

NEW YORK STATE SUPREME COURT
ONONDAGA COUNTY

IN THE MATTER OF

REBECCA SHIROFF

Petitioner,

- against -

NEW YORK STATE BOARD OF ELECTIONS, et al

Respondents.

Case No: 009200/2022

RJI No:

IN THE MATTER OF

JOHN W. MANNION

Petitioner,

- against -

NEW YORK STATE BOARD OF ELECTIONS, et al

Respondents.

Case No: 009195/2022

RJI No:

BRIAN L. QUAIL, an attorney admitted to practice in the State of New York, affirms under penalty of perjury as follows:

1. I make this affirmation on behalf of Commissioners Douglas A. Kellner and Andrew J. Spano, two of the four commissioners of the New York State Board of Elections, in opposition to the application of petitioner Shiroff relative to the assertion of the right to object to the canvassing of affidavit ballots

in the manner provided for under prior law.

PRIOR LAW

2. Election Law § 9-209 (2) (d), prior to Chapter 763 Laws of 2021, previously provided that:

Any person lawfully present may object to the refusal to cast or canvass any ballot [on various grounds]...or to the casting or canvassing of any ballot on the grounds that the voter is not [various ground stated]....” When any such objection is made, the central board of inspectors shall forthwith proceed to determine such objection and reject or cast such ballot according to such determination. If the board cannot agree as to the validity of the ballot it shall set the ballot aside, unopened, for a period of three days at which time the ballot envelope shall be opened and the vote counted unless otherwise directed by an order of the court.

3. This express language in prior law authorizing objections to “any ballot” no longer appears in Election Law § 9-209. The new Election Law § 9-209 (7) (j), provides as to affidavit ballots:

At the meeting required pursuant to paragraph (a) of subdivision eight of this section, each candidate, political party, and independent body shall be entitled to object to the board of elections’ determination that an affidavit ballot is invalid. Such ballots shall not be counted absent an order of the court. In no event may a court order a ballot that has been counted to be uncounted.”

4. The conclusion is inescapable that the board of elections’ determination of an affidavit ballots’ validity is not subject to candidate objection.

ELECTION LAW § 8-506 INAPPLICABLE

5. Petitioner Shiroff attempts to evade this conclusion by suggesting that the provisions relating to poll site objections to absentee ballots contained in Election Law 8-506 provide for this authority. This section does not apply for two reasons. *First*, the section applies only to “absentee, military, special federal and special presidential ballots,” *not* affidavit ballots. *Second*, more importantly, this section only applies to such ballots canvassed at poll sites, and since amendments to the law in 2010 presently no such ballots are canvassed at poll sites in elections conducted by boards of elections.

6. Boards of Elections no longer send absentee ballots out to poll sites for canvass. Election Law 8-412 amended by Chapter 308 of Laws of 2011 provides that “[a]bsentee ballots received by the board of elections shall be retained at the board of elections **and cast and canvassed pursuant to the provisions of 9-209 of this chapter.**” [emphasis added]. Affidavit ballots were never canvassed at poll sites. *See eg* Election Law 9-110 (3) (providing “[n]othing in this section shall be construed to require of permit affidavit ballots to be canvassed at the poll site on election day.”).

7. Chapter 163 of Laws of 2010 repealed entirely “§ 9-104. Casting of ballot; absentee, military and special federal and special presidential” which provided for the procedure to cast and canvass absentee at poll sites, and since then

all absentees received at poll sites at elections run by boards of elections are returned to the board of elections to be canvassed under Election Law § 9-209.

8. Chapter 163 of Laws of 2010 and Chapter 308 Laws of 2011 are attached as Exhibit “A”.

9. To the extent that the court does find tension between Election Law § 8-506 and 9-209, the enactment of the new 9-209 is the more recent enactment, and it was clearly intended to define, exclusively, the manner in which absentees and affidavit ballots are canvassed.

BOARD OPINION 1 of 1979

10. Attached as Exhibit “B” hereto is Formal NYSBOE Opinion 1 of 1979 which opined, under prior law, when commissioners split as to the validity of an affidavit ballot, it is to be counted.

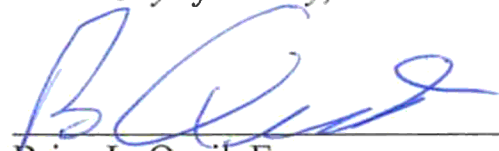
ARGUMENTS OF CONSTITUTIONAL DIMENSION CANNOT BE CONSIDERED AT THIS TIME

11. Any arguments of a Constitutional dimension should not be considered on the instant motion at this time. While the pleadings suggest such arguments may be advanced, Shiroff’s pleadings in their current form do not advance such causes except aspirationally, and, upon information and belief, the Attorney General has not been placed on notice that any statute is being attacked

on Constitutional grounds. *See* CPLR § 1012; Executive Law § 71 (requiring notice to Attorney General when constitutionality of a statute is challenged).

WHEREFORE, the instant motion related to affidavit ballots should be denied.

*Affirmed this 10th day of November 2022
in the City of Albany, New York*



Brian L. Quail, Esq.

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EXHIBIT A

RETRIEVED FROM DEMOCRACYDOCKET.COM

JP

CHAPTER 163LAWS OF 20 10

SENATE BILL _____

ASSEMBLY BILL 11352-A

STATE OF NEW YORK

11352--A

IN ASSEMBLY

June 3, 2010

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Millman, Molinaro) -- read once and referred to the Committee on Election Law -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

AN ACT to amend the election law, in relation to canvassing votes; and to repeal certain provisions of such law relating thereto

S. 8151 Addabbo

RETRIEVED FROM DEMOCRACY DOCKET

DATE RECEIVED BY GOVERNOR:

JUN 25 2010

ACTION MUST BE TAKEN BY:

JUL 07 2010

DATE GOVERNOR'S ACTION TAKEN:

JUL 07 2010

000001

RETRIEVED FROM DEMOCRACYDOCKET.COM

SENATE VOTE 61 Y 0 N

HOME RULE MESSAGE ___ Y ___ N

DATE 6/24/10

ASSEMBLY VOTE 135 Y 0 N

DATE 6/16/10

000002

A11352-A Rules (Millman) Same as S 8151 ADDABBO

<u>06/24/10</u>	A11352-A	Senate Vote	Aye: 61	Nay: 0
<u>06/16/10</u>	A11352-A	Assembly Vote	Yes: 135	No : 0

[Go to Top of Page](#)**Floor Votes:**

06/24/10 A11352-A Senate Vote Aye: 61 Nay: 0

Aye Adams	Aye Addabbo	Aye Alesi	Aye Aubertine
Aye Bonacic	Aye Breslin	Aye DeFrancisco	Aye Diaz
Aye Dilan	Aye Duane	Aye Espada	Aye Farley
Aye Flanagan	Aye Foley	Aye Fuschillo	Aye Golden
Aye Griffo	Aye Hannon	Aye Hassell-Thompson	Aye Huntley
Aye Johnson C	Aye Johnson O	Aye Klein	Aye Krueger
Aye Kruger	Aye Lanza	Aye Larkin	Aye LaValle
Aye Leibell	Aye Libous	Aye Little	Aye Marcellino
Aye Maziarz	Aye McDonald	Aye Montgomery	Exc Morahan
Aye Nozzolio	Aye Onorato	Aye Oppenheimer	Aye Padavan
Aye Parker	Aye Peralta	Aye Perkins	Aye Ranzenhofer
Aye Robach	Aye Saland	Aye Sampson	Aye Savino
Aye Schneiderman	Aye Serrano	Aye Seward	Aye Skelos
Aye Smith	Aye Squadron	Aye Stachowski	Aye Stavisky
Aye Stewart-Cousins	Aye Thompson	Aye Valesky	Aye Volker
Aye Winner	Aye Young		

[Go to Top of Page](#)**Floor Votes:**

06/16/10 A11352-A Assembly Vote Yes: 135 No : 0

Yes Abbate	Yes Alessi	Yes Alfano	Yes Amedore
Yes Arroyo	Yes Aubry	Yes Bacalles	Yes Ball
Yes Barclay	Yes Barra	Yes Barron	Yes Benedetto
Yes Benjamin	Yes Bing	Yes Boyland	Yes Boyle
Yes Brennan	ER Brodsky	Yes Brook-Krasny	Yes Burling
ER Butler	Yes Cahill	Yes Calhoun	Yes Camara
Yes Canestrari	ER Carrozza	Yes Castelli	ER Castro
Yes Christensen	Yes Clark	Yes Colton	Yes Conte
ER Cook	Yes Corwin	Yes Crespo	Yes Crouch
Yes Cusick	Yes Cymbrowitz	Yes DelMonte	Yes DenDekker
Yes Destito	Yes Dinowitz	Yes Duprey	Yes Englebright
Yes Errigo	ER Espaillat	ER Farrell	Yes Fields

Yes Finch	Yes Fitzpatrick	Yes Gabryszak	Yes Galef
ER Gantt	Yes Gianaris	Yes Gibson	Yes Giglio
Yes Glick	Yes Gordon	Yes Gottfried	Yes Gunther A
Yes Hawley	Yes Hayes	Yes Heastie	Yes Hevesi
Yes Hikind	Yes Hooper	Yes Hoyt	Yes Hyer-Spencer
Yes Jacobs	Yes Jaffee	Yes Jeffries	Yes John
Yes Jordan	Yes Kavanagh	Yes Kellner	Yes Kolb
Yes Koon	ER Lancman	Yes Latimer	Yes Lavine
Yes Lentol	Yes Lifton	Yes Lopez P	Yes Lopez V
Yes Lupardo	Yes Magee	Yes Magnarelli	Yes Maisel
Yes Markey	Yes Mayersohn	Yes McDonough	Yes McEneny
Yes McKevitt	Yes Meng	Yes Miller J	Yes Miller M
Yes Millman	Yes Molinaro	Yes Montesano	Yes Morelle
Yes Murray	Yes Nolan	Yes Oaks	Yes O'Donnell
Yes O'Mara	ER Ortiz	Yes Parment	Yes Paulin
Yes Peoples-Stokes	ER Perry	Yes Pheffer	ER Powell
Yes Pretlow	Yes Quinn	Yes Rabbitt	Yes Raia
Yes Ramos	Yes Reilich	Yes Reilly	ER Rivera J
Yes Rivera N	Yes Rivera P	Yes Robinson	Yes Rosenthal
Yes Russell	Yes Saladino	Yes Sayward	Yes Scarborough
Yes Schimel	Yes Schimminger	Yes Schroeder	Yes Scozzafava
Yes Skartados	Yes Spano	Yes Stirpe	Yes Sweeney
Yes Tedisco	Yes Thiele	Yes Titone	Yes Titus
Yes Tobacco	Yes Towns	Yes Townsend	Yes Weinstein
ER Weisenberg	Yes Weprin	Yes Wright	Yes Zebrowski K
Yes Mr. Speaker			

RETRIEVE

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**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)**

BILL NUMBER: A11352A

SPONSOR: Rules (Millman)

TITLE OF BILL: An act to amend the election law, in relation to canvassing votes; and to repeal certain provisions of such law relating thereto

PURPOSE OR GENERAL IDEA OF BILL: This bill amends Article 9 of the Election Law to Provide for the canvassing of ballots at the polls on Election Day when utilizing ballot scanners.

