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Our miserable Board of Elections



By [Jerry H. Goldfeder](#)

It's like clockwork. Almost every election cycle, the city Board of Elections embarrasses itself and makes us roll our eyes. This year — when we are desperately trying to emerge from the pandemic and serious economic dislocation — the board has thrown the counting of the ballots into chaos. It was a dumb mistake: The board included sample ballots into their scanning machines when they were counting. Not just a few, though. About 135,000 of them. I guess “dumb mistake” is being generous.

This is not the first time. Twenty years ago, I represented a mayoral candidate who beat his opponent by 32,000 votes. A few days after the primary, I got a call that no election attorney wants to get. “The numbers were wrong. The board made a mistake. They doubled the totals.”

Turned out, my candidate won by only 16,000 votes — sufficiently close to cause unending acrimony between the winner and runner-up.

I won't even mention that ballots are sometimes discovered weeks after an election, thousands of people are improperly purged from the voter rolls, or absentee ballots are mailed to voters at the wrong address and too late to be cast.

A few years ago, then-Vice President Joe Biden flew into LaGuardia Airport and observed that he thought he was in a “third-world country.” In response, Gov. Cuomo made its renovation a priority, and poured tons of money into doing the job. I think Biden would have a far more positive impression today.

If I were advising the governor, I would tell him to take a page from his own playbook. Consider exercising your broad plenary powers by putting the board under trusteeship, appointing nonpartisan workers and bringing their procedures into the 21st century. That would only be a temporary fix, of course. The state Constitution should be amended to institutionalize the kind of independent professionalism that so many other states have.

In the meantime, though, what can we expect? Having eliminated the 135,000 sample ballots, the board has posted what they say are accurate ranked-choice voting numbers — and Eric Adams maintains his lead. But the numbers released, by the board’s own admission, are incomplete. They do not include the more than 120,000 absentee ballots.

So what is the point of releasing incomplete, and necessarily inaccurate, totals? It is misleading and confusing. It needlessly raises the hopes of some candidates and dashes those of others. And when all the ballots are counted — from election day, early voting and absentee voting — and the results are “changed,” then cries of foul will likely be heard. Why the board opted to run totals for partial results is beyond me.

In this context of erroneous and misleading “results,” candidates are already bringing lawsuits (including some of mine in down-ballot races). These court cases are, of course, premature, because the board may very well sort out all the votes and get accurate totals. But — believe it or not — state law requires lawsuits relating to primary elections to be commenced within 10 days of the primary, well before any real results are known.

What’s the point of that? Ask the Legislature. So on top of the board’s botch job, we are already descending into potentially contentious litigation over results that we don’t even know.

This can be fixed easily for future elections. Albany can change the timeline of when candidates can seek judicial intervention. For now, though, these cases will give the appearance that candidates are going to war over the board’s malfeasance. I’m afraid this will confuse and turn off the public even more than has already happened.

Let me add one other piece of news. If the margin between a winner and the second-place candidate is one-half of one percent or less, the state law allows a manual count of all the ballots in a race. This means the board will look at each and every ballot, whether it is a few thousand in a City Council race or close to a million in the mayoral race. Did the voter properly fill in the ovals next to the candidate’s name or did they circle it? Either would count. Did they write next to the name “I support so-and-so!” That ballot will not count.

How about the inevitable extraneous, inadvertent stray line on a ballot? The lawyers will fight over these. Two years ago, I represented a candidate in the Queens district attorney primary where the margin was so thin that we had a manual count of 90,000 votes. It took about 10 days of reviewing each and every ballot. The winner prevailed by 55 votes.

Can you imagine if the actual totals in a citywide race are so close that it requires a manual count? It could take weeks and weeks. So, hope for the best but expect the worst.

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