

STATE OF NEW YORK
NEW YORK STATE BOARD OF ELECTIONS

In the Matter of:

KATHRYN CARROLL,

Complainant,

HAVA Complaint No. 25-02
Determination

-v-

ALBANY COUNTY BOARD OF ELECTIONS,

Respondent.

Procedural Background

On February 10, 2025, the New York State Board of Elections (hereinafter “SBOE”) received a written, sworn, signed, and notarized Complaint (hereinafter “Complaint”) dated January 29, 2025, filed by Kathryn Carroll, 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 Saturday, October 26, 2024, during early voting, Ms. Carroll went to her polling place at the Albany County Board of Elections office at approximately 4pm. Ms. Carroll is blind and requested use of the ballot marking device (BMD). She was led to the BMD and inserted her ballot which was rejected multiple times. When the BMD eventually accepted the ballot, it displayed an error message. A poll worker opened the BMD to retrieve the ballot and found it significantly crinkled and unusable. The ballot was spoiled and Ms. Carroll was directed to request a second ballot at the check-in desk. A poll worker assisted in inserting the second ballot, which the BMD accepted. Ms. Carroll tried to vote, but no audio was playing through the headphones. Ms. Carroll discovered that the headphones and the controller were plugged into the wrong jacks, and was able to fix the issue herself. She then marked and printed her ballot. However, when she attempted to scan her printed ballot the scanner rejected her ballot as unreadable multiple times. A poll worker asked Ms. Carroll if he could examine her ballot to

determine the issue. She agreed but was upset to have lost the privacy of her vote. The poll worker explained that Ms. Carroll had provided a write-in candidate and the BMD had printed it over top of the oval which was causing the scanner to reject the ballot. The poll worker recommended that she mark a new ballot, and accept assistance in filling out the write-in portion to prevent the BMD from making this mistake again. Ms. Carroll agreed and was directed to the check-in desk to spoil her second ballot and receive a third. She was told by the check-in worker that she would "only get three" ballots. Ms. Carroll marked the third ballot using the BMD, except for the write-in candidate, printed that ballot, and then a poll worker marked the write-in candidate at her direction. This ballot was then properly accepted by the scanner. The entire voting experience took about one hour.

On April 21, 2025, the Albany County Board of Elections (hereinafter "Albany CBOE") responded to the Complaint. In the response the Albany CBOE stated that it tests ballots and all voting equipment, including the BMD, on-site prior to use in an election. The voting attempts made by Ms. Carroll, resulting in an unreadable ballot, were machine related. The poll inspectors on site that day misinterpreted their training and conflated machine errors for voter errors when they invoked the "three spoiled ballots" guidance provided by the Albany CBOE. To prevent this happening again, the Board's poll inspector trainer has been replaced and the training related to BMDs is being emphasized in the training class.

The Albany CBOE's training manual has very clear directions related to the BMD's headphones and Headphone placement will continue to be tested by Board staff prior to use in the field. The Albany CBOE worked with the BMD's vendor, and found a software programming issue causing the original error which was compounded by a poll inspector error. This programming issue was resolved. As to the "crinkling of the ballot," it should be noted that the Board's BMDs are old and the Board will be purchasing new ones as soon as they are made available by the vendor. In addition, the Board offered their apologies to Ms. Carroll.

A hearing was held on May 1, 2025.

Kathryn Carroll and Jenessa Seymour appeared on behalf of the Complainant. During the hearing, Ms. Carroll reiterated the allegations made in her complaint. In addition, Ms. Carroll testified to the raised level of anxiety and stress her voting experience caused her. She also added that she has run into issues voting in the past however, these voting issues were above and beyond any of her previous issues.

Alison McLean Lane and Rachel Bledi appeared on behalf of the Albany CBOE. In their testimony, Albany CBOE reaffirmed their response. Albany CBOE also testified that since the BMD's printing mistake was caused by a software error there was no other remedy other than receiving assistance from poll workers that would have allowed Ms. Carroll to vote. Albany CBOE also acknowledged that the remedy was not ideal but that their ultimate goal was to allow Ms. Carroll to vote. In addition, Albany CBOE testified that the vendor provided a work around so this issue would not reoccur, and that they are confident in the vendor's solution.

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 Kathryn Carroll has standing to bring a Complaint.

Issues Raised by the Complainant

The Complainant, Kathryn Carroll, alleges the following:

1. The BMD's headphones were not set up properly and it malfunctioned and damaged her ballot so it could not be used;
2. The BMD malfunctioned and did not print her ballot in a manner that would allow it to be scanned and Ms. Carroll had to accept help from poll workers with the write-in portion of her ballot;
3. Poll workers wrongly told Ms. Carroll that ballots damaged due to machine error were included in the three-ballot limit provided for in Election Law section 8-312.

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 Was Not Set Up Properly and Malfunctioned When Ms. Carroll Tried to Use It.

The headphones were not attached correctly when Ms. Carroll tried to use the BMD and multiple attempts had to be made to get the BMD to accept the ballot. In addition, the BMD printed the write in candidate in a manner that would not allow the ballot to be scanned. Ms. Carroll was not afforded her right to vote independently and privately since she had to accept help from poll workers to complete her ballot.

Poll Workers Wrongly Told Ms. Carroll That She Was Only Entitled to Three Ballots.

Ms. Carroll was told that she would not receive another ballot after the first one was spoiled because the BMD crinkled her ballot and the second one printed in a manner that made it unable to be scanned. While Election Law section 8-312 provides a three-ballot limit, such limit does not apply to ballots made unusable by machine error or through no fault of the voter.

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 Albany CBOE to:

1. Test all BMDs prior to each election to prevent the BMD from printing the write in vote in a manner that would prevent it from being read by the scanner.

2. Emphasize during poll worker training that the three-ballot limit as provided for in Election Law section 8-312 does not apply to ballots made unusable by a malfunctioning BMD or other voting system;

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: May 16, 2025

Kevin G. Murphy

Deputy Counsel, New York State Board of Elections

Aaron Suggs

Counsel, New York State Public Campaign Finance Board