SUMMARY OF SPECIFIC PROVISIONS: Section 1 of the bill amends section 4-134 of the election law that allows boards of elections to send absentee ballots to the polling place to be opened and canvassed on election night.

Section 1-a of the bill amends section 7-206 of the election law to require that if a discrepancy is discovered, upon the recanvass of the results of the election, between the number of votes as recorded on the tabulated result tape and the number of voters who cast votes in an election district, the ballot scanner shall be retested before it is used again.

Section 2 of the bill amends section 9-102(1) of the election law to outline the steps election inspectors must take when closing the polls and canvassing the votes on election day.

Section 3 of the bill amends section 9-102(2) of the election law (that will expire in 2010) to provide how election inspectors will print the ballot scanner's tabulated result tape in the presence of watchers, announce the result and hand count the ballots that can not be scanned and announce the result. All result's shall be recorded on the return of canvass, including the aggregate number of write in votes for each public office or party position. The removable memory card will be secured for return to the board of elections.

Section 4 of the bill amends section 9-102(2) of the election law (that will take effect in 2010) to make the same changes as section 3 of the bill.

Section 5 of the bill amends section 9-102(3) of the election law to require any corrections to the canvass of returns to be made in the presence of watchers, for election day paper ballots that have not been scanned to be canvassed pursuant to election law § 9-108 and for the ballot scanners to be closed and locked.

Section 5-a of the bill repeals section 9-104 of the election law which currently provides for the canvassing of absentee, military, special federal and special presidential ballots at the polling place on election day.

RETRIEVE

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Section 6 of the bill amends section 9-106 of the election law to provide for an accounting of all paper ballots that were delivered to the polling place on a reconciliation form to assure the accuracy of the return of canvass. The number of ballots counted by a ballot scanner shall be added to the number of affidavit ballots cast, the number of ballots cancelled before delivery to a voter and the number of ballots spoiled. This sum shall be subtracted from the total number of ballots delivered to the polling place to determine a remainder number of ballots. This remainder number will be compared with the number of ballots that have been cast but not scanned. This section also requires that each type of paper ballot not contained in the ballot scanner's locked box shall be labeled separately and secured.

Section 7 of the bill amends section 9-108(1) of the election law to require that the number of ballots that have not been scanned because a scanner was not available, because they were abandoned at the scanner or because they are not machine processable shall be compared to the remainder number obtained under the procedures outlined in section 9-106 to provide an accurate chain of custody account of all paper ballots.

Section 8 of the bill amends election law section 9-110 of the election law to outline the procedures to be used to canvass ballots that have not been scanned. Any ballots that can be scanned shall be scanned if a ballot scanner is available at the close of the polls and before the tabulated result tape is printed. If a ballot cannot be scanned because of an over vote or blank ballot warning or for some other reason, it shall be hand counted and the results announced and recorded on the return of canvass. The section makes it clear that affidavit ballots shall not be canvassed at the poll site on Election Day.

Section 8-a of the bill amends section 9-208 of the election law to provide for the recanvass of the election day results by comparing the tabulated results tape from each ballot scanner used in each election district with the return of canvass. The ballots that were hand counted will also be recanvassed and the result compared with the return of canvass. Finally, the write in votes for each election district will be recanvassed. The sum of all votes will be validated and proven, corrections made and any remaining discrepancy in an election district results shall be reconciled by a review of all the paper ballots in that election district by the board of elections. Candidates and state and county chairs will get notice of the recanvass and an opportunity to be present.

Section 8-b of the bill amends section 9-209 of the election law to repeal references to canvassing absentee, military and all special ballots at the polling place on Election Day.

Section 9 of the bill amends section 11-212 of the election law to repeal references to canvassing special federal ballots at the polling place on Election Day.

Section 10 of the bill amends section 11-300 of the election law to repeal references to canvassing special ballots on account of religious scruples at the polling place on election day.

Section 11 of the bill amends section 11-302 of the election law to repeal references to canvassing special ballots for board of election employees at the polling place on Election Day.

RETRIEVE

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Section 12 of the bill repeals section 11-304 of the election law with respect to special ballots.

Section 13 of the bill amends section 11-306 of the election law to repeal references to canvassing special ballots for victims of domestic violence at the polling place on Election Day.

Section 14 of the bill amends section 16-113 of the election law to correct the section heading and to allow a court proceeding if a discrepancy exists in an election district's results, as defined in section 9-208(3) of the election law, that could change the result of the election.

Section 15 of the bill is the effective date.

JUSTIFICATION: The State of New York is scheduled to begin to use polling place ballot scanners beginning with the Primary Election in September 2010 in compliance with the federal Help America Vote Act and enabling state legislation. This bill codifies the procedures for closing the polls on Election Day and canvassing the results of the election using the ballot scanners. The only paper ballots that will be delivered to the polls will be election day paper ballots. These will be canvassed at the polls on Election Day, with the number of write in votes for each office or party position reported in the aggregate. No affidavit ballots will be canvassed at the polls. All absentee, military and special ballots will be retained at the board of elections and canvassed by the board after the election and upon the recanvass of the election day results. The bill continues procedures that have been in place in New York for many years regarding the canvassing of votes on Election Day except where the features of the new machines warrant a change in language or substance.

PRIOR LEGISLATIVE HISTORY: None

FISCAL IMPLICATION: None

EFFECTIVE DATE: This bill would take effect immediately.



STATE OF NEW YORK

DAVID A. PATERSON
GOVERNOR

PETER J. KIERNAN
COUNSEL TO THE GOVERNOR

July 14, 2010

Honorable Joan L. Millman
New York State Assembly
Room 748
Legislative Office Building
Albany, New York 12248

Honorable Joseph P. Addabbo, Jr.
New York State Senate
Room 815
Legislative Office Building
Albany, New York 12247

Dear Assemblywoman Millman and Senator Addabbo:

As you know, legislation that you have sponsored (A.11352-A / S.8151) has now passed both houses of the Legislature, and will soon be sent to the Governor for action.

In order to assist the Governor in reviewing this legislation and deciding whether it should be signed into law, we would greatly appreciate receiving any relevant documents or information that you have on this bill. In particular, we would very much like to receive:

- copies of the sponsor's memorandum in support of this bill;
- copies of any comment letters in support of or in opposition to this bill that you received from outside organizations, individuals or other third parties;
- if hearings were held on the bill, copies of the transcripts of those hearings; and
- any other documents or information that you believe should be considered by the Governor.

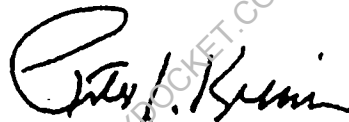
The State Constitution gives the Governor only 10 days to act on bills after they have been forwarded by the Legislature, and we therefore would appreciate receiving the above information at your earliest convenience. Please send any materials you have to:

Kristin Ross
Legislative Secretary's Office
Executive Chamber
State Capitol - Room 225
Albany, New York 12224

Any information that you provide will be included in the bill jacket that is maintained by the State Archives and constitutes the legislative history of bills that have been signed into law.

Thank you for your consideration and assistance, and please feel free to contact this office if you have any questions.

Very truly yours,



Peter J. Kiernan
Counsel to the Governor

cc: K. Ross

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JULIE DENT
PRESIDENT

JUAN CARLOS "J.C." POLANCO
SECRETARY

JOSE MIGUEL ARAUJO
NAOMI BARRERA
NANCY MOTTOLA-SCHACHER
MICHAEL J. RYAN
J. P. SIPP
GREGORY C. SOUMAS
JUDITH D. STUPP
FREDERIC M. UMANE
COMMISSIONERS

BOARD OF ELECTIONS

IN
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EXECUTIVE DIRECTOR

GEORGE GONZALEZ
DEPUTY EXECUTIVE DIRECTOR

PAMELA GREEN PERKINS
ADMINISTRATIVE MANAGER

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srichman@boe.nyc.ny.us

VIA E-MAIL & FIRST CLASS MAIL

June 29, 2010

Peter J. Kiernan, Esq.
Counsel to the Governor
Executive Chamber
Albany, NY 12224

RE: A. 11352-A
A. 11353-A
A. 11354-A

Dear Mr. Kiernan:

The Commissioners of Elections in the City of New York, at their open public meeting held this afternoon, unanimously directed me to convey their urgent request for the Governor to immediately sign into law:

A. 11352-A
A. 11353-A
A. 11354-A.

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As a result of federal and state legislation and a Federal Court order, this year **2010**, the Board of Elections in the City of New York, as well as the other Boards throughout the State, are faced with the most significant challenge in recent memory, **making the transition to an entirely new way of voting** in each of our more than 1,300 poll sites. We have embarked on an ambitious program to facilitate the exercise of the franchise by more than 4.2 million registered voters in the City of New York during the coming year, when all of our Statewide elected offices, both United States Senators, our entire Congressional Delegation and every member of the State Legislature will be elected using a new voting system for the first time in over forty years.

