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**Testimony of New York State Assemblymember Brian Kavanagh
Before the City Council Governmental Operations Committee
Regarding Proposed Res. No. 671-A**

September 22, 2011

My name is Brian Kavanagh. I represent the 74th District on the East Side of Manhattan in the State Assembly and I chair Assembly's Subcommittee on Election Day Operations and Voter Disenfranchisement.

I want to thank Chair Gale Brewer and the members of the Committee for your leadership in many areas related to making government more efficient and more effective for the public, and particularly for your leadership on the question of what we can do to make that most basic aspect of our democratic system operate more smoothly and with greater fairness: Our elections. And thanks for the opportunity to testify today and for considering two of the bills I've introduced in the Assembly as part of Resolution 671A.

Although my subcommittee covers a wide range of issues that fall within the subject matter of today's oversight hearing, I will focus my testimony mostly on the two bills referenced in the proposed Council resolution, relating to the usability of ballots. I would like to mention that I expect to co-chair hearings later this Fall, with Assembly Election Committee chair Mike Cusick, to consider a statewide perspective on many of the issues you're considering today with regard to election operations. Although I'll focus my testimony on the ballot design bills, I'm happy to discuss any other aspects of election operations that the Committee would like to discuss.

The two bills referenced in the resolution, A04696A and A07492A, the latter of which is commonly known as the Voter Friendly Ballot Act, and the rest of your proposed resolution deal with one of the most common concerns we've heard from voters and election administrators. My staff and I have surveyed voters on Election Day on-site at polling places across the state, and complaints about the ballots themselves are frequent and ubiquitous.

And the State Board of Elections and the statewide election commissioners association—the people who run the elections in every part of the state—have acknowledged a need for changes in legislation and regulations in this area, to bring about better ballot design.

The City Board, as you've already heard this afternoon, also acknowledges that there are concerns that need to be addressed.

And of course this Committee and the Council have played an important role in highlighting this issue—finding, for example, in your 2010 voter survey that difficulty reading and using the ballot was one of the most common complaints following the 2010 election cycle, with voters citing ballot design and font size as particular concerns and more than 30 percent of respondents saying that the ballot was confusing or difficult to read. The League of Women Voters found similar results statewide, with about 20 percent of voters participating in a 2010 General Election survey saying they had difficulty completing the ballot. The League concluded that designing the paper ballot for easier use should be a top priority.

So New Yorkers have issues with our ballots. What is to be done to address this?

The first step is to recognize that difficult-to-use ballots are not an inevitable result of the move from lever machines to paper and optical scanners. We can improve ballot design, just as we can better design, tax forms, public service announcements, and other essential tools the general public is supposed to be able to use freely to communicate with their government.

Second, we must recognize that many of the problems come from adherence by local boards of elections to laws and regulations that may have been sensible when they were written, but have not kept up with the times and no longer make sense, if they ever did.

The first of the two bills on this subject I've introduced— A04696A with Senator Joe Addabbo of Queens, who is of course a former member of the Council—would do three things: It would eliminate the requirement that names of candidates be printed in ALL CAPS. It would require a reasonable size font. And it would require that the State Board of Elections and local boards of larger jurisdictions including New York City have staff trained in ballot design. The second bill is significantly broader. Commonly known as the Voter Friendly Ballot Act, bill A07492A represents some of the best thinking available on how to create an effective, voter-friendly ballot. It would make ballots easier for voters to read and easier for machines to accurately scan, and has been drafted with input from many of groups testifying before you today including the Brennan Center for Justice, the League of Women Voters, Citizens Union, NYPIRG, AIGA Design for Democracy, the Usability Professionals Association, Election Commissioners from around the state, and many others.

In addition to dealing with the issues covered in A04696, the Voter Friendly Ballot Act would provide for easier to read and more succinct instructions. To give just one example, the current instructions mandated in State law, must include the following:

If you tear or deface or wrongly mark this ballot, return it and obtain another. Do not attempt to correct mistakes on the ballot by making erasures or cross outs. Erasures or cross outs may invalidate all or part of your ballot. Prior to submitting your ballot, if you make a mistake in completing the ballot or wish to change your ballot choices, you may obtain and complete a new ballot. You have a right to a replacement ballot upon return of the original ballot.

This is just one of eight mandated instructions in current law. We think these 85 words can be replaced by simply saying:

If you make a mistake, or want to change your vote, ask for a new ballot.

That's 16 words, far clearer, and it leaves more room for names of candidates and other key elements of the ballot.

The Act would address issues relating to the readability and clutter of current ballots by concentrating on the layout, font, and format of ballots. It would encourage print on ballots to be uniform in size and font, and as the bill I discussed earlier would do, it would encourage the use of standard capitalization, rather than the current ALL CAPS font. It would remove the requirement of a pointing index finger and party emblems, a relic of past symbols of political parties that the average voter cannot identify. In my experience, even elected officials are surprised to learn that the official symbol in New York for the Democratic party is a 5-point star and the Republican party is identified with an eagle. I think the only symbol the general public might recognize at this point is the marijuana leaf of the Anti-Prohibition Party.

The bill takes a nuanced approach to many of the other issues of ballot design and I know you're going to hear later from some of the true experts on this subject, particularly from the Brennan Center, which has done extraordinary work in this area. By encouraging best practices, requiring the State board to produce ballot templates to guide local officials in designing their ballots, and eliminating overly restrictive—and often counterproductive—requirements, the Voter Friendly Ballot Act will go a long way toward improving the voter experience.

Citizens have a right to expect that we'll do everything we can to make voting convenient and accessible. That means a far more reliable system, and ballots that are easy to read and use. I'm confident that we can get these reforms done.

Thanks again for considering these bills in the context of your resolution and for the opportunity to speak with you today. I look forward to continuing to work with you on this issue here and in the State Capitol.