

Approved February 15, 2008

**Minutes of The New York State Board of Elections  
Thursday, January 24, 2008**

The meeting of the Commissioners of the New York State Board of Elections held at Holiday Inn, 232 Broadway, Saratoga Springs, New York 12866 was called to order at 11:00 am. The meeting was chaired by Commissioner Douglas Kellner. Commissioners present were Neil Kelleher and Helena Donohue. Staff present were: Stanley Zalen, Todd Valentine, Allison Carr, Paul Collins, Elizabeth Hogan, Anna Svizzero, William McCann, Lee Daghlian, Bob Brehm and Deirdre Hammer The guest list is attached.

Commissioner Kellner asked if there were any new staff reports; there were none. Commissioner Kellner asked for a motion to lay over the four items of old business to the next meeting. A motion was made by Commissioner Donohue and the commissioners agreed unanimously. **It was moved 3-0 do so.**

After some statements by all three Commissioners concerning the Plan B machines, a recommendation was made by Commissioner Donohue to vote on the BMD machines individually to approve and provide a list of recommended machines to counties to be ordered. **It was unanimously agreed to consider the systems one by one.**

Commissioner Donohue moved the Avante DRE as the first machine up for a vote. Commissioner Keller stated for the record that the Avante DRE does not comply with NYS Election Law Section 7-104 requirements; did not comply with the accessibility provisions of the Help America Vote Act with respect to the independent verification; and, did not comply with NYS Election Law Section 7-201(1)(e) with respect to the verification requirements. Allison Carr then stated that it does comply with New York State Election Law in that it displays a full face ballot and that they brought in a scanner for independent verification and that is why we were voting yes. A call for a vote on the motion was made by Commissioner Donohue. **Those voting in favor were Commissioner Donohue and Commissioner Kelleher. Commissioner Kellner voted no, therefore the motion failed** to attain a majority.

Commissioner Donohue next presented the Premier AutoMark for approval, and she stated that supposedly it is in the process of being delivered with a full face quality and that the vendor is supposed to be here by Monday. **A vote was called.** In explaining his vote, Commissioner Kellner stated his position that the submission that was already made does comply with NYS Election Law Section 7-104 in that it starts with a pre-printed full face ballot and that it ends with a marked full face ballot and that he would support the request by the Republican Commissioners with that modification either. Commissioner Kellner, Commissioner Kelleher and Commissioner Donohue voted yes. **The motion passed 3 – 0.**

The third machine presented by Commissioner Donohue was the Sequoia Imagecast. **The vote was 3-0 to add to the list of approved BMD-s. The motion passed.**

The Liberty machine was the next one presented. There was a discussion about this machine. Commissioner Kellner indicated that it was his opinion that the Liberty machine did not comply with the Help America Vote Act disability provisions; the provisions of NYS Election Law Section 7-202(1)(e) for independent verification of the ballot in a usable form; and, that it does not produce a ballot that meets the requirements of NYS Election Law Section 7-104. Commissioner Kellner also incorporated by reference into his remarks the memorandum that was submitted by the Brennan Center Of Law; the League of Women Voters; the New York State Independent Living Council; and New Yorkers for Verified Voting. The vote was called for and Commissioners Kelleher and Donohue voted yes. Commissioner Kellner voted no. **The motion failed to gain the required three votes and, therefore, it did not pass.**

Commissioner Donohue moved that the ES&S AutoMark with modifications also be added to the list. Commissioner Kellner stated that he has the same remarks as with respect to the Premiere Automark indicated above. **A vote was called for and all three Commissioners voted yes with modifications. Motioned passed.**

The last machine, the Avante BMD – OpScan was moved by Commissioner Donohue for approval. Commissioner Kellner stated that with respect to the Avante optical scan ballot marking device, it is the issue that it presented what purported to be a full face ballot for three seconds. But, if you actually freeze frame it and magnify it it is illegible because the pixels are so small that when they are magnified, they are not legible. Commissioner Kellner further stated that, as such, it did not comply with the ballot requirements of NYS Election Law Section 7-104 and then, in addition, there was no adequate means of independent verification as required by NYS Election Law Section 7-202(1)(e) and that it did not comply with the Help America Vote Act disability requirements. Commissioner Kellner, Donohue and Kelleher all voted no. **The motion failed.**

A discussion of the next meeting date was made for Monday, February 11<sup>th</sup>.

The result of the voting, the following machines will be on the list: the Sequoia Imagecast, the Premier AutoMark (with modifications) and the ES&S AutoMark (with modification). The commissioners carried out further discussion and comments from the audience on these issues.

**The meeting was adjourned at 12 noon.**