Memorandum of Support

January 9, 2020

S.1833 (Gianaris)/A.8377 (Paulin)

Title: An act to amend the election law, in relation to requiring the hand counting of all ballots cast in an election for a position in which the difference in the ballots cast for the candidates for such position is ten or less votes or 0.5 percent of votes cast, whichever is greater.

Purpose: This will require Boards of Elections and bipartisan committees to hand count ballots cast in elections where the difference is 10 or less votes or 0.5%, whichever is greater.

Statement of Support: Sometimes, the difference between establishing groundbreaking environmental legislation and the continued degradation of our air and water depends on a handful of votes in a close election. Unfortunately, in many cases, moneyed interests decide the final outcome of a close race by campaigning to block recounts. New York City and Ulster County have provisions for 100% hand counts in close races, and Columbia County hand counts in every contested race voluntarily. Currently, New York State has no provision in place for an automatic hand recount for close statewide elections. Our state should follow the lead of several of its counties, providing equal protections for voters statewide in the event of a close race.

The election law empowers a trial judge to exercise discretion on whether or not to conduct an election recount. This turns these elections into highly partisan legal battles where no one speaks on behalf of the voters. If we are striving for true democracy, however, the voice of voters should be heard above all else.

State courts have denied candidates' requests for hand counts of paper ballots cast at the polls on election day, including contests with margins of victory as small as a single vote. In one such case where the litigants agreed to end protracted litigation and count all the votes by hand, the outcome of the contest was in fact reversed (see Matter of Slisz v. Beyer, in Tonowanda City Council Third Ward, 2011 election).
In another case in which vote-count errors were found in the 3% audit of electronic ballot scanners required by EL § 9-211, expert testimony from statisticians as to the possibility that a full hand count could change the winner was not allowed to be heard (see Matter of Johnson v. Martins, Senate District 7, 2010 election).

In an election where the margin is small, voters should not be forced to accept a possibly flawed electoral result for the sake of expedience and convenience. New York wisely chose a system that records the voters' intent plainly and permanently on paper ballots. Let's remember the fundamental reason that we switched to paper ballots: That they are hand marked by the voter so they are accurate records of the voter's intent, and they can be hand counted to ascertain the accuracy of the machine count.

More than ever before, New Yorkers are aware that we need to take impactful steps toward protecting our environment, both now and in the future. For many people in our state, the democratic action of voting is the single most effective way to take a stance and help enact change. It is crucial that New Yorkers across the state have confidence that our voting system accurately and faithfully represents the voice of voters. Elected officials play a significant role in determining important decisions made regarding our air, water, and natural places, so it is critical that the candidate chosen by the people is rightfully elected. Sierra Club Atlantic Chapter, with over 50,000 members in New York State, strongly supports this bill.

The Sierra Club Atlantic Chapter Strongly Urges Your Support of S.1833/A.8377.

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