

**What Was Your Experience?**

*By Brad Williams*

It was early in the morning on Election Day 2008. There was excitement in the air. The polls had been opened for about a half hour and I confidently went to my designated site to use one of the court mandated Ballot Marking Devices (BMDs) designed to provide accessible voting to people with disabilities. Federal Judge Gary Sharpe ruled on December 20, 2007 that the State had to provide one BMD per polling place on Primary and Election Days 2008 as proof they were complying with the Help America Vote Act (HAVA).

I was greeted at the door by a poll worker who inquired about my election district. I then responded, "I want to vote on the Ballot Marking Device." "Oh, no you don't," she replied. "Yes, I do." "No, you don't," the poll worker insisted. "It will take you more than 20 minutes to vote on that machine. Why don't you just vote on a lever machine? It will take less than 3 minutes." "I've done focus group testing on BMDs. It might take someone who has never used



them before extra time, but it will take me only 6-8 minutes."

"Fine." The poll worker then asked me the next question in front of a room full of people. "What is your disability?" "That's an illegal question. Do not ask anyone else who comes in here that question. People with and without disabilities can use the Ballot Marking Device." "Okay. Sorry. No problem. Go to the table and sign in. I'll meet you back over at the machine." The poll worker realized that the situation was no longer negotiable. I told the three poll workers at the sign in table my name. They looked it up in the book. I then explained that I was going to use the Ballot Marking Device. They digressed into a lament over how it was going to screw up their lever machine counts. Finally, one worker got the idea that they would put an "A" next to my number. I was free to go vote on the BMD. I met the initial poll worker over at the machine. She had turned it on and instructed me to feed a

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blank piece of paper into the system. It took the paper. She searched desperately for different ways to enter a code to load my election district ballot, but was unsuccessful. The poll worker decided to reboot the BMD and asked me if I would like to look over the instructions with her and see if together we could make sense of how to enter the codes and load the ballot. We got started at the same point.

"Is this all the information that you have?" I asked. She nodded. "How much training did you receive on this system?" "Just the one time," she replied. I wondered why she didn't have a counterpart with her. Having been a poll inspector, I knew that poll workers were supposed to work in pairs.

"Listen, it is too important for me not to vote. So I will go back to the lever machines. However, you need to contact one of your county election commissioners as soon as possible. They need to load a ballot and make this system operational." The poll worker agreed and got on her cell phone. I went back to the sign in table and voted on a lever machine. So much for the Federal court order! I called and complained to the State Board of Elections. They took my concerns seriously. The county commissioner called me at home to apologize and inform me that they had eventually addressed the situation.

Over the next few days similar complaints came in from across the State from colleagues. While there were some instances where the BMDs were operational, many people with disabilities were discouraged from using the devices. Several instances occurred where poll workers were not properly trained and voters gave up on the BMDs. A New York Times article commented about the confusion created over its use because of poll worker distrust. At first some poll workers didn't acknowledge its existence. When the new system was recognized, it was dismissed

as broken. On election day, a number of people waited in line for more than three hours; these dedicated people insisted on being able to use the BMDs, as per Judge Sharpe's ruling.

In the northern part of the State, an advocate reported that the BMDs appeared operational. However, poll workers expressed an attitude that the disabled machine was hardly used and as a result was a waste of time and taxpayer dollars.

Here's my response to the last comment and the whole experience.

- It will take more than one election to get this right.
- There needs to be increased training of all poll workers more than once a year until counties can reliably operate Ballot Marking Devices (BMDs).
- It is time to recruit people with disabilities and young adults to become poll workers, to help address disability and technology issues at polling places.
- BMDs should not be seen as the disabled machine. While they do provide voting access to people with disabilities, BMDs are going to be expanded with scanners in the next one to two years and become the voting system of ALL New Yorkers! IT IS NOT A WASTE OF TIME AND TAXPAYER DOLLARS!