These three bills seek to address significant matters of importance and concern to the City Board. They amend provisions of Articles 7, 8 and 9 of the Election Law to reflect the new reality that will occur at poll sites throughout this State on September 14 and November 2, 2010.

The current comprehensive statutory framework was enacted long before the mandated introduction of a poll site based paper ballot optical scanning system for the conduct of elections in the Empire State. Following an extensive review the City Board believes that the current provisions would make opening and closing the polls as well as the conduct of Board activities on Election Day a more difficult, time-consuming and complex task, jeopardizing the voting rights of millions of voters across the State of New York.

If the current statutory framework is not promptly modified (i.e. – before we begin training our poll workers in early July 2010), then the potential for the Board of Elections in the City of New York to successfully complete the transition to a new voting system without adversely affecting the voters of this City is in doubt.

The City Board of Elections, together with our colleagues at the State Board of Elections and each of the other County Boards recognize that the current statutory framework as set forth in Articles 7, 8 and 9 of the Election Law does not provide for the use of poll site based optical scanning systems using only paper ballots.

The enactment into law of A. 11352-A, A.11353-A, and A. 11354-A modifies the current statutory requirements to reflect the realities of the new voting system. For example, the Election Law now provides that each paper ballot cast by a voter and processed by the optical scanner would still have to be manually cast and canvassed by the Inspectors of Elections at each poll site upon the close of the polls. The entire basis for moving the State of New York to poll site based optically scanned paper ballots was to provide an easy and timely manner of casting and canvassing votes while provided for the ultimate check, the creation by the voter of a paper record of there votes (the actual paper ballots) to be used in the event of a dispute as to the accuracy and correctness of the canvass.

Another example is a change in the instructions on the paper ballot. Currently a voter is told to mark a ballot with a check or a cross/"x"; the new system requires a voter to fill in an oval or a square. These bills make the necessary changes to insure that the voter is given the correct instructions.

The Commissioners of Elections in the City of New York unanimously urge the prompt enactment of these bills which provide for the changes we believe are necessary to give the City Board and election administrators throughout the Empire State the opportunity and ability to successfully conduct this fall's elections.

Therefore, the Commissioners of Elections in the City of New York strongly and urgently recommends that the Governor immediately sign:

A. 11352-A

A. 11353-A

A. 11354-A

into law.

Very truly yours,

THE BOARD OF ELECTIONS IN THE CITY OF NEW YORK

By: _____
STEVEN H. RICHMAN, General Counsel

Copy: Jeff Pearlman, Esq., Assistant Counsel to the Governor

The Commissioners of Elections in the City of New York
George Gonzalez, Deputy Executive Director
Pamela Perkins, Administrative Manager
John Owens, Director, Campaign Financial Reporting
Enforcement
Steven Denkberg, Counsel to the Commissioners
Charles Webb, Counsel to the Commissioners
Temporary Legal Staff

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New York Democratic Lawyers Council*A Voting Rights Project of the New York State Democratic Committee and the DNC*

June 30, 2010

New York Democratic Lawyers Council
c/o New York State Democratic Committee
461 Park Avenue South
New York, NY 10016

The Honorable David Paterson
Governor, New York State
New York State Capitol
Albany, NY 12224

Dear Governor Paterson:

The New York Democratic Lawyers Council writes this letter in formal support of S8151 (Addabbo)/A11352A (Millman), S8152 (Addabbo)/A11353 (Millman), and S8153 (Addabbo)/A11354 (Millman). These bills amend articles 7, 8, and 9 of the election law to ensure that election procedures conform with the use of optical scan voting machines.

A11352A updates the canvassing procedures laid out in article 9 of the election law to address the fact that election workers will be canvassing votes calculated by optical scanners rather than lever machines. A11353 clarifies how polling sites must be set up to accommodate use of the optical scanners and defines the duties of poll workers when utilizing such machines. A11354 defines the paper ballots to be used on the optical scanners and specifies that such ballots must no longer include party emblems in voting squares.

Currently, the procedures described in articles 7, 8, and 9 only pertain to lever machines. To ensure that the transition to optical scanners is as smooth and seamless as possible, the election law must be updated to address the particularities of using such technology. For this reason, the NYDLC requests that you sign the aforementioned bills into law.

Sincerely,

John Nonna, Co-Chair
Matt Morningstar, Co-Chair
Robert Donovan, Co-Chair
Cindy Warner, Co-Chair

Cc: Senator Addabbo, Elections Committee Chair
Assemblywoman Millman, Election Law Committee Chair

www.nydlic.org

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RETRIEVE

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STATE OF NEW YORK

11352--A

IN ASSEMBLY

June 3, 2010

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Millman, Molinaro) -- read once and referred to the Committee on Election Law -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

AN ACT to amend the election law, in relation to canvassing votes; and to repeal certain provisions of such law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivisions 1 and 3 of section 4-134 of the election law,
2 subdivision 1 as amended by chapter 91 of the laws of 1992, are amended
3 to read as follows:
4 1. The board of elections shall deliver, at its office, to the clerk
5 of each town or city in the county, except the cities of New York,
6 Buffalo and Rochester and to the clerk of each village in the county in
7 which elections are conducted by the board of elections, by the Saturday
8 before the primary, general, village or other election for which they
9 are required: the official and sample ballots; ~~[envelopes containing~~
10 ~~absentee voters' ballots received not later than five o'clock in the~~
11 ~~afternoon of the Friday before the day of an election; unless such board~~
12 ~~of elections has determined by resolution adopted at least thirty days~~
13 ~~before election day not to deliver such absentee ballots to the inspec-~~
14 ~~tors of election at the polling place,]~~ ledgers prepared for delivery in
15 the manner provided in subdivision two of this section and containing
16 the registration poll records of all persons entitled to vote at such
17 election in such town, city or village, or computer generated registra-
18 tion lists containing the names of all persons entitled to vote at such
19 election in such town, city or village; challenge reports prepared as
20 directed by this chapter; sufficient applications for registration by
21 mail; sufficient ledger seals and other supplies and equipment required
22 by this article to be provided by the board of elections for each poll-
23 ing place in such town, city or village. ~~[The board of elections shall~~
24 ~~deliver at its office to each town, city or village clerk those ballots~~
25 ~~from military and absentee voters received after five o'clock in the~~

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD17094-11-0

RETRIEVE

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A. 11352--A

2

1 afternoon of the Friday before and before twelve o'clock noon on the
2 Monday before the primary, general or other election for which they are
3 required, unless such board of elections has determined by resolution
4 adopted at least thirty days before election day not to deliver such
5 ballots to the inspectors of election at the polling place, and the
6 town, city or village clerk receiving such ballot envelope shall cause
7 the same to be delivered to the inspectors of election of the election
8 district as provided in this section.] The town, city or village clerk
9 shall call at the office of such board of elections at such time and
10 receive such ballots, supplies and equipment. In the cities of New York,
11 Buffalo and Rochester the board of elections shall cause such ballots,
12 supplies and equipment to be delivered to the board of inspectors of
13 each election district approximately one-half hour before the opening of
14 the polls for voting, and shall take receipts therefor.

15 3. Any envelope containing absentee voters' ballots on which the
16 blanks have not been properly filled in ~~[shall not be delivered to the~~
17 ~~town or city clerk or the board of inspectors as aforesaid but]~~ shall be
18 stamped to indicate the defect and shall be preserved by the board for
19 at least one year after the receipt thereof.

20 § 1-a. Section 7-206 of the election law is amended by adding a new
21 subdivision 4 to read as follows:

22 4. Upon the discovery of a discrepancy during the recanvass required
23 by subdivision three of section 9-208 of this chapter, the ballot scan-
24 ner shall be retested pursuant to 9 NYCRR 6210.2. No ballot scanner
25 shall be returned to service until any such discrepancy has been
26 resolved.

27 § 2. Subdivision 1 of section 9-102 of the election law, as amended by
28 chapter 234 of the laws of 1976, is amended to read as follows:

29 1. As soon as the polls of the election are closed, the inspectors of
30 election thereat shall, in the order set forth herein; a.) ~~[lock the~~
31 ~~voting machine against voting; place an inspector at the ballot scanner~~
32 ~~to prevent further voting; b.) [sign a certificate stating the number~~
33 ~~of voters as shown on the public counters, the number on the seal, the~~
34 ~~number registered on the protective counter, and that the voting machine~~
35 ~~is closed and locked] reconcile the paper ballots pursuant to section~~
36 ~~9-106 of this title; c.) [account for the paper ballots used, if any]~~
37 ~~remove surplus ballots, if any, pursuant to section 9-108 of this title;~~
38 ~~d.) [canvass the machine vote] scan the ballots contained in the emer-~~
39 ~~gency box or other secure storage container pursuant to section 9-110 of~~
40 ~~this title; e.) [cast and canvass all the ballots] hand count and secure~~
41 ~~ballots that cannot be scanned pursuant to section 9-110 of this title;~~
42 ~~f.) close the poll, print the tabulated result tape, announce the result~~
43 ~~and sign the return of canvass pursuant to subdivisions 2 and 3 of this~~
44 ~~section; g.) close, lock and seal the machine; and h.) sign the close of~~
45 ~~poll certificate, as provided by the board of elections.~~

46 § 3. Subdivision 2 of section 9-102 of the election law, as amended by
47 chapter 234 of the laws of 1976, paragraph (a) as amended by chapter 92
48 of the laws of 2001 and paragraph (c) as added by chapter 262 of the
49 laws of 1986, is amended to read as follows:

