

STATE OF NEW YORK  
NEW YORK STATE BOARD OF ELECTIONS

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In the Matter of:

JEREMY DEMICK,

Complainant,

HAVA Complaint No. 24-02  
Determination

-v-

NEW YORK CITY BOARD OF ELECTIONS,

Respondent.

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**Procedural Background**

On July 9, 2024 the New York State Board of Elections (hereinafter “SBOE”) received a written, sworn, signed, and notarized Complaint (hereinafter “Complaint”) dated July 3, 2024, filed by Jeremy Demick, 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, on April 2, 2024, Mr. Demick went to his poll site between 6 and 6:30 pm. The door was locked so someone had to let him in. At the poll site he told the poll workers that he wanted to vote using the Ballot Marking Device (hereinafter “BMD”). The touchscreen of the BMD did not work, so he had to use the machine's manual arrows to operate it. Poll workers told Mr. Demick that they told the Board about the error, but that it had not been fixed. Mr. Demick used the BMD to vote but it malfunctioned, and the ballot got stuck while printing. A poll worker was able to retrieve the ballot from the BMD, but the scanner was unable to read it. The poll workers thought that water may have gotten on the ballot and that was causing the issue. The poll workers thereafter tried to scan the ballot again but were unsuccessful. The poll workers also called the Board to get assistance. In

addition, the poll workers tried to void Mr. Demick's ballot but were unable to do so. A poll worker then thought that the scanner was not taking the ballot because the circles on the ballot weren't dark enough. The poll worker darkened the circles, and the scanner successfully took the ballot. The voting process took at least 30 minutes to complete.

On July 25, 2024, the New York City Board of Elections (hereinafter "NYC BOE") responded to the Complaint. In the Response the NYC BOE generally denied the allegations contained in the Complaint. The Response states that in NYC BOE's opinion the temporary inoperability of a BMD is not, in and of itself, a HAVA violation. In addition, NYC BOE stated that the "relief being sought" by the Complainant, has generally already been implemented by the NYC BOE. NYC BOE also provided many of their processes and procedures on the use of BMDs in their response.

A hearing was held on September 25, 2024.

Mr. Demick and Helen Hellmuth from Disability Rights New York appeared on behalf of the Complainant. During the hearing, Mr. Demick reiterated most of the allegations made in the complaint. Mr. Demick testified that the poll workers did not tell him that the BMD touch screen was not working, and they did not disclose to Mr. Demick how long the touchscreen was not operational. He also stated that after the poll worker retrieved his ballot from the malfunctioning BMD it was unclear if he was being assisted by a bipartisan team of poll workers. In addition, Mr. Demick testified that he was not given the option to darken the circles on the ballot himself and the poll worker did so without Mr. Demick's assistance. He also testified that at the time the circles were darkened there was only one poll worker assisting him.

Raphael Savino appeared on behalf of the NYC BOE. During the hearing, NYC BOE reiterated the information that they provided in their Response. NYC BOE testified that they did not have any documentation of a broken touchscreen on a BMD at that poll site. However, NYC BOE testified that a

technician was at Mr. Demick's poll site on the day that he voted but there is no record of what they worked on and there is no record of a breakdown of a BMD. NYC BOE also testified that all machines are tested before they are sent to poll sites.

### **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 the Mr. Demick has standing to bring a Complaint.

### **Issues Raised by the Complainant**

1. The touchscreen of the BMD did not work, so Mr. Demick had to use the machine's manual arrows to operate it;
2. Mr. Demick used the BMD to vote but it malfunctioned, and the ballot got stuck while printing; and
3. The poll worker darkened the circles on Mr. Demick's ballot for him.

## **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**

The BMD Malfunctioned When Mr. Demick Was Using It to Vote

While Mr. Demick was still able to use the BMD, the touchscreen was non-operational. In addition, the BMD had trouble printing the ballot and had to be retrieved from the machine by a poll worker. The ballot that did eventually print was unable to be read by the scanner.

#### Mr. Demick Was Not Afforded the Right to Vote Independently and Privately

When the ballot was unable to be read by the scanner a poll worker took Mr. Demick's ballot to darken the circles and was thus able to see how he voted. Before the poll worker took Mr. Demick's ballot there was no discussion on how to fix his ballot or the scanner in a manner that would allow him to vote independently and keep his ballot private.

#### **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 NYC BOE to:

1. Emphasize during the training of poll workers the proper procedure to follow when a BMD is non-operational;
2. Emphasize during training that all voters, including those using the BMD, must be able to vote independently and privately if they so choose and the proper procedure to assist a voter with their ballot, in particular emphasizing that the privacy of the ballot attaches to every step of the process, including post-ballot-marking handling

of the ballot, and any inspection of the face of the ballot revealing the voter's vote selections to discern why it is not scanning, is improper.

**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: October 18, 2024

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