

When All Else Fails: The HAVA Complaints Process

August 23, 2016

2:00pm-3:30pm EST

Agenda...

- Michelle Bishop, NDRN
 - National perspective and upcoming initiatives
- Cheryl Jansen, Equip for Equality (Illinois)
 - Illinois process and 2015 complaint
- Fred Nisen, Disability Rights California
 - California process and 2014 complaint
- Q&A following presentations
 - Use the “chat window” for questions during the presentation

The HAVA Complaints Process

- Congress passed the Help America Vote Act (“HAVA”) in 2002.
- Among other things, federal funding was provided to the states to improve access to polling places for people with disabilities.
- States were required to have a HAVA state plan that stipulated how they would ensure that all polling places, voter registration, and voting equipment were accessible to people with disabilities.
- Each state’s plan is required to include a state-based administrative complaint procedure to remedy grievances.

Federal Requirements of Complaints Process

There are 9 requirements of state complaint proceedings under HAVA:

1. The procedures must be uniform and nondiscriminatory
2. Any person who believes there is a violation may file a complaint
3. All complaints must be in writing, signed, and notarized
4. The State may consolidate complaints filed
5. The complainant may request a hearing on the record
6. If the State determines there has been a violation, the State will provide an appropriate remedy
7. If the State determines there is no violation, the State shall dismiss the complaint and publish the results of the procedures
8. A final determination must be made within a 90-day period after the complaint is filed, unless the complainant consents to a longer period
9. If the State fails to meet this deadline, the complaint shall be resolved within 60 days via alternative dispute resolution proceedings

Trends in State-Level Management

- 32 states have a form available online that claimants fill out and submit my mail.
 - As they are federally required to be signed and notarized, voters are not able to submit formal complaints online.
- 16 states do not have a specific form, but instead request that claimant write a letter containing the details of the complaint.

Trends, Continued

- Several states do not have either a form or directions where to send a letter on their website. For example:
 - Hawaii has no specific information on how to submit a HAVA complaint online. A call to the state elections office revealed that a claimant must submit a complaint in writing to the Chief Elections Officer.
 - Kentucky, Pennsylvania, and Colorado do have HAVA forms, but they are not available online and a person filing a complaint would have to call in and request the form.
 - Interestingly, when calling Illinois State Board of Elections – we were advised to seek counsel before proceeding with a HAVA complaint.

Trends, Continued

- All forms allow for a narrative paragraph about the alleged violation and surrounding circumstances, but many forms also suggest that the claimant name a specific elections official who they believe violated HAVA.
- Other forms require a specific citation to the part of HAVA that was violated.
- In many cases, the address to send complaints is often the Secretary of State's Office or the Attorney General's Office, without a more specific person to which complaints can be directed.

Initial Concerns

- No uniformity to the process across states
- Lack of publicity and voter awareness
- Process that allows for “lost in the shuffle”
- Forms are not necessarily accessible
- Directions that are difficult to obtain or unclear
- Additional state requirements
 - Naming election personnel
 - Citing HAVA
- Barriers within the process
 - Notary requirement
 - Inability to submit online
 - Structures that require calling the right place to find the information
 - The element of mystery around hearing processes, etc.

Future Directions for NDRN

- Some of these requirements will be difficult to address
- More research is needed
- Developing a model HAVA complaints process
- Partnering around adoption of the model process:
 - US Election Assistance Commission
 - National Association of Secretaries of State
 - The Election Center



Complaints to Enforce the Rights of Voters with Disabilities under Title III of the Help America Vote Act (HAVA)

Cheryl R. Jansen
Equip for Equality



Ways to Encourage Reporting of HAVA Issues

- Have an Election Day Help Line for all federal elections—Primary and General
- Conduct voting rights trainings
- Host voting-related meetings and discussions
- Distribute voting rights materials at outreach events
- Participate in coalitions and other collaborative efforts to expand the voting rights of citizens