50 2. (a) The inspectors shall canvass the machine vote by ~~[opening the~~
51 ~~counting compartments] printing the ballot scanner tabulated results~~
52 ~~tape~~ in the presence of the watchers and all other persons who may be
53 lawfully within the polling place, giving full view of ~~[all] the [count-~~
54 ~~er] tabulated result tape~~ numbers. The ~~[chairman] chair~~ of the board of
55 inspectors shall, under the scrutiny of an inspector of a different
56 political party, in the order of the offices as their titles are

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1 arranged on the ~~[machine]~~ tabulated result tape, read and announce in
2 distinct tones the ~~[designating number and letter on each counter]~~
3 public office or party position, candidate name, political party and the
4 result as shown [by] on the [counter number] tabulated result tape and
5 then shall announce the aggregate number of write-in votes recorded for
6 each office. ~~[If the voting machine records write-in votes on a regis-~~
7 ~~ter or roll in a separately sealed compartment, a] The board of~~
8 elections ~~[may, by resolution adopted at least thirty days before the~~
9 ~~date of an election, determine to]~~ shall canvass the write-in votes cast
10 for each office on the ~~[write-in register or roll either]~~ election day
11 paper ballots at the time of the recanvass conducted pursuant to section
12 9-208 of this article ~~[or direct that the chairman of the board of~~
13 ~~inspectors shall, under the scrutiny of an inspector of a different~~
14 ~~political party, read the votes recorded for each office on the write-in~~
15 ~~ballots at the close of the polls]. [He] The chair~~ shall also in the
16 same manner announce the vote on each ballot proposal. The ~~[vote as~~
17 ~~registered]~~ results on the tabulated result tape shall be [entered on]
18 entered on or the tabulated result tape shall be affixed to the
19 [returns] return of canvass [in ink,] for that ballot scanner or
20 election district pursuant to section 9-120 of this title, by an inspec-
21 tor[; other than the chairman], under the scrutiny of an inspector of a
22 different political party, in the space [which has the same designating
23 number and letter, after which the figures shall be verified by being
24 called off in the same manner from the counters of the machine by an
25 inspector of opposite political faith from the chairman] indicated;
26 provided, however, if any election day paper ballots were hand counted,
27 the results of such hand counting shall be recorded on the return of
28 canvass and be added to the numbers reported from the tabulated results
29 tape to produce a single result for each candidate and ballot proposal.
30 The return of canvass, which shall show the ~~[total]~~ aggregate number of
31 votes cast for each office, the number of votes cast for each candidate
32 appearing on the ballot for each office and the aggregate number of
33 write-in votes for each office, [as shown on his counter and the number
34 of votes for persons not nominated] shall then be filled out. Such
35 return and tabulated result tape shall be signed by each inspector. ~~[The~~
36 ~~counter compartment of the voting machine shall remain open until the~~
37 ~~official returns and all other reports have been fully completed and~~
38 ~~verified by the board of inspectors.]~~

39 (b) ~~[If the machine is provided with a device for printing or photo-~~
40 ~~graphing candidate and amendment counters, the printed or photographic~~
41 ~~record produced by the machine shall be the official return of the~~
42 ~~canvass and the result of the votes as shown thereon shall be proclaimed~~
43 ~~in the same manner as herein provided and ample opportunity shall be~~
44 ~~given to any person lawfully present to inspect such printed or photo-~~
45 ~~graphic record. A] The printed or photographic record produced by such~~
46 machine shall include a certificate which the inspectors shall sign,
47 stating ~~[that the machine has been locked against voting and sealed,]~~
48 the number of voters as shown on the public counter ~~[; the number on the~~
49 ~~seal;]~~ and the number on the protective counter.

50 (c) If the machine is provided with a removable electronic or comput-
51 erized device which records the total of the votes cast on such machine,
52 such device shall be removed from the machine after copies of the print-
53 ed record, sufficient to meet the requirements of this chapter and the
54 regulations of the board of elections, have been produced. After the
55 device is removed from the machine, the inspectors shall ~~[sign their~~
56 ~~names in the place provided on the seal on the outside of such device~~

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1 ~~and then place such device in the envelope or other container provided~~
2 ~~for its return to the board of elections] place such device in the~~
3 ~~secure envelope or other secure container provided for its return to the~~
4 ~~board of elections. Such secure container shall be signed by the inspec-~~
5 ~~tors upon the securing of the device therein.~~

6 § 4. Paragraph (a) of subdivision 2 of section 9-102 of the election
7 law, as amended by chapter 647 of the laws of 1982, is amended to read
8 as follows:

9 (a) The inspectors shall canvass the machine vote by ~~[opening the~~
10 ~~counting compartments] printing the ballot scanner tabulated results~~
11 ~~tape~~ in the presence of the watchers and all other persons who may be
12 lawfully within the polling place, giving full view of ~~[all]~~ the ~~[count-~~
13 ~~er]~~ tabulated result tape numbers. The ~~[chairman]~~ chair of the board of
14 inspectors shall, under the scrutiny of an inspector of a different
15 political party, in the order of the offices as their titles are
16 arranged on the ~~[machine]~~ tabulated result tape, read and announce in
17 distinct tones the ~~[designating number and letter on each counter,]~~
18 public office or party position, candidate name, political party and the
19 result as shown [by] on the [counter number,] tabulated result tape and
20 then shall [read] announce the aggregate number of write-in votes
21 recorded for each office [on the write-in ballots]. ~~[He]~~ The chair shall
22 also in the same manner announce the vote on each ballot proposal. The
23 ~~[votes as registered]~~ results on the tabulated result tape shall be
24 entered on or the tabulated result tape shall be affixed to the
25 ~~[returns]~~ return of canvass [in ink,] for that ballot scanner or
26 election district pursuant to section 9-120 of this title by an inspec-
27 tor~~[, other than the chairman]~~, under the scrutiny of an inspector of a
28 different political party, in the space ~~[which has the same designating~~
29 ~~number and letter, after which the figures shall be verified by being~~
30 ~~called off in the same manner from the counters of the machine by an~~
31 ~~inspector of opposite political faith from the chairman]~~ indicated;
32 provided, however, if any election day paper ballots were hand counted
33 pursuant to subdivision two of section 9-110 of this title, the results
34 of such hand counting shall be recorded on the return of canvass and be
35 added to the numbers reported from the tabulated results tape to produce
36 a single total result for each candidate and ballot proposal. The
37 return of canvass, which shall show the ~~[total]~~ aggregate number of
38 votes cast for each office, the number of votes cast for each candidate
39 appearing on the ballot for each office and the aggregate number of
40 write-in votes for each office, [as shown on his counter and the number
41 of votes for persons not nominated] shall then be filled out. Such
42 return and tabulated result tape shall be signed by each inspector. ~~[The~~
43 ~~counter compartment of the voting machine shall remain open until the~~
44 ~~official returns and all other reports have been fully completed and~~
45 ~~verified by the board of inspectors.]~~

46 § 5. Subdivision 3 of section 9-102 of the election law, as amended by
47 chapter 647 of the laws of 1982, paragraph (a) as amended by chapter 262
48 of the laws of 1986, is amended to read as follows:

49 3. (a) During the canvass time any candidate or duly accredited
50 watcher who may desire to be present shall be admitted to the polling
51 place. ~~[The proclamation of the result of the votes cast shall be delib-~~
52 ~~erately announced in a distinct voice by the chairman of the board of~~
53 ~~inspectors who shall read the name of each candidate, with the designat-~~
54 ~~ing number and letter of his counter, and the vote registered on such~~
55 ~~counter, also the vote cast for and against each ballot proposal.]~~
56 During ~~[such]~~ the proclamation of the result, ample opportunity shall be

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1 given to any person lawfully present to compare the results so announced
2 with ~~[the counter dials of the machine or the numbers on]~~ the ~~[printed~~
3 ~~or photographic record]~~ sum of the votes appearing on the tabulated
4 result tape and any hand counted election day ballots, if any, and any
5 necessary corrections shall then and there be made on the return of
6 canvass by the [board, after which] inspectors. Thereafter, the [doors
7 of the] voting machine shall be closed and locked. The first copy of the
8 printed record for each voting machine ~~[which does not have counters~~
9 ~~shall]~~ should be posted on the wall of the polling place forthwith;
10 provided, however, that if only one copy of such printed record can be
11 printed by any such machine at any election, such copy shall be used in
12 preparation of the statement of returns required by this title. ~~[Before~~
13 ~~adjourning, the board shall, with the seal provided therefor, so seal~~
14 ~~the operating lever of the machine that the voting and counting mech-~~
15 ~~anism will be prevented from operation.]~~

16 (b) ~~[Paper]~~ Election day paper ballots ~~[and emergency ballots cast~~
17 ~~during voting machine breakdowns which have been voted]~~ that have not
18 been scanned shall ~~[then]~~ be canvassed and tallied~~[, the vote thereon~~
19 ~~for each candidate and ballot proposal, announced and added to the vote~~
20 ~~as recorded on the return of canvass]~~ pursuant to sections 9-108 and
21 9-110 of this title.

22 (c) ~~[Absentee and military, special federal, and special presidential~~
23 ~~ballots shall then be canvassed and tallied, the vote thereon for each~~
24 ~~candidate announced and added to the vote as recorded on the statement~~
25 ~~of canvass and a final proclamation made as to the total vote received~~
26 ~~by each candidate and ballot proposal.]~~

27 ~~(d)]~~ At a primary election, the ballots of the parties represented on
28 the board of inspectors shall be canvassed before the ballots of other
29 parties are canvassed.

30 § 5-a. Section 9-104 of the election law is REPEALED.

