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Legally Required Missing Records At Center of Appeal Against Brooklyn Board of Elections - Oral Arguments Friday

BOE unable to produce records of 144 votes in election decided by 18 votes.

NEW YORK, NY, September 24, 2026 — With oral arguments scheduled for Friday, **September 25, 10 am**, before the New York Appellate Division, Second Department, SMART Elections is highlighting an ongoing election-law appeal concerning a Republican State Senate primary race decided by just 18 votes. The hearing is open to the public at 45 Monroe Place, Brooklyn, NY, 11201. It may be [viewed online](#) at the court's website.

The appeal, *Matter of Bernard Vaiselberg v. Nachman Caller et al.*, **Case No. 2026-08005**, challenges the lower court's decision regarding missing election documents, and whether or not the ballots in the case can be considered trustworthy, when the documents that vouch for them have vanished. The race was on the ballot in Kings County (Brooklyn) in the June 23 primary for New York's 22nd State Senate District.

LEGALLY REQUIRED MISSING RECORDS

At the center of the appeal are 17 reconciliation forms that the Brooklyn Board of Elections (BOE) has acknowledged it cannot locate. According to the appellant's brief, those forms correspond to 17 districts in the election that represent **144 votes**, eight times the margin of victory.

The BOE maintains that the ballots were securely stored and that a subsequent manual recount confirmed the election results. They emphasize in their response that the manual recount closely confirmed their reported results. Recounting the ballots on hand verifies *how* those ballots were counted; but the missing documents would help establish whether the ballots on hand *are the ballots that should be there in the first place*. That distinction is central to the appeal.

Regarding the 17 legally required missing documents: during trial testimony, Brooklyn BOE Chief Clerk Salvatore Barrera stated, "It's ... possible that they were just not handled properly ... on election night. And the inspectors instead of putting them where they are supposed to go, put them in the trash." Barrera added that this would have been, "Regular course of business," implying that it was not unusual for legally required records to go missing at the Brooklyn BOE.

EXPERT OPINIONS

Two elections experts, including legendary election security expert Dr. Douglas Jones submitted [affirmations](#) arguing that the irregularities in the case were substantial enough to call the validity of the election into question. Professor Jones stated, "Based on the materials reviewed and on my experience in election administration, it is my opinion that the records necessary to verify the result of this canvass do not exist for a material portion of this contest."

In the original trial, Judge Sweeney did not allow Dr. Jones' affirmation to be considered, saying in a footnote that he had not, "shown expertise regarding election practices in New York." It's worth noting that in Dr. Jones' long and storied experience as a computer science professor and elections expert, he gave 21 pages of notes in 2006 regarding the New York State Board of Elections Voting Systems Standards. He was also influential in the revision of New York election law, during the time that New York implemented the current voting system.

His involvement in New York election law was documented in a 2022 email from then Co-Chair of the New York State Board of Elections, Douglas Kellner, who said of Dr. Jones, "He wrote the first draft of our Voting System Regulations, Part 6209. I find him to be objective and he has very high credibility."

BROADER IMPACT

The key legal question may have an impact far beyond this particular race. The appeal asks whether missing records *required* to establish election results can be treated as minor issues if there is not separate proof of significant fraud. Or, if the absence of those legally required election records, can itself become legally significant. The answer could affect how seriously statutory election document requirements are treated in future close elections.

MULTIPLE IRREGULARITIES

Jimmy Wagner is the pro-bono attorney representing Bernard Vaiselberg, the candidate who lost by 18 votes under these circumstances. During the trial, Mr. Wagner pointed out to the court the considerable number of irregularities. These included election seals that are legally required to be preserved for two years, being thrown in the garbage. Mr Wagner addressed the court, saying, "Not just one irregularity ... we have ... at least thirty irregularities. Each one of them, individually, enough under the law to allow you to order a new election."

Other irregularities that were attested to by affirmations and brought to the court's attention include: the statutory violation of ballots being handled by an election worker by himself, bags of

ballots left unlocked overnight, bags and boxes of ballots brought into the recount unsealed, and sometimes clearly having been gone through prior to the count, copies of ballots being intermingled with actual ballots, and black pens - which could have been used to change ballots - being present on seven of ten tables where ballots were being handled, during the recount preparation.

Lulu Friesdat, the Co-founder and Executive Director of SMART Elections was a certified observer in the election. She was present at the preparations for the recount and photographed many of the irregularities. In her [supplemental affirmation](#) she listed nineteen boxes or bags of ballots by serial number or location that came into the recount with missing or broken seals. She also documented careless handling of the seals by the Brooklyn BOE.

