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## Brooklyn Transparency Pilot Project

June 2021

New York City Primary

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SMART Elections conducted The Brooklyn Transparency Pilot Project as part of the June 2021 New York City primary. It is part of our ongoing #CountTheVote initiative to monitor, protect & verify election results. The goal of #CountTheVote is to improve our elections and increase public confidence in them.

The Brooklyn Transparency Pilot Project sought to compare the number of voters who voted, with the number of ballots cast and scanned in one City Council District in the 2021 Brooklyn Primary. We chose the 45th City Council District, partly because there is an ongoing civil court case here alleging corruption and poll workers "fraudulently feeding ballots into the scanner." We are not making those allegations, or taking a position on them. We are simply aware that allegations are moving forward in the courts, and they indicate that there is some lack of confidence in the process already. Nationally, there is also a lack of confidence in our elections. In a 2019 C-SPAN poll, only 50% of Americans said they believed the election would be "conducted openly and fairly."

We discovered discrepancies that raise concerns and deserve further exploration. These were reported to the coordinators at each poll site and directly to the Board of Elections. The Board of Elections responded by removing our project leader as a poll watcher and changing the information our poll watchers were allowed to view. We then could not collect the data necessary for the successful completion of the project.

In our opinion, we experienced hostility and obstruction from the New York City and the Brooklyn Board of Elections, as well as some coordinators at Early Voting poll sites.

We deeply respect the voters, candidates and poll workers who have committed so much time and effort to the election. They deserve to have confidence in it.

At this point, we cannot assure the public that the results in all these locations are accurate, because the process was not transparent and we were not allowed to check.

This lack of cooperation and transparency is unfortunate and unnecessary. We hope that the Board of Elections will examine these issues fully and whole-heartedly commit to a respectful, transparent partnership with those engaged in public oversight.

## **FDR HIGH SCHOOL - 698 MORE BALLOTS THAN VOTERS**

Comparing the number of voters to ballots is a common reconciliation

The number of voters who check in must always be the same or close to the number of ballots scanned. This has nothing to do with affidavit or void ballots. Those are accounted for separately. Each voter who checks in successfully is given one ballot and is supposed to scan it themselves, unless there is a problem with the scanners. So the number of voters who check in is supposed to be close to the number of ballots scanned.

Sometimes voters leave without scanning their ballots - called "fleeing voters". Because of this, the number of ballots scanned can be lower than the number of voters who check in. But the number of ballots scanned is not ever supposed to be more than the number of voters who check in.

On June 16th, 2021 we found 698 *more* scanned ballots than voters who checked in. This occurred at the close of polls at FDR High School at 5800 20th Ave. in Brooklyn. At closing, there were 480 voters checked in, according to the numbers provided us by the coordinator, and one electronic poll book that we were allowed to view personally.

We examined the number of ballots scanned personally and it was 1178, meaning there were 698 more ballots scanned than voters checked in at that point in the Early Voting.

### Board of Elections Response

We told the coordinator about the discrepancy. In our opinion, she showed no concern. It was subsequently reported to the Board of Elections, in person, and also via an email thread that included members of the Campaign Finance Board and the Chief Democracy Officer from the Mayor's office.

The Board of Elections responded with an email that our "concerns may stem from the public count on scanners vs. pieces of paper. Public counter counts the first sheet of a ballot as it is representative of the number of voters, not the number of ballots."

We are aware that with a 2-page ballot, the public counter counts one ballot, but the protective counter counts two pages. If the discrepancy were due to that, then there would be 480 voters and 960 ballots scanned. But that is not the number that we found.

Furthermore, at other polling locations, the number of voters checked in and the number of ballots scanned was very close. So from our experience, this does not explain the problem.

### FURTHER DATA CREATES MORE QUESTIONS

On June 17th we returned to FDR High School. We had a different poll watcher review the data. At that point the number of total voters checking in more closely matched the number of total scanned ballots. There were 1505 voters checked in and 1491 ballots scanned. So there were 14 less ballots scanned than voters. But the number of new voters since the day before was 1025. According to the public counter on the scanners 313 voters cast their ballots since the day before. So this creates a 712 vote discrepancy between the number of new voters checking in and the number of new ballots scanned. Again, basic reconciliation of voters to ballots is not possible.