31 § 6. Section 9-106 of the election law is amended to read as follows:

32 § 9-106. ~~[Paper]~~ Official ballots; accounting for number used. At the
33 close of the polls and before any boxes or envelope containing voted
34 ballots are opened, the clerks, or if there be no clerks, two inspectors
35 representing different parties designated by the ~~[chairman]~~ chair, shall
36 ~~[make up in duplicate in ink the ballot returns, which shall]~~ account
37 for all of the paper ballots furnished to the election district~~[, except~~
38 ~~the absentee, military and special presidential ballots accounted for~~
39 ~~pursuant hereto]. [They]~~ On a reconciliation form supplied by the board
40 of elections, they shall count [and], verify and record on such form the
41 number of [each kind of] unused ballots [and enter it upon the ballot
42 returns. They shall then open the box or envelope, for], the number of
43 ballots cancelled before delivery [and] to voters in the poll site, the
44 number of ballots spoiled and returned by voters [, separate them into
45 their several kinds, count all ballots of each kind and enter the
46 several results upon the ballot returns] and the number of affidavit
47 ballots cast. These numbers shall be added to the number of ballots
48 cast as recorded by the public counter number appearing on the ballot
49 scanner screen. The sum shall be recorded on the ballot reconciliation
50 form. This resulting number shall be deducted from the number of
51 ballots originally delivered to the poll site, and the remainder number
52 shall be determined to be the number of ballots secured in the emergency
53 ballot box or other secure storage container provided by the board of
54 elections. This remainder number shall be recorded on the ballot recon-
55 ciliation form.

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1 ~~[They shall make the additions and subtractions called for by the~~
2 ~~returns and prove their figures. If adhesive pasters have been used for~~
3 ~~any office or party position, the return for the ballots for which the~~
4 ~~pasters were supplied shall contain a memorandum showing the number of~~
5 ~~pasters received, the number affixed to ballots and the number unused~~
6 ~~and returned.]~~ Such clerks or inspectors shall then ~~[tie securely in a~~
7 ~~separate package each kind of ballot and each kind of stub, counted as~~
8 ~~above provided, and shall plainly label, seal and return the same to]~~
9 ~~separate, label and place each type of ballot in the box [from which it~~
10 ~~was taken] or container provided by the board of elections, and securely~~
11 ~~lock [and] or seal [the] each such box or container. [Such clerks or~~
12 ~~inspectors shall also securely tie all unused ballots in a sealed pack-~~
13 ~~age. They shall also enter on the ballot return, the number of emergen-~~
14 ~~cy ballots, if any, delivered to voters.]~~ They shall then sign such
15 ~~[ballot returns]~~ reconciliation form.

16 § 7. Subdivision 1 of section 9-108 of the election law is amended to
17 read as follows:

18 1. ~~[The]~~ For all election day paper ballots cast when a ballot scanner
19 is not available, ballots abandoned by a voter at the ballot scanner, as
20 defined in 9 NYCRR 6210.13(a) (11) (a) or ballots submitted by the voter
21 which are otherwise non-machine processable, as defined in 9 NYCRR
22 6210.13(a) (8), the board of inspectors, at the beginning of the canvass,
23 shall count the number of unscanned ballots found in each ~~[ballot]~~ emer-
24 gency box ~~[without unfolding them, except so far as to ascertain]~~ or
25 other secure storage container provided by the board of elections,
26 ~~ascertaining~~ that each ballot is single, and shall compare the number of
27 ballots found in ~~[each]~~ such box or container with the remainder number
28 ~~[shown by the registration poll records, and the ballot returns to have~~
29 ~~been deposited therein]~~ of ballots, as determined pursuant to section
30 9-106 of this title.

31 § 8. Section 9-110 of the election law, as amended by chapter 647 of
32 the laws of 1982, is amended to read as follows:

33 § 9-110. Canvass; election day paper ballots that have not been
34 scanned; method of. ~~[The method of canvassing ballots other than ballots~~
35 ~~upon ballot proposals]~~ 1. Election day paper ballots that have not been
36 scanned because a ballot scanner was not available or because the ballot
37 has been abandoned by a voter at the ballot scanner shall be canvassed
38 as follows: a bipartisan team of inspectors shall cast such ballots on a
39 ballot scanner, if one is available, at the close of the polls before
40 the tabulated result tape is printed. If a ballot does not scan because
41 of an overvote or blank ballot warning on the ballot scanner screen, the
42 inspectors shall cause the ballot scanner to eject such ballot to be
43 hand counted pursuant to subdivision two of this section.

44 2. Election day paper ballots that cannot be scanned, as provided in
45 subdivision one of this section shall be canvassed as follows: The
46 inspectors shall unfold each ballot of the kind then to be canvassed and
47 shall place all such ballots upon the table in one pile face down. The
48 ~~[chairman then]~~ chair shall take up each ballot in order, turn it face
49 up and announce loudly and distinctly the vote registered on each
50 section, in the order of the sections upon the ballot, or that the
51 ballot is void or the section blank, as the case may be. If more than
52 one person is to be elected to the same office or party position the
53 ~~[chairman]~~ chair, if the ballot is void or the ballot or section is
54 wholly blank, shall announce as many void or blank votes as there are
55 persons to be elected to the office or party position. On a primary
56 ballot a "section," as the term is used above, shall mean the space

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1 occupied by the title of an office or party position, names of candi-
2 dates therefor and the voting squares therewith. The canvass of each
3 ballot must be completed before the next ballot is taken up ~~[except that~~
4 ~~in canvassing the ballots at a general election in an even numbered year~~
5 ~~the votes upon the first section of each ballot shall be canvassed~~
6 ~~first, and when the canvass of such section on each such ballot is~~
7 ~~completed the ballot shall be placed in a new pile]~~. When the tallies
8 of the votes ~~[on the first section]~~ of all such ballots are proven, and
9 the results announced, the inspectors' ~~[returns of the vote thereon]~~
10 shall ~~[be filled out. The remaining sections of each such ballot shall~~
11 ~~then be canvassed, the canvass of each ballot to be completed before the~~
12 ~~next ballot is taken up]~~ record the results on the return of canvass.

13 3. Nothing in this section shall be construed to require or permit
14 affidavit ballots to be canvassed at the poll site on election day.

15 § 8-a. Section 9-208 of the election law, the section heading as
16 amended by chapter 373 of the laws of 1978, subdivision 1 as amended by
17 chapter 359 of the laws of 1989, and subdivision 2 as amended by chapter
18 9 of the laws of 1978, is amended to read as follows:

19 § 9-208. Provisions for recanvass of vote in every election district
20 in the state; procedure in case of discrepancy. 1. Within fifteen days
21 after each general, special or primary election, and within seven days
22 after every village election conducted by the board of elections at
23 which ~~[voting machines]~~ ballot scanners are used, the board of
24 elections, or a bipartisan committee of or appointed by said board~~[7]~~
25 shall, in each county using ~~[voting machines]~~ ballot scanners, make a
26 record of the serial number ~~[on the seal and the number on the protec-~~
27 ~~tive counter,]~~ of each ~~[voting machine]~~ ballot scanner used in each
28 election district in such general, special or primary election~~[, shall~~
29 ~~open the counter compartment of each of such machine, and, without~~
30 ~~unlocking such machine against voting, shall recanvass the vote cast~~
31 ~~thereon or, if the machine is provided with a device for printing or~~
32 ~~photographing the counters, such board or committee shall]~~. No person
33 who was a candidate at such election shall be appointed to membership on
34 the committee. Such board of elections or bipartisan committee shall
35 recanvass [such printed or photographic record or, if the machine is
36 provided with a removable electronic or computerized device which
37 records the vote cast on such machine and from which a printed copy of
38 such vote may be made mechanically or electronically and also a device
39 for printing or photographing such vote directly from the voting
40 machine, such board or committee shall recanvass the vote] the tabulated
41 result tape from each ballot scanner used in each election district by
42 comparing [the vote on the printed copy of the canvass made from such
43 removable device with the printed or photographed copy of the canvass
44 made directly from the voting machine at the close of the polls] such
45 tape with the numbers as recorded on the return of canvass. [No person
46 who was a candidate at such election shall be appointed to membership on
47 the committee.] The said board or committee shall [during such time,]
48 also make a recanvass of any [absentee and military, special federal,
49 special presidential, emergency] election day paper ballots that have
50 not been scanned and were hand counted pursuant to subdivision two of
51 section 9-110 of this article and compare the results with the number as
52 recorded on the return of canvass. The board or committee shall then
53 recanvass write-in votes, if any, on ballots which were otherwise
54 scanned and canvassed at polling places on election night [and delivered
55 to the board of elections by the person filing returns]. The board or
56 committee shall validate and prove such sums. Before making such canvass

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1 the board of elections, with respect to each election district to be
2 recanvassed, shall give notice in writing to the voting machine custo-
3 dian thereof, to the state and county ~~[chairman]~~ chair of each party or
4 independent body which shall have nominated candidates for the said
5 general or special election or nominated or elected candidates at the
6 said primary election and to each individual candidate whose name
7 appears on ~~[said machine]~~ the office ballot, of the time and place where
8 such canvass is to be made; and the state and county ~~[chairman]~~ chair of
9 each such party or independent body and each such individual candidate
10 may send a representative to be present at such recanvass. Each candi-
11 date whose name appears on ~~[said machine]~~ the official ballot, or his or
12 her representative, shall have the right personally to examine and make
13 a ~~[copy]~~ record of the vote recorded on ~~[such machine]~~ the tabulated
14 result tape and any ballots which were hand counted.

15 2. If upon such recanvass, it shall be found that the original canvass
16 of the returns of an election district has been incorrectly made from
17 any ~~[machine or machines or upon the result of any absentee and mili-~~
18 ~~tary, special federal, special presidential, emergency or alleged write-~~
19 ~~in ballot]~~ tabulated result tape plus any ballots which were hand count-
20 ed, a statement in writing shall be prepared giving [in detail] the
21 details for [each such machine or total of such ballots or alleged
22 write-in ballots cast, the] any corrections made for such election
23 district. The result of the recanvass, and such statement shall be
24 witnessed by the persons required to be present and shall be filed with
25 the board of elections. Such recanvass of votes made pursuant hereto
26 shall thereupon supersede the returns filed by the inspectors of
27 election of the election district in which the canvass was made.