Poll workers better improve their attitudes and learn how to use these new systems. All New Yorkers will eventually be voting on either the BMD or scanner ends of the machine. Can you imagine if poll workers were as unprepared and treated the State's general voting population as poorly as it just treated people with disabilities? It's time for both the county and state Boards of Election to do a reality check ♦

## **Default Disenfranchisement**

*By T.K. Small, Attorney at Law*

At approximately 12:20 on Election Day, I started the process to exercise my right to vote in what was arguably the most important election of my life. Although I was eventually able to cast an absentee ballot, it took almost 6 hours, two appearances before a Supreme Court Judge, and numerous frustrating interactions with a variety of Board of Elections employees at two different polling sites and at the Brooklyn Board of Elections headquarters, not to mention the 28 blocks of rolling around downtown Brooklyn in a drizzling rain.

After signing into the book at my originally designated polling site (116 AD, 52 ED) I was immediately directed to use the standard lever machine. The Ballot Marking Device (BMD) was not even offered as a possible alternative. I gently informed the poll workers that the BMD would be the only way that I would be able to cast my ballot privately and independently. Although it should be obvious that I am a person with a significant physical disability, I had to explain that I needed to use the sip & puff+switch. Essentially these remarks were ignored and I was again directed to the lever machine. The excuse that I was given was that the printer was not working. However, since I was the first person that had asked about the machine, I am not certain how they could make such a statement. Again I was importuned to use the lever machine %I wanted my vote to be counted.+ After 10 to 15 minutes I left to call for legal advice. I returned to my apartment and telephoned a friend who works for New York Lawyers for the Public Interest to discuss my options.

He contacted the BOE administrative offices, and after a number of calls, we eventually spoke with someone who expedited the dispatch of a technician to the Pierrepont Street Polling site. Within the next hour, one of the poll workers knocked on my door and announced that the technician had arrived. Immediately I went downstairs (at approximately 2:15 p.m.) and attempted for the second time to vote. Unfortunately, things did not go any better the second time around. Again I informed the poll workers that I would need to use the sip & puff+switch in order to vote. This time there was a different poll worker, but he was completely unfamiliar with the technology. The initial poll worker said %we were told that you would know how to use the equipment.+ Naturally, I thought that the BOE technician was there to assist. However, she seemed to be standing in the background and was not providing any help. When I suggested that the BOE technician should know how to use the equipment, she finally came forward. To my amazement, she announced that %am only trained in how to plug it in and turn it on,+maintaining that she did not know anything about the accessibility features. Again the poll workers strongly urged me to use the inaccessible lever machines or cast a provisional ballot. By now it was 2:35 and I returned to my apartment to seek further legal advice. During this series of telephone calls, a woman from the BOE called me to proudly announce that a technician had been dispatched. I explained to her again that my rights to vote independently and privately had been completely frustrated.

My public interest lawyer friend informed me that there was a special judge assigned to resolve election matters who would be available at the Brooklyn BOE headquarters. At approximately 3:15, I left my apartment for 345 Adams to seek judicial relief. In the meantime my friend contacted the Judge and explained my situation. The Judge quickly signed an order directing the BOE to allow me to vote on a Ballot Marking Device anywhere within the 52<sup>nd</sup> Election District. Following the judge's order, I spoke directly with Brooklyn BOE staff that were facilitating compliance with the order, and explained that I wanted assurances that there was a functioning machine with poll workers trained in the use of the equipment. They agreed that that was a fair request, and after further checking, a staff member specifically directed me to the Joralemon Street polling site. I was also provided with a list of poll workers who allegedly had been trained on using the BMD. During these interactions with BOE I also asked whether there was a BMD at the Brooklyn headquarters, and was informed that there was not one at the site. By now it was a few minutes after 4:00 and I headed to Jorlemon Street to continue my struggle to vote. When I arrived at the polling site, I presented my order from the Judge. I quickly realized that this attempt was also going to be fraught with difficulties. The poll worker had to read the order many times and repeatedly tried to direct me back to my original polling site at Pierrepont Street. Eventually another poll worker intervened and understood the order. After explaining to the other poll workers what needed to occur, he started to move the BMD so that I could approach the equipment. Although it was approaching 4:30 in the afternoon, my effort to use the BMD was the first of any voter at this poll site. I am confident that this was the case because I witnessed

the removal of the plastic encasing the sealed ballots. Furthermore, the BMD was situated between two tables and facing the wall, so there was absolutely no way that a voter in a wheelchair could approach the machine. Next, the BMD became unplugged as the machine was being moved, which caused a series of software and computer problems.

