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July 1, 2008

Judge Gary L. Sharpe
United States District Court Northern District of New York
James Hanley Federal Building
P.O. Box 7367
100 South Clinton Street
Syracuse, New York 13261-7367

Re: *United States v. New York State Board of Elections et al.*, 06-cv-00263

Dear Judge Sharpe:

We write on behalf of the Nassau County Legislature and the Nassau County Board of Elections (collectively "Nassau"), to supplement our letter dated June 26, 2008, regarding major defects in the ballot marking devices (BMDs) that New York State must implement by September 2008 under the Court's Order in *United States of America v. ew York State Board of Elections et al.*, 06-cv-00263.

We wish to apprise the Court of the fact that there has been no improvement in the quality of State's acceptance testing. Since our last letter, Nassau County has received two additional shipments of BMDs that were acceptance tested by the State. As was the case with the earlier shipments, a very high percentage of the BMDs received in the most recent shipments are defective or damaged, and therefore unusable in their present condition. Also we are informed that the New York State Board of Elections ("SBOE") has been shipping the BMDs with a new type of plastic security seal instead of the prior metal seal which had been apparently damaging the BMDs in earlier shipments. These new seals are evidently less secure as several of the BMDs have arrived in Nassau County with broken security seals and there is no way for Nassau County to make sure that the BMDs have not been tampered with.

Nassau has now been forced to take possession of scores of defective BMDs with no solution of this problem in sight. Despite the County's demands, Sequoia has failed to

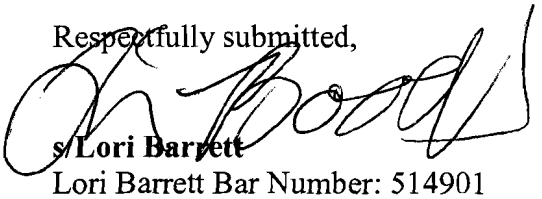
fix a single broken BMD or to give any indication when the BMDs will be repaired. In addition, the SBOE has turned a deaf ear to our repeated requests for assistance in addressing these major difficulties.

In view of the foregoing, Nassau respectfully requests this Court to order the SBOE to demand that its vendor Sequoia immediately make arrangements to repair or replace the damaged or defective BMDs so that Nassau has adequate time to implement the BMDs in time for the September primary elections—elections that are now roughly two months away. After the BMDs are repaired, Nassau requests the Court to order that the SBOE's acceptance testing on these BMDs—which must be performed again after repairs are made—be performed in Nassau County so that we can ensure that they properly function.

Unless the Court orders otherwise, Nassau believes it has no sound alternative but to postpone delivery of its remaining BMDs until the problem is addressed. We believe this is the only sensible course of action, given the strong likelihood that damaged BMDs will either have to be replaced or shipped elsewhere for repair and then shipped back to Nassau County, wasting precious time immediately before the primary elections. Under these circumstances, we believe it does not make sense to compound the problem by receiving additional defective BMDs. Nassau believes that it will be prudent to resume delivery only when the BMDs that are currently in Nassau's possession are repaired, Sequoia's manufacturing problems are fixed, and the SBOE resolves its inadequate acceptance testing and defective security seal.

We believe this matter is extremely urgent because the defective BMD's jeopardize the implementation of this Court's January 16, 2008 Order. We therefore respectfully request expedited treatment of our request for an order: (1) directing the SBOE to immediately demand that Sequoia resolve its manufacturing problems and (2) as requested in our letter dated June 26, 2008, directing that all future acceptance tests of BMDs designated for Nassau be conducted in Nassau County at the Nassau Board of Elections' facility. Without swift action, Nassau County, through no fault of its own, may be unable to provide *functioning* BMDs in the majority of polling places in the fall 2008 elections.

Respectfully submitted,



s/Lori Barrett
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