28 3. If upon ~~[such]~~ the recanvass of an election district, it shall be
29 found that a discrepancy ~~[still remains unaccounted for,]~~ exists between
30 the number of voters who cast a vote in an election district and the
31 number of votes recorded on the tabulated results tape plus any election
32 day paper ballots counted by hand the board of elections, or the commit-
33 tee thereof, [with the assistance of the custodian of the machine, shall
34 unlock the voting and counting mechanism of the machine and] shall
35 proceed thoroughly to examine [and test the machine] all the election
36 day paper ballots in that election district to determine [and reveal the
37 true cause or causes, if any, of the discrepancy in] the [returns]
38 result from such [machine] election district. [Before testing, the
39 counters shall be reset at zero and each counter shall be operated at
40 least one hundred times.] The result of this examination of election day
41 ballots shall supersede the returns filed by the inspectors of election
42 of the election district in which the canvass was made. After the
43 completion of such examination [and test], the [custodian] board of
44 elections, or the committee thereof, shall then and there prepare a
45 statement in writing giving in detail the result thereof, and such
46 statement shall be witnessed by the persons required to be present and
47 shall be filed in the office of the board of elections.

48 § 8-b. The opening paragraph and subparagraph (i) of paragraph (a) of
49 subdivision 2 of section 9-209 of the election law, as amended by chap-
50 ter 104 of the laws of 2010, are amended to read as follows:

51 Before completing the canvass of votes cast in any primary, general,
52 special, or other election at which voters are required to sign their
53 registration poll records before voting, the board of elections shall
54 proceed in the manner hereinafter prescribed to cast and canvass any
55 absentee, military, special presidential, special federal or other
56 special ballots ~~[which were not cast and canvassed at the polling~~

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1 place,] and any ballots voted by voters who moved within the county or
2 city after registering, voters who are in inactive status, voters whose
3 registration was incorrectly transferred to another address even though
4 they did not move, [or] voters whose registration poll records were
5 missing on the day of such election [or], voters who have not had their
6 identity previously verified [or] and voters whose registration poll
7 records did not show them to be enrolled in the party in which they
8 claimed to be enrolled. Each such ballot shall be retained in the
9 original envelope containing the voter's affidavit and signature, in
10 which it is delivered to the board of elections until such time as it is
11 to be cast and canvassed.

12 (i) Upon assembling at the time and place fixed for such meeting, each
13 central board of inspectors shall cast and canvass the envelopes and the
14 ballots therein contained as nearly as practicable in the manner
15 provided by this chapter for a board of inspectors to consider, cast,
16 and canvass absentee ballot envelopes [and ballots at the polling
17 place].

18 § 9. Section 11-212 of the election law, as amended by chapter 165 of
19 the laws of 2009, is amended to read as follows:

20 § 11-212. Special federal ballots; deadline for receipt [and delivery
21 to polling place]. All special federal ballots received by the board of
22 elections before the close of the polls on election day [may be deliv-
23 ered to the inspectors of the election districts in which the voters are
24 registered, in the manner prescribed by this chapter for absentee
25 ballots, or] shall be retained by the board of elections and cast and
26 canvassed pursuant to section 9-209 of this chapter [as the board of
27 elections, in its discretion, shall determine by resolution adopted at
28 least thirty days before election day]. All ballots contained in envel-
29 opes showing a cancellation mark of the United States postal service or
30 a foreign country's postal service, or showing a dated endorsement of
31 receipt by another agency of the United States government, with a date
32 which is ascertained to be not later than the day before election, shall
33 be cast and counted if received by the board of elections not later than
34 seven days following the day of a primary election or thirteen days
35 following the day of a general or special election except that the
36 special federal ballot of a voter who requested such ballot by letter,
37 rather than application, shall not be counted unless a valid application
38 form, signed by such voter, is received by the board of elections with
39 such ballot. All ballots received by the board of elections and all
40 federal write-in ballots received from special federal voters not later
41 than seven days following the day of a primary election or thirteen days
42 following the day of a general or special election, shall be retained at
43 the board and shall be cast and canvassed in the same manner as other
44 ballots retained by such board.

45 § 10. Section 11-300 of the election law, as amended by chapter 302 of
46 the laws of 1990, is amended to read as follows:

47 § 11-300. Special ballots on account of religious scruples. A voter
48 may deliver to the inspectors of election of the election district in
49 which he is registered, or to the board of elections, at any time during
50 the period in which an application for absentee ballot may be so deliv-
51 ered pursuant to the provisions of this chapter, a written statement of
52 religious scruples against voting at a polling place located in a prem-
53 ises used for religious purposes. In the event the polling place for any
54 such voter's election district shall be located in a premises used for
55 religious purposes, the board of elections shall permit such voter to
56 cast a special ballot, at an office of such board of elections, not

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1 earlier than one week before the election and not later than the close
2 of the polls on election day. Such ballots ~~[may be delivered to the~~
3 ~~inspectors of election in the manner prescribed by this chapter for~~
4 ~~absentee ballots or]~~ shall be retained at the board of elections and
5 cast and canvassed pursuant to the provisions of section 9-209 of this
6 chapter ~~[as such board shall, in its discretion, determine by resolution~~
7 ~~adopted at least thirty days before election day]~~.

8 § 11. Section 11-302 of the election law, as amended by chapter 243 of
9 the laws of 2003, is amended to read as follows:

10 § 11-302. Special ballots for board of election employees. A person
11 who is an employee of the board of elections or who has been appointed
12 to serve as an inspector of elections, poll clerk or election coordina-
13 tor at a polling place other than the one at which he or she is regis-
14 tered to vote, may deliver to the inspectors of election of the election
15 district in which he or she is registered, or to the board of elections,
16 at any time during the period in which an application for an absentee
17 ballot may be so delivered pursuant to the provisions of this chapter, a
18 written statement that he or she will be unable to appear at the polling
19 place for such election district on the day of an election because his
20 or her duties as an employee of such board or as an inspector, poll
21 clerk or election coordinator require him or her to be elsewhere. The
22 board of elections shall provide such voter a special ballot not earlier
23 than two weeks before the election and not later than the close of the
24 polls on election day. Such cast ballots may be delivered to an office
25 of such board of elections or to any board of inspectors not later than
26 the close of the polls on election day. Such ballots ~~[may be delivered~~
27 ~~to the inspectors of election in the manner prescribed by this chapter~~
28 ~~for absentee ballots or]~~ shall be retained at the board of elections and
29 cast and canvassed pursuant to the provisions of section 9-209 of this
30 chapter ~~[as such board shall, in its discretion, determine by resolution~~
31 ~~adopted at least thirty days before election day]~~.

32 § 12. Section 11-304 of the election law is REPEALED.

33 § 13. Section 11-306 of the election law, as amended by chapter 38 of
34 the laws of 2010, is amended to read as follows:

35 § 11-306. Special ballots; victims of domestic violence. 1. A voter
36 may deliver to the board of elections, at any time during the period in
37 which absentee ballot applications may be delivered, a signed written
38 statement swearing or affirming:

39 (a) that he or she is the victim of domestic violence;

40 (b) that he or she has left his or her residence because of such
41 violence; and

42 (c) that because of the threat of physical or emotional harm to
43 himself or herself or to family or household members, he or she wishes
44 to cast a special ballot in the next election. The statement must
45 include the voter's address of registration. The board of elections
46 shall permit such a voter to cast a special ballot at an office of such
47 board of elections not earlier than one week before the election and not
48 later than the close of the polls on election day. Such ballots ~~[may be~~
49 ~~delivered to the inspectors of election in the manner prescribed by this~~
50 ~~chapter for absentee ballots or]~~ shall be retained at the board of
51 elections and cast and canvassed pursuant to the provisions of section
52 9-209 of this chapter ~~[as such board shall, in its discretion, determine~~
53 ~~by resolution adopted at least thirty days before election day]~~.

54 2. "Family or household members" mean the following individuals:

55 (a) persons related by consanguinity or affinity;

56 (b) persons legally married to one another;

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A. 11352--A

11

1 (c) persons formerly married to one another regardless of whether they
2 still reside in the same household;

3 (d) persons who have a child in common regardless of whether such
4 persons are married or have lived together at any time; or

5 (e) persons who are not related by consanguinity or affinity and who
6 are or have been in an intimate relationship regardless of whether such
7 persons have lived together at any time.

8 § 14. Section 16-113 of the election law, as added by chapter 181 of
9 the laws of 2005, is amended to read as follows:

10 § 16-113. ~~[Audit of]~~ Proceeding with respect to voter verifiable
11 records. The supreme court, by a justice within the judicial district,
12 or the county court, by a county judge within his or her county, by any
13 candidate or his or her agent, may direct a manual audit of the voter
14 verifiable audit records applicable to any candidate running for office
15 within such judicial district or county where (1) the uniform statewide
16 standard promulgated by regulation by the state board of elections
17 pursuant to subdivision three of section 9-211 of this chapter with
18 respect to discrepancies between manual audit tallies and voting
19 machines or systems tallies requires a further voter verifiable record
20 audit of additional voting machines or systems or all voting machines or
21 systems applicable to such election, or (2) where evidence presented to
22 the court otherwise indicates that there is a likelihood of a material
23 discrepancy between such manual audit tally and such voting machine or
24 system tally, or a discrepancy as defined in subdivision three of
25 section 9-208 of this chapter, which creates a substantial possibility
26 that the winner of the election as reflected in the voting machine or
27 system tally could change if a voter verifiable record audit of addi-
28 tional voting machines or systems or of all voting machines or systems
29 applicable to such election were conducted.