Ms. Friesdat's affirmation notes that the SMART Elections data team [analyzed the results](#) of the election produced by the Brooklyn Board of Elections. They found that the New York State Board of Elections showed only **1241** voters who were registered Republicans, eligible to vote, and cast ballots, in the June 23rd Republican primary. The Brooklyn Board of Elections counted **1257** ballots, sixteen votes more than are listed on the rolls as having voted.

This number of sixteen extra voters is close to the eighteen votes that the BOE is reporting as the margin of victory in the race. It's important to note that it would only take 10 ballots to change the outcome, since each vote for one candidate that changes sides adds a vote to one candidate and takes away a vote from the other. So sixteen additional ballots added to the race is enough to change the outcome. Furthermore, the analysis found that internal discrepancies within districts put the discrepancy number much higher at 56 total discrepancies - far greater than the margin of victory.

STRICT COMPLIANCE REQUESTED

"Candidates live and die by strict compliance," says Vaiselberg's attorney Jimmy Wagner. "The courts enforce the Election Law against every candidate to the letter, and they should. But strict compliance cannot be a one-way street. When the Board of Elections cannot produce 17 of the records the law requires it to keep, in a race decided by 18 votes, the same rule has to apply. The voters of the 22nd Senate District are entitled to an election that can be verified, not one we are simply asked to trust."

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Case Information

Supreme Court Of The State Of New York
Appellate Division : Second Department
Index No. 2026-08005

