

New York's Election Administration Accountability Vacuum - Part I: 'Bad Choices at Every Step'

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NYC BOE Executive Director Michael Ryan (photo: John McCarten/City Council)

After each election cycle, New York elected officials, government insiders, and interested members of the press and public gather at City Hall and in other hearing rooms for a bit of political theater. The protagonist is the electorate, or the democratic process, itself; the one cast as villain is Michael Ryan, the executive director of the New York City Board of Elections, who is there to respond to questions about how voting went that year.

“Mr. Ryan, do you apologize to the public for what happened on Election Day?” asked City Council Speaker Corey Johnson in the opening question of an oversight hearing following the calamitous midterm elections this past November.

Ryan has been responsible for election administration in the city since August 2013, when he was selected to replace former executive director George Gonzalez. Gonzalez had been fired three years earlier after a botched general election in 2010 and the position had been left vacant. In the six years since Ryan’s appointment, elections have been plagued by poorly trained staff and failing machinery. Confusing ballot

design and limited translation services have added to the frustration many voters experience trying to access the polls.

Responding to Johnson, Ryan went along with the apology, a tack he often takes when he's not defending his agency's work. "Yes we do," he said. "We want what you all want and what the voters want: an ease of experience."

While he occasionally testifies at the City Council or the State Legislature, mostly acting as a punching bag for venting politicians, Ryan gets his authority through an irregular -- explicitly partisan -- process in New York State, which allows his agency to avoid a high degree of public accountability. The structure has been criticized for creating a system of election administration that is resistant to modernization and favors the type of political patronage characteristic of machine party politics. Experts say the patronage causes extensive inefficiency throughout what should be a coherent 21st century election system.

"The problem is operational. The BOE's technical capacity and its inefficiency does have consequences for the integrity, fairness, and the equity of the election process," said Ester Fuchs, director of the Urban and Social Policy Program at Columbia University, in an interview.

As executive director, Ryan really only answers to the ten commissioners of the New York City Board of Elections. They hired him, and only they can fire him. Amid the 2018 Election Day snafus, Johnson called for Ryan's resignation, but he still has the job.

A Creature of State Law

The New York City Board of Elections is governed by state law, which gives power to the City Council to appoint commissioners, but the Council must make the appointments from lists selected by political party leaders at the county level. A balance of five Democratic and five Republican commissioners is supposed to add checks within the system, but critics say it serves more to protect incumbents from challengers.

Ryan and the agency he manages are still the subject of scrutiny by the City Council at oversight hearings, but are ultimately controlled by the Democratic and Republican party organizations in each county (borough). Though the city BOE receives most of its funding from city government, its policies are largely based on state law, state Board of Elections guidance, and its own commissioners' decisions. It generally has not responded to the law-making power of the City Council, nor the directives of the Mayor.

The State Board of Elections, which also has a bipartisan structure, functions as an elections and campaign finance oversight body, unlike the city board. The state BOE sets certain rules and regulations that local boards, including New York City's, must follow.

Good government advocates say the structures of the city and state boards of election make major-party collusion possible, transparency elusive, and efficiency second to party loyalty.

"Every step along the way the board makes bad choices and they are never held accountable for it," said Susan Lerner, executive director of good government group Common Cause New York, in testimony at the City Council oversight hearing on last

year's elections. She was talking about the board's decisions around ballot design and staff training, which advocates have sought to influence and improve upon for years without success.

Running Elections, Poorly

The city Board of Elections is responsible for carrying out all the administrative functions of running elections across the five boroughs. In reality, it is a decentralized operation in which the executives of the city board oversee five borough boards with few direct management controls.

"Each one of the borough boards operates a little fiefdom and they do what they do," Lerner said in an interview with Gotham Gazette. Local patronage dictates hiring practices all the way down to the part-time poll workers, often chosen by party district leaders, who do not have to pass a civil service exam like other professionals in city government.

The board is responsible for arranging the sites where elections are held, ensuring proper equipment and staffing are present, registering voters, certifying the contents of the ballot, and securing, validating, and counting them after an election. This requires an immense amount of recruitment and training, machine testing, and government contracting, much of which must be done according to guidelines outlined in state law and regulations.