30 § 15. This act shall take effect immediately, provided, however, that
31 the amendments to paragraph (a) of subdivision 2 of section 9-102 of the
32 election law made by section three of this act shall be subject to the
33 expiration and reversion of such paragraph pursuant to section 3 of
34 chapter 92 of the laws of 2001, as amended, when upon such date the
35 provisions of section four of this act shall take effect:

JC

CHAPTER 308

LAWS OF 20 _____

SENATE BILL _____

ASSEMBLY BILL 7602-A

STATE OF NEW YORK

7602--A

2011-2012 Regular Sessions

IN ASSEMBLY

May 10, 2011

Introduced by M. of A. MILLMAN -- read once and referred to the Committee on Election Law -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the election law, in relation to the retention of absentee ballots and the canvass of military and absentee ballots

S5677/Lanza

RETRIEVED FROM DEMOCRACYDOCKET.COM

DATE RECEIVED BY GOVERNOR:

JUL 22 2011

ACTION MUST BE TAKEN BY:

AUG 03 2011

DATE GOVERNOR'S ACTION TAKEN:

AUG 3 2011

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SENATE VOTE 62 Y 0 N

HOME RULE MESSAGE ____ Y ____ N

DATE 6/20/11

ASSEMBLY VOTE 137 Y 0 N

DATE 5/25/11

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A7602-A Millman Same as S 5677 LANZA

<u>06/20/11</u>	A7602-A	Senate Vote	Aye: 62	Nay: 0
<u>05/25/11</u>	A7602-A	Assembly Vote	Yes: 137	No : 0

[Go to Top of Page](#)**Floor Votes:**

06/20/11 A7602-A Senate Vote Aye: 62 Nay: 0

Aye Adams	Aye Addabbo	Aye Alesi	Aye Avella
Aye Ball	Aye Bonacic	Aye Breslin	Aye Carlucci
Aye DeFrancisco	Aye Diaz	Aye Dilan	Aye Duane
Aye Espaillat	Aye Farley	Aye Flanagan	Aye Fuschillo
Aye Gallivan	Aye Gianaris	Aye Golden	Aye Griffo
Aye Grisanti	Aye Hannon	Aye Hassell-Thompson	Aye Huntley
Aye Johnson	Aye Kennedy	Aye Klein	Aye Krueger
Aye Kruger	Aye Lanza	Aye Larkin	Aye LaValle
Aye Libous	Aye Little	Aye Marcellino	Aye Martins
Aye Maziarz	Aye McDonald	Aye Montgomery	Aye Nozzolio
Aye O'Mara	Aye Oppenheimer	Aye Parker	Aye Peralta
Aye Perkins	Aye Ranzenhofer	Aye Ritchie	Aye Rivera
Aye Robach	Aye Saland	Aye Sampson	Aye Savino
Aye Serrano	Aye Seward	Aye Skelos	Aye Smith
Aye Squadron	Aye Stavisky	Aye Stewart-Cousins	Aye Valesky
Aye Young	Aye Zeldin		

[Go to Top of Page](#)**Floor Votes:**

05/25/11 A7602-A Assembly Vote Yes: 137 No : 0

ER Abbate	Yes Abinanti	Yes Amedore	Yes Arroyo
Yes Aubry	Yes Barclay	Yes Barron	Yes Benedetto
Yes Bing	Yes Blankenbush	Yes Boyland	Yes Boyle
Yes Braunstein	Yes Brennan	Yes Bronson	Yes Brook-Krasny
Yes Burling	Yes Butler	Yes Cahill	Yes Calhoun
Yes Camara	Yes Canestrari	Yes Castelli	Yes Castro
Yes Ceretto	Yes Clark	Yes Colton	Yes Conte
Yes Cook	ER Corwin	Yes Crespo	Yes Crouch
Yes Curran	Yes Cusick	Yes Cymbrowitz	Yes DenDekker
Yes Dinowitz	Yes Duprey	Yes Englebright	Yes Farrell
Yes Finch	Yes Fitzpatrick	Yes Friend	Yes Gabryszak
Yes Galef	Yes Gantt	Yes Gibson	Yes Giglio

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Yes Glick	Yes Goodell	Yes Gottfried	Yes Graf
ER Gunther A	Yes Hanna	Yes Hawley	Yes Hayes
Yes Heastie	Yes Hevesi	ER Hikind	Yes Hooper
Yes Hoyt	Yes Jacobs	Yes Jaffee	Yes Jeffries
Yes Johns	Yes Jordan	Yes Katz	Yes Kavanagh
Yes Kellner	ER Kirwan	Yes Kolb	Yes Lancman
Yes Latimer	ER Lavine	Yes Lentol	Yes Lifton
Yes Linares	Yes Lopez P	Yes Lopez V	Yes Losquadro
Yes Lupardo	Yes Magee	Yes Magnarelli	Yes Maisel
Yes Malliotakis	ER Markey	Yes McDonough	Yes McEneny
Yes McKevitt	Yes McLaughlin	Yes Meng	Yes Miller D
Yes Miller J	Yes Miller M	Yes Millman	ER Molinaro
Yes Montesano	Yes Morelle	Yes Moya	Yes Murray
Yes Nolan	Yes Oaks	Yes O'Donnell	Yes Ortiz
Yes Palmesano	Yes Paulin	ER Peoples-Stokes	Yes Perry
Yes Pretlow	Yes Ra	Yes Rabbitt	Yes Raia
Yes Ramos	Yes Reilich	Yes Reilly	Yes Rivera J
Yes Rivera N	Yes Rivera P	Yes Roberts	Yes Robinson
Yes Rodriguez	Yes Rosenthal	Yes Russell	Yes Saladino
Yes Sayward	Yes Scarborough	Yes Schimej	Yes Schimminger
Yes Schroeder	Yes Simotas	Yes Smardz	Yes Spano
Yes Stevenson	Yes Sweeney	Yes Tedisco	Yes Tenney
Yes Thiele	Yes Titone	Yes Titus	Yes Tobacco
Yes Weinstein	Yes Weisenberg	Yes Weprin	Yes Wright
Yes Zebrowski K	Yes Mr. Speaker		

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)**

BILL NUMBER: A7602A

SPONSOR: Millman

TITLE OF BILL: An act to amend the election law, in relation to the retention of absentee ballots and the canvass of military and absentee ballots

PURPOSE OR GENERAL IDEA OF BILL: To make technical conforming changes in the law to match previously adopted statutory language. This bill is also designed to provide specific guidance to county boards as to the processing of absentee ballots and envelopes.

SUMMARY OF SPECIFIC PROVISIONS: Section one makes §8-412 consistent with the provisions of Chapter 163 of the laws of 2010 regarding that chapter's prohibition of delivering absentee ballots to polling places for canvass.

Section two amends §9-209 to provide specific guidance to county boards as to the processing of absentee ballots and envelopes.

JUSTIFICATION: Chapter 163 of 2010 prohibited the long-standing statutorily prescribed practice of delivering absentee ballots to polling places for canvassing with other election results at the close of the polls on election day. This bill makes §8-412 consistent with the chapter 163 of 2010 language.

§9-209 is amended to provide replace previously repealed specific essential language regarding the processing of absentee envelopes and ballots.

PRIOR LEGISLATIVE HISTORY: None

FISCAL IMPLICATION: None.

EFFECTIVE DATE:; This bill would take effect immediately.

DIVISION OF THE BUDGET BILL MEMORANDUM

Session Year 2011

SENATE:
No.**ASSEMBLY:**
No. 7602-A

Primary Sponsor: Assemblymember Millman

Law: Election

Sections: 8-412 and 9-209

Division of the Budget recommendation on the above bill

APPROVE:

NO OBJECTION: X

1. Subject and Purpose:

The bill makes technical changes regarding the retention and canvassing of military and absentee ballots and provides specific direction to county board of elections on the processing of absentee ballots.

2. Budget Implications:

This bill has no impact on State finances.

3. Recommendation:

This bill makes changes regarding the delivery and canvassing of absentee ballots to conform to a recently enacted provision and establishes specific direction regarding the handling of absentee ballots by county board of elections. It has no State fiscal impact. Accordingly, the Division of the Budget has no objection to this bill.



STATE OF NEW YORK
DEPARTMENT OF STATE
ONE COMMERCE PLAZA
99 WASHINGTON AVENUE
ALBANY, NY 12231-0001

ANDREW M. CUOMO
GOVERNOR

CESAR A. PERALES
SECRETARY OF STATE

MEMORANDUM

To: Honorable Mylan L. Denerstein
Counsel to the Governor

From: Matthew W. Tebo, Esq. *Matthew W. Tebo*
Legislative Counsel

Date: June 28, 2011

Subject: A.7602-A (M. of A. Millman)
Recommendation: No comment

The Department of State has no comment on the above referenced bill.

If you have any questions or comments regarding our position on the bill, or if we can otherwise assist you, please feel free to contact me at (518) 474-6740.

MWT/mel



JUAN CARLOS "J.C." POLANCO
PRESIDENT

GREGORY C. SOUMAS
SECRETARY

JOSE MIGUEL ARAUJO
NAOMI BARRERA
JULIE DENT
NANCY MOTTOLA-SCHACHER
J.P. SIPP
JUDITH D. STUPP
FREDERIC M. UMANE
COMMISSIONERS

BOARD OF ELECTIONS

IN
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EXECUTIVE OFFICE, 32 BROADWAY
NEW YORK, NY 10004-1609
(212) 487-5300
www.vote.nyc.ny.us

EXECUTIVE DIRECTOR

DAWN SANDOW
DEPUTY EXECUTIVE DIRECTOR

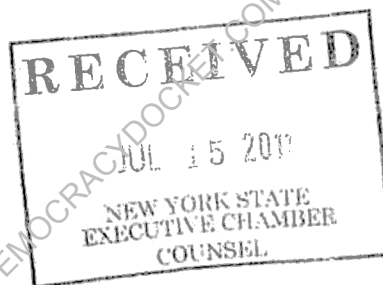
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ADMINISTRATIVE MANAGER

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srichman@boe.nyc.ny.us

VIA E-MAIL & FIRST CLASS MAIL

July 13, 2011

Mylan L. Dinerstein, Esq.
Counsel to the Governor
Executive Chamber
Albany, NY 12224



Re: A. 7602-A

Dear Ms. Dinerstein:

The Commissioners of Elections in the City of New York at their open public meeting held on July 12, 2011 unanimously directed me to convey their recommendation that the Governor to sign into law A. 7602-A.

