

Office of the Ohio Secretary of State

Election Complaint Procedure Adopted Pursuant to Section 402 of the *Help America Vote Act of 2002*

Section 1. Authority.

These complaint procedures are established as required by the *Help America Vote Act of 2002* [hereafter referred to as HAVA], P.L. 107-252, Section 402, and in accordance with the Ohio State Plan created pursuant to HAVA.

Section 2. Purpose.

These rules are promulgated to establish State-based uniform, nondiscriminatory administrative complaint procedures under which all complaints alleging violations of Title III of HAVA, sections 301 through 312, may be promptly and efficiently resolved and all complaints of merit will be appropriately remedied by the State of Ohio.

Section 3. Definitions.

As used in this complaint procedure, the following terms shall have the following meanings:

- (A) "Complainant" means the person who files a complaint under this chapter.
- (B) "Federal election" means a primary, special primary or general election at which a federal office appears on the ballot.
- (C) "Respondent" means any state or local election official whose actions are asserted, in a complaint under this chapter, to be in violation of Title III.
- (D) "State or local election official" means the Secretary of State, any member of a county board of elections, or any person employed by either the secretary or a county board of elections whose responsibilities include or directly relate to the administration of any federal election.
- (E) "Title III" means Title III of the Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 United States Code §§15481-15485.

Section 4. Applicability.

- (A) Any person who believes there is a violation of any provision of Title III of HAVA (including a violation which has occurred, is occurring, or is about to occur) may file a complaint.
- (B) These procedures shall apply only to complaints raised under Title III of HAVA.
- (C) Other complaints related to the conduct of elections shall be raised with the responsible public official(s), United States or Ohio prosecutors, or the Ohio Secretary of State as appropriate under 42 U.S.C. § 1973 et seq.; 42 U.S.C. § 12101 et seq.; 42 U.S.C. § 701; and other applicable laws.

Section 5. Form of Complaint.

- (A) The complaint must be in writing and notarized, and signed and sworn to by the person filing the complaint. The complaint must set forth the complainant's name, mailing address and telephone

number, and each alleged violation of Title III of HAVA, and must include a clear and concise description of each alleged violation that is sufficiently detailed to apprise both the respondent and the decision maker of the nature of each alleged violation.

- (B) The complaint may name witnesses to the alleged violation and include their written statements; may include documentary evidence supporting the allegations; and may also identify the sections, subsections, and paragraphs of HAVA alleged to have been violated.
- (C) The Secretary of State shall establish a complaint form to be used, although complaints received in substantially the same form and meeting all the legal requirements of subsection (A), above, shall be accepted.

Section 6. Place and Method of Filing Complaints.

The complaint shall be filed, along with adequate proof of mailing or delivery of a copy of the complaint to each Respondent, with the Office of the Ohio Secretary of State, Elections Division, 180 E. Broad Street, 15th Floor, Columbus, Ohio 43215. Telephonic, electronic, and facsimile complaints will not be accepted. There is no fee for filing a complaint.

Section 7. Service of Papers on all Parties.

- (A) When a complaint alleges violations by a county board of elections, the Secretary of State or the Secretary's designee shall promptly transmit a copy of the complaint to the county board of elections and permit the board to respond on its own behalf.
- (B) A copy of each piece of correspondence between the complainant or the county board of elections and the Secretary of State, the Secretary's designee, or the hearing officer, shall be filed with the Office of the Secretary of State. Copies of the correspondence and filings shall simultaneously be mailed to the hearing officer, if his or her identity and address are known, and to the opposing party, if any.

Section 8. Maintenance and Confidentiality of Official Agency Record.

- (A) The Secretary of State shall be the official custodian of the record of each complaint.
- (B) The record shall contain:
 - (1) A copy of the complaint, including any amendments made with the permission of the Secretary of State or the Secretary's designee;
 - (2) A copy of any written submissions by the complainant, respondents, or other interested persons, including any responses or replies thereto permitted under the schedule or by the Secretary of State or the Secretary's designee;
 - (3) Copies of all notices and correspondence with regard to the complaint;
 - (4) Originals or copies of any tangible evidence produced;
 - (5) The results of any investigation conducted;
 - (6) Other documents received or generated by the Secretary of State, his or her designee, or the hearing officer, concerning the substance and/or procedure applied to resolution of the complaint; and
 - (7) A copy of any final determination made regarding the complaint.
- (C) All records are confidential until there is a final resolution of each complaint. If the complainant makes a timely request for a hearing, the record shall be confidential until the hearing is finally resolved.

