

**STATE OF NEW YORK
SUPREME COURT**

**APPELLATE DIVISION
THIRD DEPARTMENT**

**LIBERTY ELECTION SYSTEMS, LLC
Petitioner-Respondent**

-against-

**AFFIDAVIT
Index #789-08**

**DOUGLAS A. KELLNER and EVELYN J. AQUILA,
Respondents-Appellants**

and

**NEW YORK STATE BOARD OF ELECTIONS,
NEIL W. KELLEHER and HELENA MOSES DONOHUE,
SAID COMMISSIONERS TOGETHER CONSTITUTING
THE NEW YORK STATE BOARD OF ELECTIONS, and
THE NEW YORK STATE OFFICE OF GENERAL SERVICES,
Respondents.**

**State of New York)
County of Albany)SS.:**


Matthew J. Clyne being duly sworn deposes and says:

1. I am the Democratic Commissioner of the Albany County Board of Elections and, along with Republican Commissioner John A. Graziano, am responsible for ordering ballot marking devices to be in place by the fall of 2008.

2. Commissioner Graziano and I have been advised by the New York State Board of Elections that the deadline for us to place orders for ballot marking devices is February 8, 2008. We have been informed that we should rank in order of preference those ballot marking devices that the State Board of Elections has indicated are available.

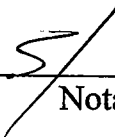
3. Mr. Graziano and I are familiar with the LibertyMark, manufactured by Liberty Election Systems, LLC. The LibertyMark has many excellent qualities and, if

available, is a ballot marking device that I would strongly consider ordering. Mr. Graziano has expressed to me similar feelings. However, the State Board of Elections has not made it clear whether the LibertyMark is an available machine. We have been advised by the State Board of Elections that the Sequoia ballot marking device is available. Also, late yesterday we received an e-mail from the Democratic and Republican Co-executive Directors of the State Board of Elections advising that the ballot marking devices of ES&S, Premiere, and Avante are all included on the list of ballot marking devices that the County Boards may rank in their selections due February 8th. We have received no similar instructions regarding the LibertyMark. Absent the same, it is unclear to us whether we may, in fact, rank that machine in the selection process.



Matthew J. Clyne

Sworn to before me this 7th
day of February, 2008.



Notary Public

L MICHAEL MACKEY
Notary Public, State of New York
No 4773650
Qualified in Albany County
Commission Expires: 7/31/10