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Testimony of Jeff Merritt, President of Grassroots Initiative Before the New York State Senate Standing Committee on Elections

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Good Morning. My name is Jeff Merritt and I am the President of Grassroots Initiative. Grassroots Initiative is the nation's only non-profit election consulting firm. We are based here in New York and each year help hundreds of candidates run for elected office. We are 100% nonpartisan and work with candidates on all party lines for all offices up to the U.S. House of Representatives. In most local elections, Grassroots Initiative works with multiple candidates – including both incumbents and challengers. Our mission is to ensure that public service is accessible and we do so by providing free technical assistance and low-cost campaign resources, including voter lists, analysis, printing and mailings. Although we are not a large organization, we work with more candidates than any other elections group in New York. During the 2009 election cycle, Grassroots Initiative was the most commonly-cited vendor for New York City candidates after the U.S. Postal Service and Staples, according campaign finance reports.

I was asked to speak here today because our organization serves a unique role in the election process – we operate on the frontline, helping candidates navigate New York's cumbersome election laws. In addition, Grassroots Initiative has also worked on the opposite side of the process – administering elections. Earlier this year, our organization managed New York City's Community Education Council Elections – where more than 400 candidates competed for positions on the City's 38 community and citywide boards. As a result of these dual facets to our work, we have a unique understanding and perspective on both the challenges and opportunities for ensuring a fair and open electoral system.

I am going to keep my testimony brief and focus on ballot access issues related to the most recent elections here in New York. As I'm sure you are well aware, New York City is in the middle of municipal elections where 66 public offices are being filled in addition to countless party positions. Roughly 300 candidates filed designating and independent nominating positions for these public offices – a healthy number which amounts to an average of 4 to 5 candidates per office. According to New York City Campaign Finance records, these candidates spent more than 1.1 million dollars on the petitioning process – a testament to the magnitude of this initial support test that candidates face.

If this were the end of this story, I'd be here today praising our election process. Unfortunately, as each of you know, filing petitions is not the end of the process for ballot access here in New York, it is merely the beginning. We have managed to create an election process in New York where, sadly, the success of a candidate is more likely determined by the quality of their lawyers than the caliber of their campaign and degree of their community support. Of the roughly 300 candidates that filed petitions for public offices in New York City this year, more than half of them faced challenges to their candidacy. According to New York City Campaign Finance records, these candidates spent more than 1.3 million dollars on legal fees to

defend their right to ballot access. After weeks of hearings and countless court battles (the public cost of which should not be ignored), 1-of-3 challenged candidates was removed from the ballot.

With this in mind, we should not be surprised when New York City sets records like the “lowest primary election turnaround in modern history.” Should the hundreds of thousands of voters who signed petitions for disqualified candidates be excited about democracy in our great state? Of course not – when public choice in elections are undermined by court battles, the public does not feel empowered, they feel marginalized and disenfranchised. By contrast, in heavily-contested races where the candidates were able to avoid court battles and ballot challenges, voter turnout was often nearly twice the city average.

Some of the blame for our broken democracy lies in our election law and state constitution, whereas other blame can be placed on poor election administration. Regardless, these two elements are intrinsically linked.

New York is one of only two states in the nation that provide in their Constitutions a role for political parties in state and local election administration. Anyone who thinks this is a wise and enlightened decision has probably not spent much time at the Board of Elections’ offices. There is no question that our local Boards of Election are home to many great public servants; however, they are also bastions of patronage, inefficiency and incompetence. As a result, most candidates have quickly learned that if you have a question about the electoral process in New York, the worst place to go for information is the local Board of Elections. Rather, these individuals most commonly turn to nonprofit organizations like Grassroots Initiative and the League of Women Voters.