Voters in the November elections -- which included congressional, state legislative, and statewide races -- turned out in modern record numbers across the five boroughs, overwhelming poll sites and ballot scanners, and causing lines out into the rain. Ryan admitted at the hearing that the board was unprepared for the number of voters, despite the high turnout in the primaries that preceded the general election and the overall atmosphere of heightened political engagement in the Trump era.

Turnout in 2018 was still lower than in a presidential year. There were similar problems in 2016 and many are worried about the upcoming 2020 elections, for which turnout is expected to be enormous. New reforms like early voting and electronic poll books offer the potential to ease the burden on the board and those administering elections, but could also lead to new hurdles.

Other problems, like the way the 2018 ballots were designed and how well each poll site was staffed, also contributed to the debacle.

The [unusual two-page, perforated ballot](#) used to accommodate three additional ballot questions where confusing to voters and [jammed scanners frequently](#), especially after getting damp from the rain. The average time a scanner broke down was roughly 53 minutes while poll site coordinators waited for a limited number of available technicians per borough. At some poll sites, all scanners were down at once.

Critics including Johnson, Lerner, and others at the Council hearing, wondered why the BOE had not taken greater steps to test scanners and train staff in handling the new ballot format, and why they would [not allow translators](#) of certain languages at the polls.

Reformers in and out of city government have for decades been pushing for changes to address election administration failures, which make voting difficult, discourage turnout, and can even disenfranchise voters.

Election after election, they seek improvements like more interpreters at poll sites, better voter outreach, professional staffing, and a less paper-based system while maintaining security. But advocates often face resistance or inaction and have virtually no recourse to the commissioners or the party leaders who pick them. The line of accountability is blurred, with only a distant state law to ultimately point to.

“Mr. Speaker, we have to work to re-earn your trust and I appreciate that,” Ryan said, addressing Johnson at the oversight hearing in November. As is typical at these hearings, no elections commissioners spoke that day. Ryan took the punches, even as he discussed what was beyond his authority.

The Two-Party Split

Many of the board’s problems can be traced to its bipartisan structure -- the two-party split that is built into its operations. The partisan balance is the result of reforms made over a century ago to create a system of checks and balances within the election process, but experts say it no longer works.

“This is a vestige of the most well-regarded thinking about preventing fraud in the late 19th century. There was no such thing as a nonpartisan approach back then,” Lerner told Gotham Gazette.

Controlling election administration had a great deal to do with controlling the outcomes. Following intense public debate around the turn of the last century, the state passed reforms based on the idea that the two major parties “would watch each other and make the election system honest,” according to Gerald Benjamin, director of the Benjamin Center at SUNY New Paltz.

Each county has a bipartisan board of elections with commissioners representing the two major political parties, as mandated in the [state constitution](#). According to [state election law](#), each county board must have an equal number of commissioners -- one, or in some cases two -- from each of the two parties earning the highest votes; New York City’s five counties fall into one citywide board with 10 commissioners -- one Republican and one Democrat chosen from the party leaders in each of the five boroughs.

“The partisan dimension is what keeps it equal,” Brooklyn Democratic Party leader Frank Seddio said in an interview. “For every Democratic worker in the Board of Elections there is a Republican worker in the Board of Elections, which balances the actions of the board, so to speak.”

It has also had the effect of entrenching the established party organizations, and creates the prospect of them “collaborating to the disadvantage of insurgencies in either of the parties,” according to Benjamin of SUNY New Paltz.

Changing the bipartisan structure in the state constitution is an [arduous process](#) that would require the Legislature to pass an amendment in two consecutive sessions and for voters to approve it. Many legislators also hold leadership positions in the county party organizations that select elections commissioners under the current system.

“Corruption is a lesser problem than collusion. The majority of the Board of Elections is needed to act. Since there are two commissioners, that means they both have to agree,” Benjamin said, referring to a typical county board, which has two commissioners (as is the case for each borough in New York City). Benjamin was an elected member of the Ulster County Legislature during the 1980s and early ‘90s,

and said he received selections from county party leaders from which to appoint elections commissioners.

“Any one commissioner can block an action. If somebody complains about something or there’s an appeal to the board, they can get together and say, ‘You back me on this one, I’ll back you on that one.’ That kind of thing happens all the time,” he said.

"The idea that the Democrat and the Republican would collude against the voter has never occurred to anybody," Lerner said, "but that’s what we’re seeing."

This is part one of a two-part series. Part two -- Partisanship, Patronage & Potential Fixes -- will be published soon.