

UNITED STATES DISTRICT COURT
THE SOUTHERN DISTRICT OF NEW YORK
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CONSERVATIVE PARTY OF NEW
YORK STATE and WORKING FAMILIES
PARTY,

Plaintiffs,

- against -

NEW YORK STATE BOARD OF ELECTIONS;
JAMES A. WALSH, DOUGLAS A. KELLNER,
EVELYN J. AQUILA, and GREGORY P.
PETERSON, in their official capacities as
Commissioners of the New York State Board of
Elections; TODD D. VALENTINE and
ROBERT A. BREHM, in their official capacities
as Co-Executive Directors of the New York State
Board of Elections,

Defendants.
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Civil Action No:
10-cv-6923 (JSR)

**DECLARATION OF
KENNETH CARBULLIDO
IN OPPOSITION
TO PLAINTIFFS' MOTION
FOR A PRELIMINARY
INJUNCTION**

KENNETH CARBULLIDO, declares as follows:

1. I am the Senior Vice President, Systems, for Election Systems & Software, Inc. (hereinafter referred to as "ES&S). I have held the position of Senior Vice President, Systems, with ES&S for 10 years. Our Organization was responsible for the design, development, quality assurance, certification, manufacturing and delivery of the DS200 and ES&S AutoMARK voting machines to the New York State Board of Elections (Hereinafter referred to as "NYSBOE" or the "Board"). I was involved extensively in the oversight of all of these activities. As such, I am fully familiar with the DS200 and ES&S AutoMARK voting machines currently being used in the State of New York and which will be used in the upcoming election scheduled for November 2, 2010.

2. I submit this affidavit on behalf of defendants in opposition to plaintiffs'

motion for a preliminary injunction for an order enjoining the Board's practice, in accordance with Election Law §9-112(4), of crediting a "double vote" for a single candidate to the candidate's party line which appears first on the ballot. For the reasons set forth herein, the motion should be denied in its entirety.

3. ES&S supplies the NYSBOE and authorized users within the State of New York with the DS200 digital scanner voting system and separate but companion AutoMARK ballot marking devices.

4. The DS200 digital scanner voting machines have been programmed to count a "double vote" for a candidate by recording the vote on the first ballot line that the voter casts his vote for that candidate.

5. I am advised that plaintiffs are asking the Court to have the DS200 voting machine systems reprogrammed before the upcoming election so that the machine issues a warning to a voter who submits a ballot with a double vote and provides the voter with an opportunity to correct the ballot.

6. To achieve this change it would require that the voting machines be reprogrammed.

7. I have reviewed the Affidavit of Robert Warren from the NYSBOE and I believe the statements contained therein are true and accurate as they relate to the operation of the DS200 and ES&S AutoMARK voting machine equipment. The DS200 and ES&S AutoMARK firmware contain candidate cross endorsement logic which governs how votes for cross endorsed candidates are treated. This firmware follows the requirements of the current New York State statutes and such logic is embedded in the firmware as such. Any message displayed to voters for such voted ballots are part of the

certified software configuration files. There is currently no accommodation for handling such “double-voted” ballots as requested by the Plaintiffs. If such logic is requested, the firmware and supporting messages would need to be enhanced (changed) to accommodate that capability. In addition, the election management software, Unity/ElectionWare, may need to be enhanced if such logic were to be made “selectable” in a configuration setting. The following is a brief explanation of the steps that would need to be followed at ES&S to change the software/firmware to implement the requested revisions:

- a. To make such changes, ES&S would require a formal Change Request be created. The issue would first need to be clearly defined with specifications from the NYSBOE with the specific handling defined, including the new handling of such “double-voted” ballots and all voter messages spelled out in all languages supported in the State of New York;
 - b. Once the change request is created, ES&S would create a Statement of Work (SOW) that spelled out our understanding of the changes, specific timelines for development and the cost of such changes. ES&S would require signature indicating approval on the SOW before we would begin making the changes. Our current estimate is that, once approved, the software and firmware enhancements would take approximately 30-60 days to make and deliver to NYSBOE in a form that is ready to begin NY State certification testing (we may be able to refine this estimate once the Change Request is received and would provide a more definitive estimate in the SOW). This estimate does not include the time or effort required to certify the changes. Additional ES&S time and efforts would likely be expended during the certification testing exercises and such costs would need to be determined as well;
 - c. Following NY State Certification, upgrades to County systems (the election management systems, DS200 scanners and AutoMARK ballot marking devices) would also have to be performed. This would take anywhere from 30 to 60 days, depending upon County schedules, access and availability to such systems;
8. In light of the above, it is clear that it would be impossible to implement the changes that plaintiffs are seeking with respect to the handling of double vote ballots

in the short time remaining before the election is to occur.

I swear under penalty of perjury that the foregoing is true and correct.

/s/ Kenneth Carbullido
KENNETH CARBULLIDO

Dated: Omaha, Nebraska
October 7, 2010