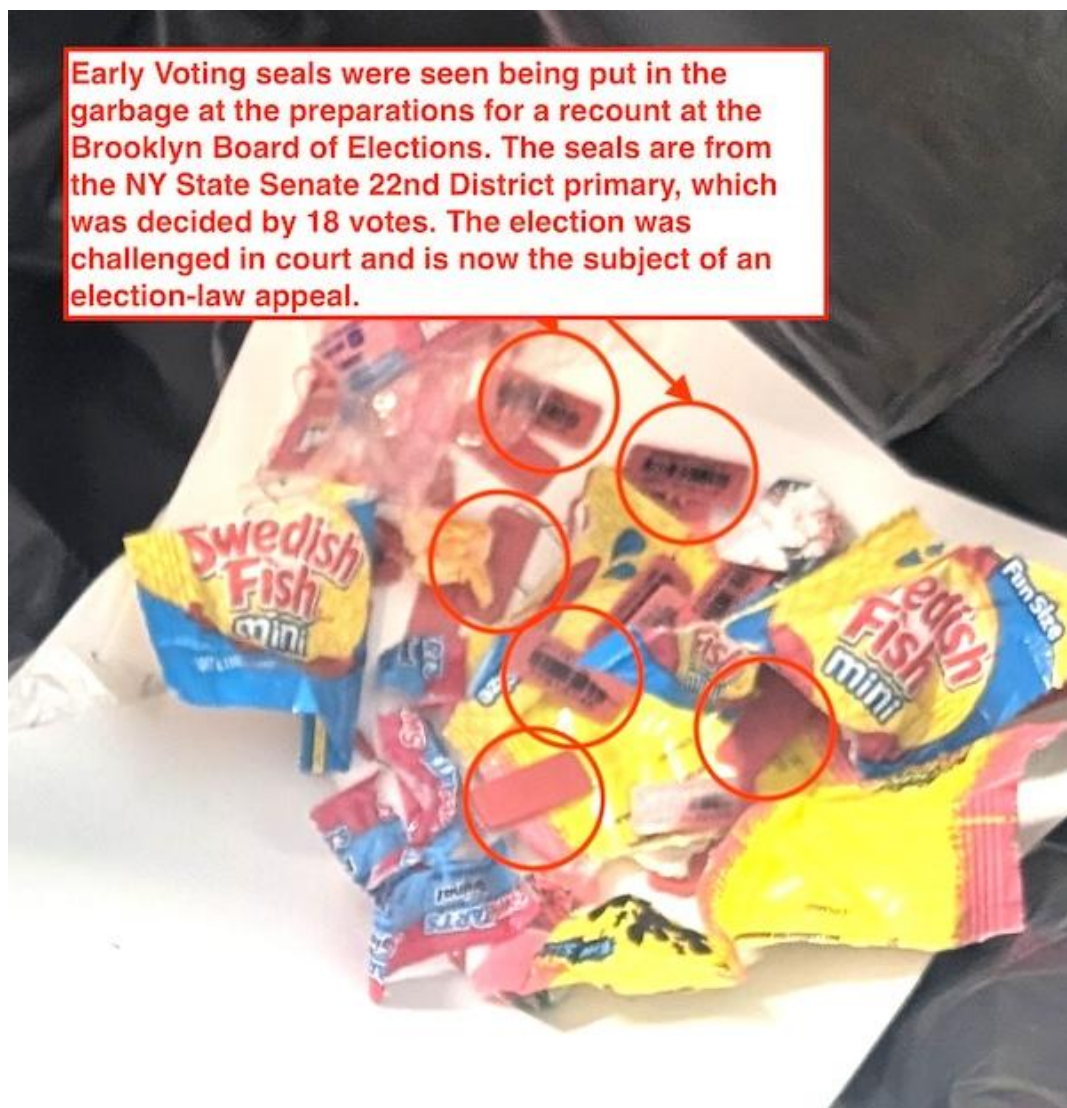
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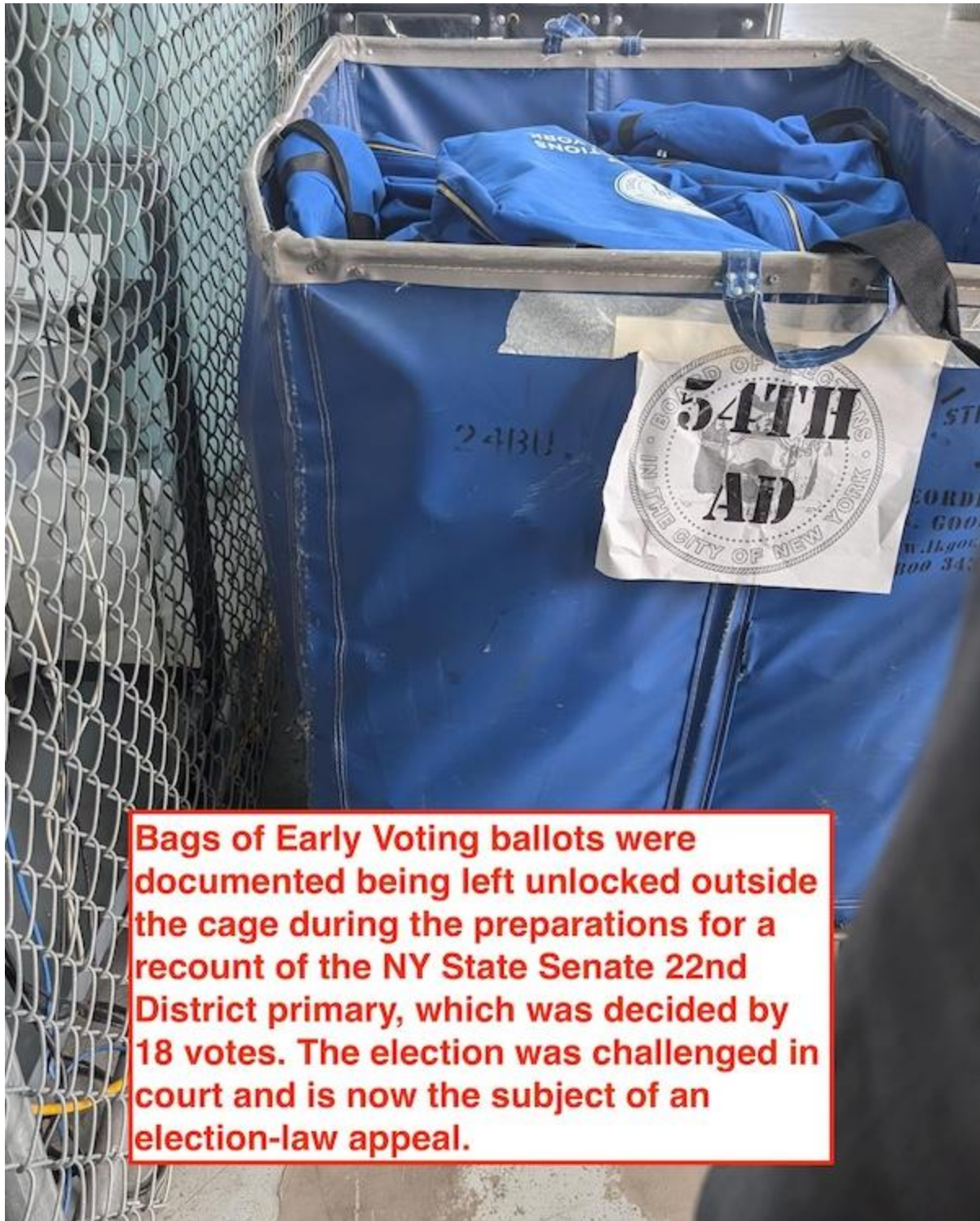
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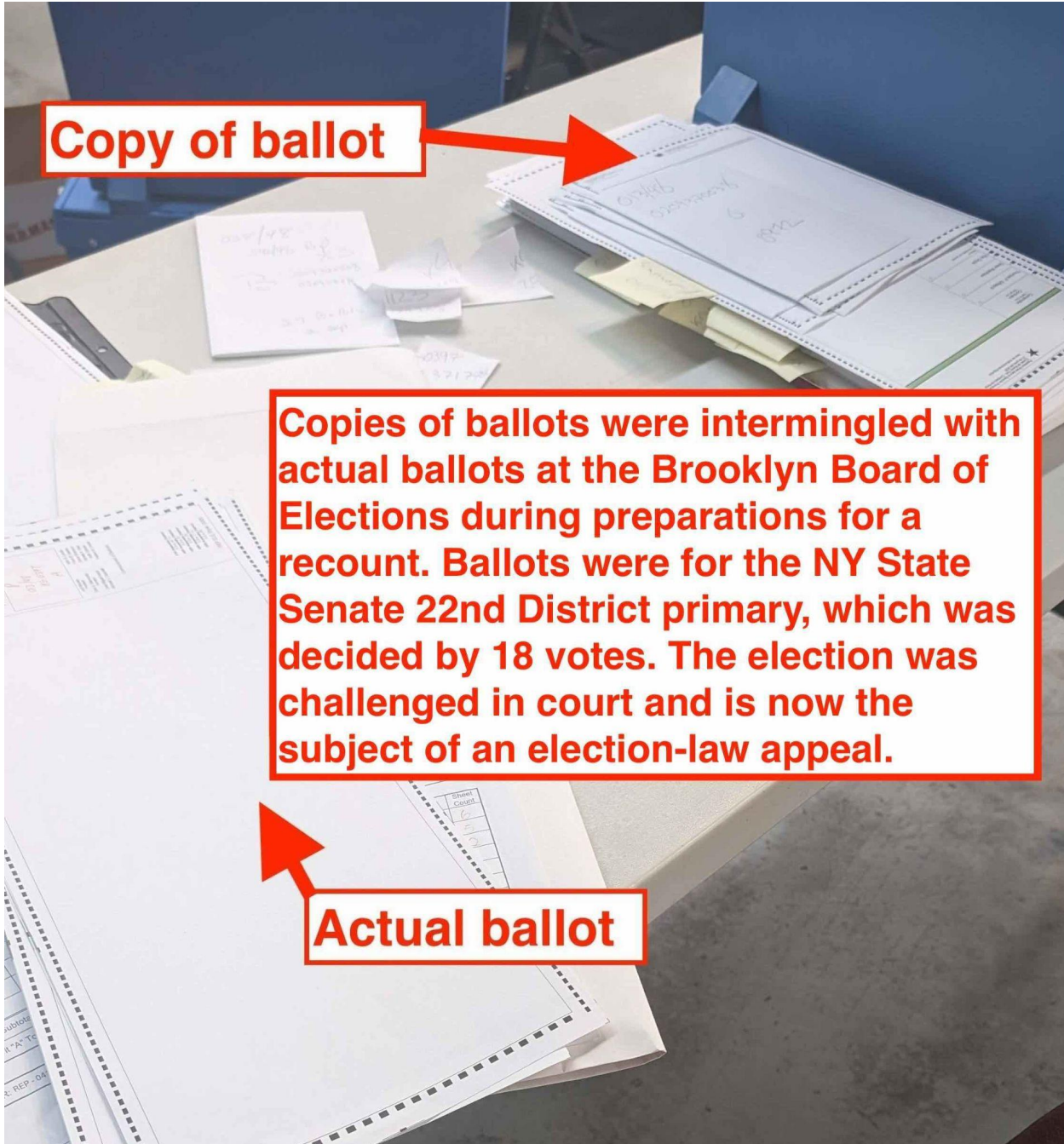
SMART Elections is a non-partisan organization dedicated to transforming U.S. elections by expanding public oversight, improving security, and advocating for fair, accessible voting. Our mission is to ensure that elections are transparent, have high participation, and inspire public confidence.

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Bags of Early Voting ballots were documented being left unlocked outside the cage during the preparations for a recount of the NY State Senate 22nd District primary, which was decided by 18 votes. The election was challenged in court and is now the subject of an election-law appeal.



Copy of ballot

Copies of ballots were intermingled with actual ballots at the Brooklyn Board of Elections during preparations for a recount. Ballots were for the NY State Senate 22nd District primary, which was decided by 18 votes. The election was challenged in court and is now the subject of an election-law appeal.

Actual ballot