This bill makes technical conforming changes to provisions of the New York State Election Law relating to the processing of absentee ballots. While enactment of this legislation will not directly affect the Board of Elections in the City of New York, since we already follow the procedures established therein for the processing of absentee ballots and their envelopes, we are mindful of its positive impact on the operations of other Boards of Elections

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within the Empire State and its enactment will insure a uniform process statewide, promoting greater confidence in the integrity of the election process.

Therefore, the Commissioners of Elections in the City of New York strongly recommends that the Governor sign A. 7602-A into law.

Very truly yours,

THE BOARD OF ELECTIONS IN THE CITY OF NEW YORK

By: 

STEVEN H. RICHMAN, General Counsel

Copy: Jeremy Creelan, Esq., Special Counsel to the Governor

The Commissioners of Elections in the City of New York
Dawn Sandow, Deputy Executive Director
Pamela Perkins, Administrative Manager
Raphael Savino, Director, Campaign Financial Reporting
Enforcement
Beth Fossella, Coordinator, Voter Registration
Lucille Grimaidi, Director, Electronic Voting Systems
Steven Denkberg, Counsel to the Commissioners
Charles Webb, Counsel to the Commissioners
Temporary Legal Staff

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STATE OF NEW YORK

7602--A

2011-2012 Regular Sessions

IN ASSEMBLY

May 10, 2011

Introduced by M. of A. MILLMAN -- read once and referred to the Committee on Election Law -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the election law, in relation to the retention of absentee ballots and the canvass of military and absentee ballots

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 2 of section 8-412 of the election law, as
2 amended by chapter 155 of the laws of 1994, is amended to read as
3 follows:

4 2. Absentee ballots received by the board of elections [~~before the~~
5 ~~close of the polls on election day from voters whose applications were~~
6 ~~received by such board at least seven days before election day may~~
7 ~~shall be delivered to the inspectors of election in the manner~~
8 ~~prescribed by this chapter or~~ retained at the board of elections and
9 cast and canvassed pursuant to the provisions of section 9-209 of this
10 chapter [~~as such board shall, in its discretion, determine by resolution~~
11 ~~adopted at least thirty days before election day. All ballots received~~
12 ~~by the board of elections from voters whose applications were received~~
13 ~~by such board later than seven days before election day, all ballots~~
14 ~~received by such board between election day and the seventh day after~~
15 ~~election day, and all federal write-in ballots received from absentee~~
16 ~~voters, shall be retained at the board and shall be cast and canvassed~~
17 ~~in the same manner as other ballots retained by such board].~~

18 § 2. Paragraphs (a) and (c) of subdivision 2 of section 9-209 of the
19 election law, as amended by chapter 104 of the laws of 2010 and subpara-
20 graph (i) of paragraph (a) as amended by chapter 163 of the laws of
21 2010, are amended to read as follows:

22 (a) (i) Upon assembling at the time and place fixed for such meeting,
23 each central board of inspectors shall examine, cast, and canvass the
24 envelopes and the ballots therein contained as nearly as practicable in

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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A. 7602--A

2

1 the following manner [provided by this chapter for a board of inspectors
2 to consider, cast, and canvass absentee ballot envelopes-]:

3 (A) If a person whose name is on an envelope as a voter has already
4 voted in person at such election, or if his or her name and residence as
5 stated on the envelope are not on a registration poll record, or the
6 computer generated list of registered voters or the list of special
7 presidential voters, or if there is no name on the envelope, or if the
8 envelope is not sealed, such envelope shall be laid aside unopened.

9 (B) If there is more than one ballot envelope executed by the same
10 voter, the one bearing the later date of execution shall be accepted and
11 the other rejected. If it cannot be determined which envelope bears the
12 later date, then all such envelopes shall be rejected.

13 (C) If such person is found to be registered and has not voted in
14 person, an inspector shall compare the signature, if any, on each envel-
15 ope with the signature, if any, on the registration poll record, the
16 computer generated list of registered voters or the list of special
17 presidential voters, of the person of the same name who registered from
18 the same address. If the signatures are found to correspond, such
19 inspector shall certify thereto by signing his or her initials in the
20 "Inspector's Initials" line on the computer generated list of registered
21 voters or in the "remarks" column as appropriate.

22 (D) If such person is found to be registered and has not voted in
23 person, and if no challenge is made, or if a challenge made is not
24 sustained, the envelope shall be opened, the ballot or ballots withdrawn
25 without unfolding, and the ballot or ballots deposited in the proper
26 ballot box or boxes, or envelopes, provided however that, in the case of
27 a primary election, the ballot shall be deposited in the box only if the
28 ballot is of the party with which the voter is enrolled according to the
29 entry on the back of his or her registration poll record or next to his
30 or her name on the computer generated registration list; if not, the
31 ballot shall be rejected without inspection or unfolding and shall be
32 returned to the envelope which shall be endorsed "not enrolled." At the
33 time of the deposit of such ballot or ballots in the box or envelopes,
34 the inspectors shall enter the words "absentee vote" or "military vote"
35 in the space reserved for the voter's signature on the aforesaid list or
36 in the "remarks" column as appropriate, and shall enter the year and
37 month of the election on the same line in the spaces provided therefor.

38 (E) As each envelope is opened, if one or more of the different kinds
39 of ballots to be voted at the election are not found therein, the
40 clerks, or inspectors, shall make a memorandum showing what ballot or
41 ballots are missing. If a ballot envelope shall contain more than one
42 ballot for the same offices, all the ballots in such envelope shall be
43 rejected. When the casting of such ballots shall have been completed the
44 clerks or inspectors shall ascertain the number of such ballots of each
45 kind which have been deposited in the ballot box by deducting from the
46 number of envelopes opened the number of missing ballots, and shall make
47 a return thereof. The number of absentee voters' ballots deposited in
48 the ballot box shall be added to the number of other ballots deposited
49 in the ballot box, in order to determine the number of all ballots of
50 each kind to be accounted for in the ballot box.

51 (ii) If the board of inspectors determines that a person was entitled
52 to vote at such election it shall cast and canvass such ballot if such
53 board finds that ministerial error by the board of elections or any of
54 its employees caused such ballot envelope not to be valid on its face.

55 (iii) If the board of elections determines that a person was entitled
56 to vote at such election, the board shall cast and canvass such ballot

A. 7602--A

3

1 if such board finds that the voter appeared at the correct polling
2 place, regardless of the fact that the voter may have appeared in the
3 incorrect election district.

4 (c) The following provisions shall apply to casting and canvassing of
5 all such ballots which are counted by machine and all other provisions
6 of this chapter with respect to casting and canvassing such ballots
7 which are not inconsistent with this paragraph shall be applicable to
8 such ballots.

9 (i) ~~[Such ballots shall be counted by placing them, arranged by~~
10 ~~election district, in the counting machine.]~~

11 ~~(ii)]~~ Such ballots may be separated into sections before being placed
12 in the counting machine.

13 ~~[(iii)]~~ (ii) Any write-in ballots and any ballots which cannot be
14 counted by the machine shall be counted manually subject to all the
15 applicable provisions of this chapter with respect to counting of
16 ballots.

17 ~~[(iv)]~~ (iii) The record of the vote counted by machine for each candi-
18 date and for and against each ballot proposal, printed by election
19 district, shall be preserved in the same manner and for the same period
20 as the returns of canvass for the election.

21 § 3. This act shall take effect immediately.

EXHIBIT B

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**NEW YORK STATE
BOARD OF ELECTIONS
1979 OPINION #1**

Question Presented:

Should a county board of elections count an affidavit ballot, if the two election commissioners disagree about the validity of the ballot?

Discussion:

Under the provisions of Article 8 of the Election Law, when a person seeks to vote at his polling place, but no registration poll record can be found, the person has the option to request, swear to and subscribe an affidavit stating that he is duly registered and qualified to vote in that election district. In essence, he has the burden of proving he is entitled to vote. He may meet that burden by executing an affidavit ballot.

The affidavit ballot is one that the voter must "(S)wear to and subscribe . . . and which contains an acknowledgment that the applicant understands that any false statement made therein is perjury punishable according to law." Election Law §8-302(f)(2).

An affidavit is legally admissible in a court of law as proof of the facts contained within it. C.P.L.R. §3212(b) The test of admissibility of an affidavit is whether perjury can be assigned upon it. People v. Becker, 20 N.Y. 354 (1859), 2 N.Y. Jur. 182. Furthermore, without evidence to disprove it, an affidavit must be accepted as true. Application of Campo Corp., 49 Misc. 2d 840 (1966).

Accordingly, the voter has met his burden of proving his eligibility to vote by completing an affidavit ballot. The county board of elections must then count the ballot or by majority decision of the Board determine that the person is not eligible to vote. Election Law §3-212(2). The burden of proof is now upon the county board of elections to prove that the person is not eligible to vote.

All actions of a board of elections require a majority vote of the commissioners. When the election commissioners disagree and cannot make a determination as to the invalidity of an affidavit ballot, the ballot must be counted.

As a parallel, we may look to two other situations within which boards of elections must frequently rule. In the first, the validity of designating petitions, it has been held that when there is a tie vote of the commissioners the petition must be accepted because of a statutory presumption of its validity. Election Law §6-154; Acito v. McCarthy, 88 Misc. 2d 55; Abrahams, p. 153.

In the second, the Election Law provides that inspectors of elections shall decide all questions by majority vote (§3-402). Specifically, in the area of challenges to absentee and other ballots, challenges shall be overruled, and the ballots shall be counted unless the Board of Inspectors by

majority vote sustains the challenge. An even vote of the inspectors, therefore, would result in the casting of the ballot. Election Law §8-506(2). There is a presumption of validity stemming from the elector's oath appearing on the envelope enclosing the ballot. 1928 Op.Atty.Gen. 218.

If the disagreement between the commissioners over the affidavit ballot stems from an alleged defect on the ballot itself rather than from the eligibility of the elector, the Board is of the opinion that the same reasoning set forth above must apply and the ballot must be counted.

Therefore, it is the opinion of the Board that an affidavit ballot must be counted where the election commissioners disagree as to its validity.

STATE BOARD OF ELECTIONS

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