

STATE OF NEW YORK
NEW YORK STATE BOARD OF ELECTIONS

In the Matter of:

WILLIAM TRONSOR,

Complainant,

HAVA Complaint No. 23-04
Determination

-v-

NASSAU COUNTY BOARD OF ELECTIONS,

Respondent.

Procedural Background

On January 23, 2023, the New York State Board of Elections (hereinafter “SBOE”) received a written, sworn, signed, and notarized Complaint (hereinafter “Complaint”) dated January 7, 2023, filed by William Tronsor , alleging certain conduct that constitutes violations of Title III of the Help America Vote Act of 2002 (52 U.S.C. § 21081)(hereinafter “HAVA”).

According to the Complaint, Mr. Tronsor voted during the early voting period on November 5, 2022 at the Rockville Centre Recreation Center. When he checked in, Mr. Tronsor asked to use the Ballot Marking Device (hereinafter “BMD”). A poll worker then asked why he wanted to use the BMD and Mr. Tronsor replied, “You are not supposed to ask me that.” The poll worker then asked if he was deaf or blind and Mr. Tronsor replied that he wasn’t. The poll worker then asked again why he wanted to use the BMD and Mr. Tronsor explained he had dyslexia and has trouble filling in the ballot by hand. The poll worker then told him a poll worker could assist him in marking his ballot but he replied that he wanted to use a BMD. He was then told he could use the BMD but it had not been working properly. Mr. Tronsor placed his ballot in the BMD but it malfunctioned and the poll worker called someone for assistance. The person on the phone instructed the poll worker on how to eject the ballot. The ejected ballot was damaged and was then spoiled by the poll worker. The poll worker then asked Mr. Tronsor to

fill out his ballot with assistance but he refused. The poll worker then told Mr. Tronsor that if the BMD did not work this time he would have to have assistance filling out his ballot. Mr. Tronsor marked a new ballot using the BMD but it would not print. The poll worker was able to retrieve the ballot from the BMD and two other poll workers reviewed Mr. Tronsor's marked ballot which defeated his ability to vote privately. His voting experience was approximately 30-40 minutes.

On February 15, 2023, the Nassau County Board of Elections (hereinafter "Nassau CBOE") responded to the Complaint. The Response stated that the Nassau CBOE inspects every BMD, voting machine, and voting apparatus sent to poll locations in the County before being transported to the poll site, but they sometimes break down after being delivered. In the future, the Nassau CBOE will try to expedite repairs to BMDs and other voting apparatus already in the poll site in order to avert similar situations to Mr. Tronsor's. All future voting seminars conducted by the Nassau CBOE will address issues dealing with damaged BMDs and/or voting machines including the telephone number and who to call to obtain immediate assistance to repair a defective BMD. The seminars will also address the alternatives that may be provided to a voter in a bi-partisan manner if a machine cannot be timely repaired or replaced. The Nassau CBOE response stated that Mr. Tronsor's complaint is troublesome since he rightfully felt that his vote was not cast in a private and independent manner. The Nassau CBOE will also incorporate a plan that will address broken and/or damaged BMDs as quickly as possible in order to eliminate the lack of voting systems which are "fully accessible" and which will guarantee privacy and independence to voters.

A hearing was held on March 22, 2023.

During the hearing, Mr. Tronsor reaffirmed his allegations in the complaint. Mr. Tronsor testified that a poll worker asked why he wanted to use the BMD and asked if he was blind or deaf. After further questioning from the poll worker Mr. Tronsor disclosed that he was dyslexic. Mr. Tronsor

testified that he felt that the poll worker would not let him use the BMD unless he disclosed his disability. Mr. Tronsor then testified that the poll worker asked him to have someone assist him with filling out his ballot. He declined and asked to use the BMD again. He testified that he was then allowed to use the BMD but the BMD malfunctioned. In addition, Mr. Tronsor testified that a poll worker tried to get him to vote with the assistance of poll workers on multiple occasions and he was told that after the second BMD malfunction that if he was given a third ballot he would have to vote with the assistance. Mr. Tronsor testified that the second time Mr. Tronsor used the BMD his ballot did not eject from the BMD but was able to be retrieved and cast.

Counsels Steven Marks and Michael Freeman, as well as Ricky Consta appeared on behalf of the Nassau CBOE. The Nassau CBOE reaffirmed the information in their response. They also testified that they apologize to Mr. Tronsor for his issues during voting. Nassau CBOE also testified to the procedures for reviewing ballots when there are print issues with the BMD. In addition, they testified that the normal procedure for when a person requests the use of a BMD is for the poll coordinator, who is trained to help voters with the BMD, to provide assistance to the voter. As part of their training poll coordinators are trained on how to remove a ballot when the BMD will not eject it. In addition, other poll workers at the poll site are trained to tell the poll coordinator when someone asks to use the BMD. Nassau CBOE also testified that the reason the poll workers reviewed Mr. Tronsor's ballot was to check the timing marks to ensure that it would scan correctly.