Section 9. Initial Screening.

- (A) The complaint shall be screened by the Secretary of State or a person designated by the Secretary to determine if it meets the criteria in HAVA and these rules.
- (B) The Secretary of State or the Secretary's designee shall examine each complaint and may reject it for filing if:
 - (1) The complaint is not signed and notarized under oath;
 - (2) The complaint does not identify the complainant or include an adequate mailing address;
 - (3) The complaint does not allege on its face a violation of Title III with regard to a federal election; or
 - (4) More than 90 days have elapsed since the final certification of the federal election at issue.
- (C) If the complaint does not meet the criteria in HAVA and these rules as stated herein, it shall be dismissed, although it may also be referred to other appropriate authorities.
- (D) If the complaint is dismissed, a designee of the Secretary of State shall send notice of the dismissal and a copy of these rules to the complainant. The notice shall advise the complainant that he or she is not precluded from refileing a complaint which conforms to the legal requirements.
- (E) The Secretary of State or the Secretary's designee shall do all the following:
 - (1) Take all necessary steps to prepare the complaint for determination;
 - (2) In coordination with the parties, shall establish a schedule under which the complainant and respondent or respondents, as well as any other interested persons, may file any written submissions concerning the complaint, and under which the complaint shall be finally determined;
 - (3) Provide copies of the official record to the decision maker in a timely manner.
- (F) When the Secretary of State, or any employee of the Secretary, is a Respondent, the functions assigned to the Secretary under this administration procedure shall, to the greatest extent possible, be performed by individuals not directly involved in the facts giving rise to the complaint.

Section 10. Consolidation of Complaints.

The Secretary of State or the Secretary's designee may consolidate complaints and resolve them together if they relate to the same actions or events, or if they raise common questions of law or fact, or if the Secretary or the Secretary's designee otherwise deem such consolidation appropriate.

Section 11. Administrative Resolution.

- (A) Complaints filed pursuant to this procedure shall be heard and determined by the Secretary of State or the Secretary's designee, and that determination shall be final.
- (B) Following the initial screening, complaints shall be resolved informally if possible. Complaints shall be evaluated, and a decision rendered, based upon the written submissions, unless the complainant requests a hearing on the record. A request must be made in writing to the secretary of state no later than 10 days after the filing of the complaint, or in the original complaint itself, but not in any amendment filed more than 10 days after the original complaint.
- (C) The Secretary of State or the Secretary's designee shall take all necessary steps to prepare the complaint for determination and, in coordination with the parties, shall establish a schedule under which the complainant and respondent or respondents, as well as any other interested persons, may file any written submissions concerning the complaint, and under which the complaint shall be finally determined.

- (D) The Secretary of State or the Secretary's designee shall consider all information filed and shall conduct an informal investigation of the complaint as appropriate, including contacting the persons alleged to have violated HAVA or alleged to be about to violate HAVA.
- (E) Based on the agency record, the Secretary of State or the Secretary's designee may enter a decision and order, which may include an appropriate remedy. When the decision is that no violation of HAVA, Title III, has or is about to occur, the complaint shall be dismissed and the results of the procedures published on the website of the Office of the Secretary of State.
- (F) The Secretary of State or the Secretary's designee shall send the decision and order to the complainant by appropriate means including proof of delivery to the address provided by the complainant.
- (G) The Secretary of State or the Secretary's designee simultaneously shall send a copy of the decision and order to the election official, if any, who was alleged, directly or indirectly, to have violated or be about to violate Title III of HAVA.
- (H) Along with the decision and order, the Secretary of State or the Secretary's designee shall notify the complainant of his or her right to request a hearing on the record if not satisfied. The request shall be in writing and received within 10 calendar days after the complainant's receipt of the decision and order. Such requests may be submitted by facsimile or e-mail as well.

Section 12. Administrative Hearing.