One of the few procedural steps that the poll worker was aware of was the need to use a sterile glove while setting up the sip & puff mechanism. But even that turned into a keystone-poll-worker routine: The worker spent 15 minutes scurrying around to locate the gloves and then contaminated them while trying unsuccessfully to figure out the system. Meanwhile, several of my neighbors were voting at a nearby table, while observing the apparent medical procedure. Finally, another poll worker, a banker who was a little more familiar with computer technology, assumed a more proactive/assertive role. Without having much training, he tried to get the system working. This worker realized that the BMD had become unplugged and required a software reboot. Finally, we quit after waiting 25 minutes for the BMD to reboot. By this time it was 5:15 and I again returned to the Board of Elections to seek further judicial relief. The judge greeted me warmly, expecting affirmative results. Upon hearing my story, he was sympathetic to my anger and frustration. The judge accepted my request for an order to have an absentee ballot provided by the BOE.

Throughout my entire experience voting on November 4, Board of Elections staff members continued to speak to my personal care worker, rather than directing their comments and questions to me. As a person with a significant physical disability, being taken seriously is a constant struggle, despite my professional and educational

background. At the very least, poll workers and BOE staff should be able to treat me with dignity and respect ♦

## **ADA Amendment Act 2008 Signed into Law**

*By Patty Black*

President Bush signed the landmark ADA Amendment Act of 2008 into law on September 25, 2008. This is momentous news for disabled workers as this new law clearly reaffirms the intent of the original legislation by extending benefits/protections to many persons with disabilities not covered under the original legislation. Examples of persons covered under the revised act may include an airline pilot whose hearing is within normal limits with the use of a hearing aide, and a computer programmer whose major depression has been stabilized by medication.

The original ADA was signed into law in 1990 by then President George H.W. Bush. This act was seen as one of the groundbreaking pieces of civil rights legislation in the 20<sup>th</sup> century because it guaranteed access to public accommodations . including the workplace . to millions of Americans with disabilities. However, the intent of this law was undermined by successive Supreme Court decisions which limited its application by narrow interpretations of its provisions, which excluded many persons with disabling conditions. This new bill was victoriously signed into law after two years of productive meetings and compromises between business groups and disability rights advocates. The ultimate gist of this bill is its balance and its newly guaranteed rights for workers who have actual or perceived impairments.+ The positive balance for the business group would include the bill limiting unwarranted claims under the ADA by requiring that workers have proof that their disability would substantially limit a major

life activity when active. Also groundbreaking is that the bill will provide protection for the *first* time to workers with serious conditions like diabetes and cancer.

Finally, it is major news that both business and disability groups are very pleased with the new bill, and the fact that they compromised and collaborated on the wording of the legislation should greatly reduce the number of lawsuits over its implementation. Perhaps the most positive result of the new bill is that its direct and clear language should potentially improve employment outcomes for workers with disabilities. At the present time, two out of three people with significant disabilities are not employed, a troubling fact that has gone unchanged since the time the original ADA was signed into law. Congress has clear intentions with this bill now, and hopefully the Supreme Court will follow through with these intentions, thereby removing an impediment to positive employment statistics for people with disabilities ♦



(L to R) Dennis Boyd, Robert Gumson, and Gregory Jones display their certificates

## **NYSILC Honors Outgoing Members**

*Albany* – NYSILC recognized its council members who have served two

consecutive three year terms at the full council meeting on November 21, 2008 at the Holiday Inn on Wolf Road. Council members receiving a framed certificate for their six years of service included Dennis Boyd, Michael Godino, Mark Hernandez, Michael Kink, Randy Black Schantz, and Alexander Wood. In addition, ex officio members Robert Gumson (VESID), Sharon Flom (CBVH), and Gregory Jones (CQCAPD) were honored for more than ten years of service.

NYSILC will have nine new appointees start terms in January 2009 ♦



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***The NYSILC Staff  
wishes you a very  
happy, healthy and  
safe New Year  
2009!***

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