

STATE OF NEW YORK
NEW YORK STATE BOARD OF ELECTIONS

In the Matter of:

HELEN HELLMUTH,

Complainant,

HAVA Complaint No. 23-07
Determination

-v-

RENSSELAER 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 10, 2023, filed by Helen Hellmuth, 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, Ms. Hellmuth went to vote on November 3rd at the Troy Medical building in Troy, NY and asked to use the ballot marking device (hereinafter “BMD”). The poll worker took approximately 10 minutes to get the session started. After making her selections the BMD produced an error message and ejected an unmarked ballot. This issue happened 2 more times. The poll worker then called the Rensselaer County Board Of Elections (hereinafter “Rensselaer CBOE”) who instructed her that a technician would have to look at the BMD. The technician arrived 15 minutes later but needed a key to fix the BMD which was at the Rensselaer CBOE office. He returned 25 minutes later and replaced the ink cartridge. Ms. Hellmuth tried to vote again but received the same error message. However, this time the ballot ejected with only the front marked. The technician made a call and then told Ms. Hellmuth that someone from SBOE would need to look at the BMD and that would occur later in the day or the next morning. Ms. Hellmuth then marked the ballot herself and left at 1pm. It took

her approximately 1.5 hours to vote. Ms. Hellmuth's husband went to the same poll site on November 6 and a poll worker told him that the BMD was still not working.

On February 3, 2023, the Rensselaer CBOE responded to the Complaint. The response stated that upon receiving the complaint, the Rensselaer CBOE tested both of the early voting BMDs used at the Troy Medical Building and found no issues with the BMD. In upcoming poll worker training, the Rensselaer CBOE will emphasize the importance of accessible voting.

A hearing was held on March 15, 2023.

During the hearing, Ms. Hellmuth reaffirmed the allegations in the complaint. Ms. Hellmuth testified that she tried to use a BMD to vote in the 2022 general election and she received an error message on multiple occasions. A poll worker then called the Rensselaer CBOE and a technician arrived to try to fix the BMD. However, the technician did not have the proper tools to fix or diagnose the issues with the BMD. Ms. Hellmuth testified that she was then directed to use the second BMD at the poll site but she received the same error message as the first BMD. The technician then left to retrieve the tools necessary to fix the BMDs. When the technician returned he tried to fix the BMDs again but was unable to do so and told Ms. Hellmuth that SBOE was going to have to fix the BMDs. Ms. Hellmuth confirmed with the technician that someone was going to fix the BMDs later that day or early the next morning. She then hand marked her ballot and left. A poll worker later told her husband that the BMD was never fixed.

The Rensselaer CBOE testified that they did not have any personal knowledge of the situation that occurred. However, the Rensselaer CBOE testified that in the future they would provide sufficient training for their technicians. The Rensselaer CBOE also testified that if there is an issue with a BMD it is not the Rensselaer CBOE's policy to inform voters that SBOE has to fix the issue. Rensselaer CBOE has the responsibility to fix the BMD.

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 Helen Hellmuth has standing to bring a Complaint.

Issues Raised by the Complainant

The Complainant, Helen Hellmuth, alleges the following:

1. The BMD malfunctioned multiple times and Ms. Hellmuth had to hand mark her ballot;
2. The technician did not have the necessary tools to fix the BMD when he first arrived at the poll site; and
3. The technician told Ms. Hellmuth that SBOE would have to fix the BMD.

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

When the BMD malfunctioned the technician did not have the necessary tools to fix it:

Both BMDs at the poll site malfunctioned on multiple occasions when Ms. Hellmuth tried to use them. A technician was called and when he arrived he did not have the tools to diagnose or fix the BMD. The technician had to return to the Rensselaer CBOE’s office and retrieve the tools and then return to the poll site. Even with the tools the technician was unable to fix the BMD.

The technician wrongly told Ms. Hellmuth that SBOE would fix the BMD:

The technician did not follow Rensselaer CBOE policy and wrongly told Ms. Hellmuth that SBOE would have to fix the BMD. The Rensselaer CBOE has the responsibility to fix any issues with voting machines.

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 Rensselaer County Board of Elections to do the following:

1. 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;
2. Instruct technicians on the responsibilities of CBOEs with respect to BMDs and the procedures if a BMD cannot be fixed.
3. Review procedures and ensure technicians have the necessary tools to fix a BMD when dispatched to a poll site.

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

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