- (A) An informal administrative hearing shall be conducted following timely receipt of a written request for a hearing on the record in accordance with Section 11(B) of this procedure.
- (B) The Secretary of State or the Secretary's designee shall promptly establish a date, time, and location for the hearing. The hearing shall occur within a reasonable period of time. The hearing shall be open to the public.
- (C) The Secretary of State or the Secretary's designee shall provide not less than five days notice of the hearing to the complainant, each respondent, and any other person who has requested notice in writing. Notice shall be provided by mail and by posting on the Secretary of State's Web site, and by such other means as the Secretary deems appropriate.
- (D) The Secretary of State may preside over the hearing or may designate a hearing officer to conduct the matter and to prepare a recommended decision and order.
- (E) Any complainant, respondent, or other person may file a written brief or memorandum within five business days of the conclusion of the hearing, but no responsive brief or memoranda will be accepted without authorization of the Secretary of State or the hearing officer.
- (F) The Ohio Administrative Procedure Act, the Ohio Rules of Civil Procedure, the Ohio Rules of Evidence, and the Ohio Rules of Appellate Procedure shall not apply to these proceedings.

Section 13. Objectives and Procedure of Administrative Hearing.

- (A) The Secretary of State or the hearing officer has considerable discretion in how the hearing is conducted, although the overriding consideration is to provide a speedy, fair and efficient method by which the parties may be heard and the matter decided in order to support and effectuate the letter and spirit of HAVA.
- (B) The Secretary of State or the hearing officer shall have a copy of the record of the complaint(s) to be heard.

- (C) The Secretary of State or the hearing officer shall introduce the matter on the record and explain the procedures to be followed.
- (D) The complainant, any respondent, or any other interested member of the public may appear at the hearing and testify or present tangible evidence in connection with the complaint. Each witness shall be sworn. A complainant, respondent, or other person may, but need not, be represented by an attorney.
- (E) The hearing officer may limit the testimony, if necessary, to ensure that all interested participants are able to present their views or to assure completion of the hearing within a reasonable time.
- (F) The hearing officer may recess the hearing and reconvene at a later date, time, and place announced publicly at the hearing.
- (G) The Secretary of State or the hearing officer may participate during the presentations of the parties at any time.
- (H) At the conclusion of the hearing, the Secretary of State or the hearing officer shall take the matter under advisement and promptly prepare or recommend a decision and order for the Secretary of State.

Section 14. Recording of Administrative Hearing.

An audio recording shall be made of the proceedings. The Secretary of State is obligated to prepare a transcript of the audio recording, but such a transcript shall be prepared at the expense of the person requesting the transcript.

If any party prefers to have a court reporter record the proceedings, he or she may do so at his or her own expense.

Section 15. Special Accommodations at the Administrative Hearing.

Individuals with disabilities shall inform the Secretary of State or his or her designee at least 5 business days before the informal hearing of any special accommodations they require. They may have people assist them and speak for them as desired.

Section 16. Final Decision.

- (A) The Secretary of State retains authority on behalf of the State of Ohio to make the final decision in each instance from the initial screening through a hearing on the record. The Secretary of State's determination shall be final and shall not be subject to judicial review.
- (B) The Secretary of State shall determine whether, under a preponderance of the evidence, a violation of Title III has been established. If the Secretary determines that a violation has occurred, then a written determination shall be issued specifying the appropriate remedy. If the Secretary determines that no violation has been established, the complaint shall be dismissed.
- (C) Upon deciding a meritorious complaint, the Secretary of State shall order an appropriate remedy.
- (D) Upon the Secretary of State's entry of the final decision and order into the record, the Secretary shall also deliver the decision and order to the complainant by appropriate means, including proof of delivery, to the address provided by the complainant and to the other parties, if any.
- (E) If the final decision and order result in the dismissal of the complaint, the result of the procedures shall be published on the website of the Secretary of State.

Section 17. Appropriate Remedies.

