

NEW YORK SUPREME COURT – ALBANY COUNTY

Art. 78 Part __

Present: HONORABLE KIMBERLY A. O'CONNOR
JUSTICE

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ELECTION SYSTEMS & SOFTWARE, INC.,

Petitioner,

Index No. 954/08

For a Judgment Pursuant to the Provisions of Article 78
of the New York Civil Practice Law and Rules

ORDER

- against -

NEW YORK STATE BOARD OF ELECTIONS, and
NEIL W. KELLEHER, DOUGLAS A. KELLNER,
HELENA MOSES DONAHUE, EVELYN J. AQUILA,
as Commissioners of the New York State Board of
Elections,

Respondents.

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ORDERED, that pursuant to Section 7805 of the New York Civil Practice Law and
Rules pending the hearing of the petition filed in above-entitled proceeding:

(A) Respondents, their employees, and all persons acting in concert with them or on
their behalf, are stayed from enforcing the decision appealed from in this proceeding as set forth
in the January 29, 2008 letter, from the New York State Board of Elections Co-Executive
Directors to the County Boards of Elections finding Petitioner's AutoMARK ballot marking
device non-compliant with the New York Election Law ballot display provisions and the Sequoia

Image Cast the sole choice for purchase by county boards of elections, and *pending the outcome*
of the litigation in this matter, the Petitioner's Auto MARK ballot
marking device, as modified, is to be included in the list of Ballot
marking device systems that the County Boards of Elections may rank
their selections for February 8, 2008 submissions to the NYS Office of
00370473

~~(B) New York State's county boards of election, and each of them, including the New York City Board of Elections, their officials, employees, and all persons acting in concert with them or on their behalf, are stayed from choosing a ballot marking device vendor until further order of this Court, and it is further~~

ORDERED, that Respondents shall forthwith furnish New York State's county boards of elections with a copy of this Order, and it is further

~~**ORDERED**, that Respondents shall take all actions necessary to extend the deadline for the county boards of elections to choose a ballot marking device vendor, which presently is set for February 8, 2008, until this Court shall decide the merits of the Verified Petition filed herein and direct the entry of Judgment upon said petition, and it is further~~

~~**ORDERED**, that respondents' answering papers, if any, shall be served upon petitioner by delivery to its attorneys, James E. Long & Associates, at their offices located at 668 Central Avenue, Albany, New York, 12206, and Davidoff Malito & Hutcher LLP, at their offices located at 605 Third Avenue, New York, New York 10158, on or before the ___ day of February, 2008.~~

ENTER:


Justice of the Supreme Court