Input from experts

We consulted with an experienced high level election official from another state who has managed and reconciled polling locations for more than a decade. His response was, "Something is off because these numbers don't make sense. That's all I can say ... And it's weird they caught up."

### **PUBLIC COUNTER AND PROTECTIVE COUNTERS NOT IN SYNC**

The public counter shows how many voters have scanned their ballots during this session. The protective counter is like an odometer on a car and is supposed to show every page scanned for the life of the scanner.

In this election, the protective counter counts 2 pages because it's a 2-page ballot, but the public counter counts 1 for each voter. It is possible to reconcile these numbers by multiplying the number of ballots scanned (public counter) times two, then adding that to the previous protective counter number.

At this location, FDR High School, the public counter and protective counter did not reconcile. There was a 39-page difference between the public counter and the protective counter, when adding all scanners on 6/17 at the close of polls. That is concerning because, according to experts we consulted, it could indicate some sort of internal software malfunction, or misalignment of the paper handling mechanics. It could even be the device has been subjected to a heavy blow or a drop. It is possible this could be affecting the votes that are counted, and this type of problem might not show up in diagnostics.

A more harmless explanation is that voters are not feeding in both pages of their ballots. But that raises the question of why it is happening so often at this location. We found this pattern in at least one other location, but the discrepancies at this location were the largest.

### **OBSTRUCTION, HOSTILITY & NO INVESTIGATION**

Denial of Access

The level of information that we were able to access was quickly and severely restricted by the Board of Elections at almost every site. Within a few days of reporting our issues, we could no longer make the comparisons necessary to conduct the pilot, and verify the accuracy of this part of the count. Our lead poll watcher was removed and not allowed to collect data. This was despite the fact that everyone on our team had legitimate candidate poll watcher's certificates. We were also prevented from viewing the 3% audit, depriving the candidate of his right to have the election and the audit observed.

At one location, both the Brooklyn Chief Clerk, who makes over \$130,000 a year, and his Deputy came in person to a polling location to block access to one of our poll watchers, who had been working very cooperatively with the coordinators up to that time.

At some sites, we were treated with courtesy and cooperation, but at many locations we were met with hostility, obstruction, and at one location, yelled at.

These restrictions and treatment do not have a foundation in the statute governing poll watchers.

We have not been informed of any investigation regarding these discrepancies. We were told, "there is a process of reconciliation for these numbers." Our public records requests for further documentation have been ignored by the New York City Board of Elections.

We appreciate and value all of the poll workers, candidates and voters who are participated in the election. Their hard work and civic participation deserves a transparent, trustworthy process that they can take pride in and feel good about.

When allowed full access, poll watchers can increase public confidence and participation by helping to ensure a trustworthy election.

Due to the obstacles placed in front of us, we are unfortunately unable to report to candidates or the public that the primary election in Brooklyn New York was conducted fairly and accurately in all locations.

### **LACK OF CORRECT & TIMELY INFORMATION TO CANDIDATES AND VOTERS**

**Candidates were not given the location or number of the open Early Voting centers until 11am on the first day of Early Voting.**

Prior to the election, Cyril Joseph, a candidate for City Council, requested the locations in order to coordinate volunteer poll watchers. He was given a list of 20 locations by the Board of Elections and told they did not know which ones would be open. On 6/12, Early Voting started at 8am. Around 11am, Mr. Joseph was told which Early Voting sites would be open. This made it impossible to know in advance how many volunteers we needed for the pilot, or in what parts of the borough. He also received reports from voters that they went to as many as 5 of the locations before finding an open polling site to vote at.

### **UPCOMING LEGISLATIVE PROPOSALS**

We are grateful to the New York Assembly, and the Election Law Chair Latrice Walker for holding these hearing. SMART Elections sister organization, SMART Legislation, will be advocating for legislation in the upcoming session that can address some of these issues. We must increase competence at the Board of Elections by moving away from patronage toward a professional and technically trained staff. We must mandate more robust audits, that are transparent to the public and the media.

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