- (A) The Secretary of State has discretion to determine the nature of an appropriate remedy when a complaint has led to the establishment of a violation of Title III of HAVA.
- (B) An appropriate remedy may detail actions to be taken or procedures to be followed by election officials, and it may include a corrective action plan.
- (C) The officials required to take the corrective action shall report to the Secretary of State or his designee the steps taken in accordance with the requirements and schedule provided in the decision and order.
- (D) Appropriate remedies are limited to those which are designed to assure compliance with Title III of HAVA. The remedy may not include any award of monetary damages, costs, or attorney fees, and may not include the invalidation of any primary or election or a determination of the validity of any ballot or vote. Remedies addressing the validity of any primary or election or of any ballot or vote may be obtained only as otherwise provided by law.
- (E) A complaint filed pursuant to this chapter does not constitute an election contest pursuant to sections 3515.08 through 3515.16, inclusive, of the Revised Code of Ohio.

Section 18. Time Allowed for Entire Process.

- (A) The State has 90 days within which to make a final determination with respect to a complaint. The period begins with the date of the filing of the complaint.
- (B) The time limit may be extended only with consent of the complainant and all opposing parties, if there are any.
- (C) When multiple complaints that have been consolidated, all deadlines in these rules shall be determined by the date the last complaint was filed.
- (D) When multiple complaints have been consolidated, an extension of time shall apply only to those complainants who have consented to the extension of time.
- (E) Consent for an extension of time shall be in writing and filed with the Secretary of State before the 90-day period expires.
- (F) The Secretary of State or the hearing officer is authorized to grant reasonable extensions of time at the request of the parties as qualified above.

Section 19. Results of Failure to Conclude the Hearing Process within the Time Allowed.

- (A) When a complaint has not been finally resolved within the 90-day period, the Secretary of State must refer the complaint to the local bar association, state bar association, or a third party certified Alternative Dispute Resolution (ADR) professional to be resolved within 60 days under alternative dispute resolution procedures. The decision as to which of these to employ will be decided on a case-by-case basis which will take into account the convenience of all interested parties as well as the efficiency of the process.
- (B) When complaints have been consolidated and some complainants have not consented to an extension of the 90-day deadline, their complaints shall be subject to separation from the others and treatment under this section.
- (C) The person designated to provide the ADR, hereafter referred to as the ADR hearing officer, shall have a copy of the agency record of the proceedings.

- (D) With one exception, the ADR hearing officer shall adhere to this Election Complaint Procedure in resolving the complaint. The exception is that the ADR hearing officer may conduct an administrative hearing in accordance with the hearing procedures set forth in sections 119.07 through 119.13 of the Revised Code of Ohio, with time lines adjusted to fit the time allowed. Conduct of the hearing in accordance with these procedures does not alter the authority of the Secretary of State as the final decision maker.
- (E) The ADR hearing officer shall conclude the matter as expeditiously as possible and shall forward his or her recommended decision and order to the Secretary of State within the time allowed by the Secretary of State.
- (F) The Secretary of State shall enter the final decision and order no later than 60 calendar days after the expiration of the 90-day period.

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ADMINISTRATIVE COMPLAINT FORM

This form may be used by any person alleging a violation of Title III of the *Help America Vote Act of 2002* (42 U.S.C. §15481-15485)

Mail or hand-deliver the signed and notarized complaint to:

Office of the Ohio Secretary of State
Election Reform Division
180 E. Broad Street, 15th Floor
Columbus, OH 43215

Complaint cannot be filed by fax or e-mail.

Please type or print all information.

PERSON BRINGING COMPLAINT

Name _____
Street Address _____
City _____ County _____ State ____ Zip Code _____
Daytime Tel. _____ E-mail address: _____

PERSON OR ENTITY AGAINST WHOM COMPLAINT IS BROUGHT (One person/entity per form)

Name _____
Street Address _____
City _____ County _____ State ____ Zip Code _____
Daytime Tel. _____ E-mail address: _____

VIOLATION ALLEGED

Section of Title III of the *Help America Vote Act of 2002* allegedly violated: _____

Date alleged violation occurred: _____

Please explain in detail the facts on which the complaint is based. If necessary, attach additional sheets, properly notarized.

Would you like the Secretary of State to conduct a hearing on the record? Yes No

IMPORTANT: TO BE CONSIDERED, THIS COMPLAINT MUST BE PROPERLY SWORN, SIGNED AND NOTARIZED.

State of Ohio, County of _____ ss:

Signature of Complainant
Sworn to and subscribed in my presence by _____, this _____ day of _____, 20____,
in the City of _____, County of _____, State of Ohio.

Signature of Notary Public of the State of Ohio
My Commission expires _____