Jurisdiction

Section 402 of Help America Vote Act of 2002 (52 U.S.C. § 21112) requires the State to create a state-based administrative complaint procedure to assure compliance with Title III of the Help America Vote Act of 2002. Subdivision 16 of § 3-102 of the New York State Election Law directs SBOE to establish a HAVA administrative complaint procedure. Section 3-105 of the Election Law outlines the

Complaint procedure, such as that a formal complaint shall be in writing, signed and notarized; that the evidentiary standard shall be a preponderance of the evidence; and that the final determination shall be published and appropriate action shall be taken by the state Board of Elections as necessary.

Additionally, 9 NYCRR § 6216.2 further outlines the administrative complaint process.

As the Complaint was written, signed and notarized, and as the Complaint alleges conduct that constitutes a violation of Title III of HAVA, SBOE determines that William Tronsor has standing to bring a Complaint.

Issues Raised by the Complainant

The Complainant, William Tronsor, alleges the following:

1. A poll worker asked Mr. Tronsor on multiple occasions why he wanted to use a BMD and asked if he was deaf or blind;
2. A poll worker offered Mr. Tronsor the opportunity to vote with assistance when he asked to use the BMD;
3. The BMD malfunctioned and would not eject his ballot; and
4. A poll worker reviewed Mr. Tronsor's ballot which did not allow him to vote privately.

Legal Authority

Title III of HAVA, Section 301(a), outlines the minimum standards for polling locations used in federal elections. It is explicitly stated that all voting systems must be accessible to persons with disabilities (52 U.S.C. § 21081(a)(3)(A)). Furthermore, Title III outlines particular requirements that states must satisfy; namely, providing non-visual accessibility to the blind and visually impaired and maintaining at least one voting system at each polling location equipped for persons with disabilities (52 U.S.C. § 21081(a)(3)(A-B)). Title III also requires that the voting opportunities provided by elections

officials to persons with disabilities “be accessible...in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters...” (52 U.S.C. § 21081 (a)(3)(A)).

Section 8-102 of the Election Law requires election inspectors to inspect ballot devices and BMDs to ensure they are in working order prior to the opening of the polls, and to inspect the polling site to ensure that there is sufficient privacy when using devices, booths, and BMDs. Section 8-300 of the Election Law provides that “(t)he operating of the ballot scanner by the voter while voting or the use of a privacy booth or ballot marking device for marking a ballot shall be secret and obscured from all other persons except as provided by this chapter in cases of voting by assisted voters or in cases of children under the age of sixteen accompanying their voting parents or guardians.”

Findings of Fact

A Poll Worker Asked Mr. Tronsor on Multiple Occasions Why He Needed To Use A BMD:

When Mr. Tronsor asked to use the BMD a poll worker wrongly asked him why he wanted to use it. In addition, the poll worker asked if Mr. Tronsor was blind or deaf and when Mr. Tronsor replied that he was not the poll worker asked again why he wanted to use the BMD. Mr. Tronsor then disclosed that he had dyslexia.

A Poll Worker Attempted to Have Mr. Tronsor Vote With Assistance on Multiple Occasions:

When Mr. Tronsor asked to use the BMD a poll worker told him he could vote with the assistance of a poll worker. Mr. Tronsor declined. After being allowed to use the BMD a poll worker told Mr. Tronsor that he would have to vote with the assistance of a poll worker after the BMD malfunctioned for the second time.

The BMD Malfunctioned While Mr. Tronsor Attempted to Vote:

When Mr. Tronsor attempted to use the BMD, it malfunctioned and did not mark and print his ballot correctly. After trying again, the BMD did mark Mr. Tronsor's ballot but would not eject it. A poll worker had to retrieve the ballot from the BMD after it printed.

Mr. Tronsor Was Denied The Ability To Vote Privately Because A Poll Worker Inspected His Ballot After Retrieving It From The Malfunctioning BMD:

After the BMD printed his ballot but would not eject it a poll worker had to retrieve it from the BMD. The poll worker then inspected his printed ballot before returning it to Mr. Tronsor. During the inspection the poll worker was able to see the selections on the ballot which denied Mr. Tronsor the ability to vote privately.

Remedy

Section 3-105 of the Election Law requires that "(w)hen a violation has been found, the final determination shall include an appropriate remedy for any violation of Title III of the Help America Vote Act of 2002 (HAVA) found by the state board of elections." Further, 9 NYCRR 6216.2(f)(1) states that "(r)emedies may consist of a directive to the local or State official(s) or entities to undertake or to refrain from certain actions or to alter certain procedures pertaining to Federal elections."

Pursuant to this authority, SBOE directs the Nassau CBOE to:

1. Review training materials and instruct poll workers on information related to disability etiquette, proper procedures when a voter request use of a BMD, and the voter's options when a BMD malfunctions;
2. Instruct poll workers on procedures relating to the checking of BMDs to ensure they are operational both prior to the opening of the polls and throughout the day;

3. Review procedures to ensure the privacy of the voter is maintained when checking for damage to a ballot retrieved from a malfunctioning BMD.

Determination

For the reasons stated above, SBOE finds the allegations in the Complaint to be credible, finds that there was a violation of Title III of HAVA, and directs its staff to comply with the Remedy section of these findings.

Dated: April 21, 2023

Kevin G. Murphy
Deputy Counsel, New York State Board of Elections

Aaron Suggs
Deputy Counsel, New York State Board of Elections