

# NJ Judge Issues Mixed Order on Use of E-voting Machines

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Wed Feb 3, 3:30 pm ET

An order this week from a New Jersey judge has electronic voting critics and e-voting machine maker Sequoia Voting Systems both claiming some level of victory in a six-year-old lawsuit seeking to decommission the machines.

Mercer County Superior Court Judge Linda Feinberg issued an opinion Monday finding Sequoia's paperless, direct record electronic (DRE) voting machines to be safe and reliable absent any "premeditated criminal activity." But Feinberg also ordered that the state's 11,000 voting machines be re-evaluated by a panel of computer experts, with the panel determining whether the state should continue using them.

Sequoia praised the judge's ruling. The decision "affirms what Sequoia and our customers throughout New Jersey and the United States have long known and experienced -- that our voting equipment is indeed safe, accurate and reliable," Jack Blaine, the company's CEO, said in a statement.

While critics of e-voting machines praised Feinberg for ordering the re-evaluation, some of the judge's determinations in the ruling left them baffled. Feinberg, in the [191-page ruling](#), seemed to reject the need for paper backups as a way to recount votes recorded on e-voting machines.

"There is simply no evidence to conclude that absent complete access, coupled with malicious intent to alter the results of an election, the voting machines have failed to correctly and accurately count every vote cast," Feinberg wrote. "The court rejects the notion that the AVC (Advantage from Sequoia Voting Systems) is not reliable because it cannot be secured from tampering."

Without paper backups, there's no way to know, countered Pamela Smith, president of [VerifiedVoting.org](#), a group pushing for changes to e-voting machines. "That's kind of a stunning statement," she said. "My sense was that she has a lot of faith that the state would sort of do the right things ... but I felt like there were some things that she didn't understand."

The lawsuit was filed in 2004 by the Rutgers School of Law-Newark on behalf of a group of voting rights advocates, including the Princeton-based Coalition for Peace Action. The groups had sought a restraining order against the use of DREs in the state.

Feinberg discounted testimony describing Sequoia machine hacks by university researchers, instead saying there's no evidence of a Sequoia machine being compromised during an election since the first machines went into operation in 1979.

"Not one witness presented evidence that the AVC, outside of a controlled academic setting, has ever been hacked," she wrote. "There is no evidence of tampering of an AVC (Advantage) in any election in this state, or any impermissible alteration of any vote. Instead, the record is replete with testimony from state and county election officials that, over the many years of use, not one election result in the state has been adversely affected."

Critics of the system were holding it to an impossible perfection standard, the judge said.

Smith disagreed, saying critics know no voting system is perfect. "I felt like she kind of missed some pretty basic things," Smith said. "You have to have a way to audit the system. New Jersey can't audit what they've got, and until they can, there's no reason for the public to have confidence, regardless of what the state does."

Rutgers law professor Penny Venetis, who represented the plaintiffs in the case, said she was happy the judge ordered a new review of the Sequoia system, although Feinberg gave only 120 days for the review to happen. The judge also ordered the state to disconnect any e-voting and vote-tallying machines from the Internet, to conduct criminal background checks on anyone who works with the machines, and to put in place a new protocol to inspect the machines for tampering.

"It's kind of an odd ruling," Venetis said. "We clearly proved our case that the machines are vulnerable. She's taking some steps to fix a system that's clearly broken."

The plaintiffs are still considering their next step, Venetis said. She said she's disappointed that Feinberg rejected the work of computer scientists that showed the system vulnerable. Researchers have shown [several hacks](#) of Sequoia machines.

"We should not be promoting systems that are vulnerable," she said.

The plaintiffs should not be claiming partial victory, said Michelle Shafer, vice president of communications and external affairs for Sequoia. The plaintiffs challenged the constitutionality of the voting equipment, and instead Feinberg rejected claims that it violated voting rights, she said.

"It was very clear from the plaintiffs' testimony that they wanted Sequoia's voting equipment tossed out of New Jersey on its ear and shown to be unconstitutional," Shafer said. "They brought this case forward with that intent. That did not happen, so in spite of what the plaintiffs and Ms. Venetis are spinning to the media and the public, they lost their case."

The judge found some structural problems in the state's voting system certification process, and the "limited" re-examination of the voting machines will look at those issues, Shafer said.

But Eugene Spafford, an e-voting critic and computer science professor at Purdue University, called the ruling a "narrow decision on some points of law." The decision was not a technical review, he said.

"The judge's statements repeatedly note that no problems have been detected so far: there may have been undetected (or unreported) problems that were therefore unavailable for the court to consider," Spafford wrote in an e-mail. "Also, simply because something has not happened yet does not mean it will

not happen."

The judge's decision should not be considered a "green light" for jurisdictions to buy e-voting machines, Spafford added. "Instead, municipalities purchasing new voting equipment should strive to get the best, unbiased advice available to obtain equipment that meets the highest standards of dependability, auditability, security, and accuracy to protect the voting process," he said.

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