So the obvious question is why? Why is it that the one public institution with a mission to facilitate elections has become one of the greatest barriers to realization of democracy? If you start by looking at the Election Law, the answer becomes immediately apparent. No where in the 548-pages of law is there a single reference to the Board of Elections’ role in assisting or educating the public about the process of becoming a candidate. The impact of this silence in the law is a complete avoidance of any responsibility by the Board of Elections in facilitating ballot access. Instead, when a candidate asks a question about what forms they need to complete or the steps that need to be taken when running for office, the most common response that you’ll hear at the Board of Elections is that the candidate should contact an election lawyer for help. By deflecting responsibility for assisting candidates, the Board of Elections furthers a culture of fear and paranoia about the elections process where candidates feel that they must have a lawyer at their side at all times.

Meanwhile, in place of facilitating candidate participation, local Boards of Elections have more commonly adopted an alternative role – taking advantage of a loophole in the law that allows the opportunity to create and enforce additional rules limiting ballot access. The particular line in the Election Law is found in Section 6-154 and states “Each such officer or board is hereby empowered to make rules in reference to the filing and disposition of such petition, certificate, objections and specifications.” Although seemingly harmless on the surface, in practice this one statement has transformed the role of the Board of Elections, particularly within New York City, from a facilitator of elections to that of an enforcement agency.

When the Board of Elections’ activities are more focused on denying ballot access than assisting in ballot access, we have a problem. Just imagine for a second if a similar provision existed in the Election Law that empowered local Boards of Elections to limit voter registration or did not allow for voters the opportunity to receive assistance if they have difficulty voting, we would rightfully call this disenfranchisement. Fortunately, the law does the opposite when it comes to voter registration and assistance – Section 3-212 of the law requires that county Boards of Elections create an annual voter registration action plan and designate a registration activities coordinator to “plan, prepare and implement voter education and registration programs to enhance electoral participation.” Section 8-306 of the state election law is

dedicated entirely to outlining the role and process for assisting voters who may have difficulty casting a ballot at the polls.

In conclusion, I believe we have tremendous opportunity to improve our elections process here in New York and to change the public's negative perception of our local Boards of Elections. Addressing barriers to ballot access is paramount in this effort for there is no point in holding elections in the first place if voters do not have a real choice of candidates.

I encourage the Committee to carefully look at the impact of partisan control of state and local election administration and to consider proposals to minimize or, ideally, end this flawed system. I look forward to the day when Board of Elections staff is selected based on their commitment to democracy and their ability to serve voters and prospective candidates, irrespective of their political party registration. For the time being, I'll keep hiring these individuals at my organization.

Lastly, I implore the Committee to consider action to amend the New York State Election law to require that county Boards of Elections take steps to educate and assist the public-at-large on the process of running for elected office in New York. This simple addition to Section 3-212 of the Election Law could be combined with provisions related to county-level voter registration plans and has the potential to recover thousands of dollars that are currently wasted on excessive hearings and litigation which result from ill-informed candidates and inefficient bureaucratic procedures. I believe this is a critical first step toward returning the Boards of Elections to their rightful role as a facilitator of elections and renewing public faith in the institution. I would recommend consideration of New York City's Campaign Finance Board as a strong model for how candidate education and assistance can coincide with enforcement.

Thank you for your time and consideration of these comments. I am always happy to be of assistance to the Committee in seeking ways to improve openness and participation in our election system.

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*Jeff Merritt is the founder of Grassroots Initiative, the nation's first (and only) nonprofit election consulting firm. Mr. Merritt is a seasoned expert in the design and implementation of citizen mobilization and empowerment programs. Prior to starting Grassroots Initiative, he served as the Executive Director of the Center for Civic Responsibility from 2003-2005. From 1998-2002, Mr. Merritt worked with the U.S. Department of State and USAID-funded democratization programs in Croatia, Macedonia, Albania, Serbia, Montenegro and East Timor. In addition, he has led political outreach and community-based initiatives in New York, New Jersey, Michigan and California. He has authored several publications on civic identity, over 50 analytical pieces and reports for the U.S. Department of State, and is a contributing author of the book, *Transacting Transition: The Micropolitics of Democracy Assistance in the Former Yugoslavia*" (Kumarian Press, 2006). Mr. Merritt holds a Master's degree in Economic and Political Development from Columbia University and a Bachelor's Degree in Political Science from the University of Michigan.*