

Capitol Beat
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Have you ever been on a roller coaster ride and felt dizzy when the ride was over? Now you know how Aimee Allaud, Bo Lipari, and I felt for the last two weeks, day in, and day out. One day up, one day down and mostly jerked around. However, by Friday afternoon after waiting an hour and a half for the New York State Board of Elections (NYSBOE) to convene a special meeting, we can claim a major battle won, which hopefully is the turning point in winning the larger war.

Now for the details:

As you may remember from Capitol Beat, Volume 1, Issue 2, the following transpired at the January 23rd and 24th meeting of the County Election Commissioners Association: January 24th, the State Board Commissioners voted on all six machines one by one. When the voting was over both sides had agreed to three machines. The next day LibertyVote DRE filed suit in NYS Supreme Court citing the NYSBOE's for their decision to eliminate that system from bidding. LibertyVote called the NYSBOE's decision "*arbitrary and capricious*", and harmful to there companies competitiveness in the state.

Monday, February 4th, Acting State Supreme Court Judge O'Connor overruled the decision of the NYSBOE and allowed LibertyVote's DRE back onto the list of voting machine available to the counties for purchase. On Tuesday, the Co-Executive Directors, in a party line split voted to exclude ES&S and Premier optical scan machines from that same list. These two companies then immediately went to Court in a joint lawsuit to get themselves back on the list. Aimee Allaud and I spent the better part of ten days sitting in NYS Supreme Court in Albany listening to the arguments from the vendors on why the NYSBOE made arbitrary and capricious decisions. On Wednesday at close of business, Judge O'Connor ruled again that both ES&S and Premier should also be put back on the list since the Co-Executive Directors of the NYSBOE did not have the authority to eliminate those two companies. Late that same day Avante, another DRE company, ran to Court to have their case joined to Liberty's and the next day, the Judge also ruled that they be put back on the list.

SO, we now had a Supreme Court Judge overruling every decision that the NYSBOE had made and we were essentially back to square one. On Thursday, the state League, along with New Yorkers for Verified Voting (NYVV) took immediate action!!! We faxed a letter to every County Board of Elections cautioning them against ordering either the LibertyVote or Avante DRE because neither machine can serve as Ballot Marking Device for voters with disabilities. Both machines provide no independent means for a voter with disabilities to verify their vote. This violates both HAVA and NYS Election law.

After close of business on Thursday the NYSBOE called an emergency meeting of the Commissioners for Friday at noon, since the County Boards of Elections had to list their machine selections with the NYS Board by the end of that day. The NYSBOE kept a crowded room filled with press and advocates sitting for an hour and a half before they finally appeared for the noon meeting. The actual meeting of the NYSBOE took 10 minutes, the previous hour and a half had been spent by the lawyers of the two parties parsing the resolution which in essence was rubberstamping the Court's Orders concerning the five machines. Because the League had alerted all the press, Commissioner Kellner, the Democratic Commissioner and Todd Valentine, the Republican Co-Executive Director were forced to essentially explain to the press present what had happened in the past week and why. I spent the remainder of the day giving interviews to the press to get the League's message out again, about the need for Counties to choose optical scan technology. By 5:30 p.m., Friday evening, Bo Lipari, Aimee Allaud, and I were waiting in the League office for the final list to come out. As the Counties checked in with their selections, it became clear, at least for that day that we had won an amazing victory. Only one small county in the Adirondacks, Hamilton County, had chosen the DRE technology, the remainder of the counties had chosen one of three machines using optical scan technology. Erie County Commissioners were split along party line and decision would have to be made by the NYSBOE, however, they are split on one of two optical scan machines. Cayuga County has since also selected an optical scan machine.

The next date the League will focus on is February 28th when the truncated certificate process will have been completed. The battle now is to make sure that Bo Lipari, our representative to the CMAC committee has access to the technical information necessary for the committee to advise the NYSBOE Commissioner on the certification of the chosen machines. Currently, the Republican Co-Executive Director, Todd Valentine is resisting Bo receiving this information. Stay tuned there are battles yet to be won.

Meanwhile the budget hearings have progressed. The League has testified on budget appropriations for the State Board of Elections, Health Care, Taxation (STAR program) and Judiciary (Judicial Pay Raise). The Governor's 21-day amendment process to make additions or corrections to his 2008-09 budget is due today and by March 1st the revenues available must be agree upon.

Next week the legislature is not in session because of President's Week. The following week we can expect the budget battles in Albany will heat up.

And the beat goes on...

