

STATE OF NEW YORK
NEW YORK STATE BOARD OF ELECTIONS

In the Matter of:

MICHAEL ORZEL,

Complainant,

HAVA Complaint No. 25-03
Determination

-v-

ALBANY COUNTY BOARD OF ELECTIONS,

Respondent.

Procedural Background

On February 18, 2025 the New York State Board of Elections (hereinafter “SBOE”) received a written, sworn, signed, and notarized Complaint (hereinafter “Complaint”) dated February 12, 2025, filed by Michael Orzel, 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 for the November 2024 General Election, Mr. Michael Orzel went to vote at the Colonie Village Recreation Center, at 3 Thunder Road, at approximately 11am. Mr. Orzel requested to use the ballot marking device (BMD). Mr. Orzel was able to use the BMD to mark and print his ballot, but it was rejected by the scanner. When Mr. Orzel and a poll worker examined his ballot to determine what was causing the error, they noticed that the BMD had printed his write-in choice for the District Attorney race underneath the line for President. Mr. Orzel had to mark a new ballot with assistance from a bipartisan team of poll workers. This new ballot was then successfully scanned.

On April 14, 2025, the Albany County Board of Elections (hereinafter “Albany CBOE”) responded to the Complaint. in the response the Albany County Board of Elections stated that it tests ballots and all voting equipment, including the BMDs and their ballots, on-site prior to use in an election and in the field.

After contacting their BMD vendor the Albany CBOE attempted to recreate the scenario that Mr. Orzel encountered while voting but were unable. This ballot did appear to have the same programming issue that another voter encountered [HAVA CMP #: 25-02]. With the help of the BMD's vendor the Albany CBOE has since fixed the software problem that was causing the issue. Albany CBOE is committed to ensuring that every eligible voter in their county is ensured their right to vote and they will continue testing their equipment and ballots prior to use in the field.

A hearing was held on May 5, 2025.

Michael Orzel and Jenessa Seymour appeared on behalf of the Complainant. During the hearing, the complainant reiterated the information provided in the complaint. Mr. Orzel further testified that up until the issue with the write-in portion of the ballot his voting experience was normal. In addition, he testified that poll workers did not give him the option to come back or wait for a technician to come fix the BMD.

Alison McLean Lane and Rachel Bledi appeared on behalf of the Albany CBOE. The Albany CBOE confirmed their written response. They further testified that in the normal course of business poll workers have a direct line to the Albany CBOE to speak to technicians about BMD and voting system issues. In addition, in normal circumstances poll workers would give the voter the option to vote with assistance or wait until the machine is fixed.

In this case, it was not clear why Mr. Orzel was not given these options, but Albany CBOE thought that it was likely that the poll workers assisting Mr. Orzel recognized that the error was a programming issue and was not something that could be fixed by a technician. In addition, the Albany CBOE did not look through their spoiled ballots to check if any others had similar issues but will try and check in the future.

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 Michael Orzel has standing to bring a Complaint.

Issues Raised by the Complainant

The Complainant, Michael Orzel, alleges the following:

1. The BMD malfunctioned and did not print his ballot in a manner that would allow it to be scanned and Mr. Orzel had to accept help from poll workers to mark his ballot.

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 And Misprinted The Ballot.

The BMD printed the write in candidate in a manner that would not allow the ballot to be scanned. Mr. Orzel was not afforded his right to vote independently and privately since he had to accept help from poll workers to complete his ballot.

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.

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

William J. McCann, Jr.

Counsel, New York State Board of Elections

Aaron Suggs

Counsel, New York State Public Campaign Finance Board