How the HAVA Complaint Process Works in Illinois

- The Illinois State Board of Elections is responsible for resolving any administrative complaints filed pursuant to Title IV of HAVA (42 U.S.C 402)
 - State administrative rules govern the complaint process
- Any person who believes there is a violation of Title II of HAVA may file a complaint with the State Board of Elections



Requirements for Filing a Complaint

- The complaint must:
 - Be directed to and state the name of the respondent against whom the complaint is directed;
 - State the specific provisions of Title III of HAVA alleged to have been violated;
 - State the time, place and nature of the alleged offense;
 - Be verified, dated and signed by the complainant;
 - Be filed within 90 days of the alleged violation or within 90 days of the federal election to which the alleged violation relates—whichever is later



Preliminary Review of the Complaint

- Upon the filing of a complaint, the State Board of Elections conducts a preliminary review to determine whether the complaint meets the following criteria:
 - Alleges a violation of Title III of HAVA
 - Pertains to a federal election
 - States sufficient facts to create a cause of action for which the State Board of Elections can grant appropriate relief



Hearing on the Complaint

- If the complaint is determined to meet the criteria *and* upon the written request of the complainant, the State Board of Elections appoints a hearing examiner to conduct a hearing
- Following the hearing, the hearing examiner is required to make a written recommendation as to whether the complaint is well-grounded in fact and law
 - The State Board of Election's General Counsel must also issue a recommendation
- The State Board of Elections makes the final determination as to the merits of the complaint and what, if any, relief shall be granted



Timeframe for Making a Determination

- The State Board of Elections is required to make its final determination within 90 days of the date the complaint is filed
 - Unless the complainant consents to a longer period for making that determination
- If the state fails to meet the 90-day deadline, the complaint must be resolved within 60 days using an alternative dispute resolution procedure



The Facts Giving Rise to the Complaint

- In January 2015, EFE was contacted by two individuals regarding problems they encountered while voting in the November 2014 election
- Client A, a person with a disability who uses a power chair to assist with mobility, attempted to use the electronic voting machine but the machine was placed too high
 - With some difficulty, she and a co-worker adjusted the machine; she held up the machine with one hand and voted with the other



The Facts Giving Rise to the Complaint

- Client A asked the election judges for the card needed to activate the machine, but they could not locate it
- After waiting for a period of time, she asked to use the accessible voting booth instead
- She did vote at the accessible booth, but there were no privacy panels
- She was not given a privacy sleeve for her ballot, so it was visible to others as she carried it in her lap to the ballot box



The Facts Giving Rise to the Complaint

- Client B requested to use the electronic voting machine to vote at her polling place
- She had to wait while the election judges figured out how to ready the card to activate the machine
- She was able to vote using the machine, but the machine was placed so that it faced the door and had no privacy panels around it
 - Voters entering the polling place had to pass right behind her, so that her ballot was visible to others



Initiating the Process

- EFE assisted each of these clients in filing a complaint with the State Board of Elections for violations of Title III of HAVA
 - Because both complaints were against the same election authority and arose out of the same election, the complaints were consolidated
- Pursuant to the request made in the complaints for a hearing on the record, a hearing examiner was appointed to hear the cases



Pre-Hearing Conference

- As authorized by state administrative rules, the hearing examiner requested the parties to meet to discuss preliminary issues and the possibility of a settlement
- In preparation for that conference, EFE met with the clients to discuss possible remedies to resolve the issues raised by the complaints
- At the end of the conference, the hearing examiner asked the parties to continue settlement discussions and report back on their progress by a date certain



The Settlement Agreement

- EFE negotiated a settlement of the cases in which the local election authority agreed to:
 - Designate 15 minutes at the start of each federal election judge training for disability advocates to provide training
 - Create diagrams showing the exact recommended placement of the electronic voting machine in each polling place
 - Designate one election judge in each polling place as responsible for responding to accessibility complaints
 - Assist the complainants in a campaign to recruit people with disabilities to serve as election judges
 - At the complainants' request, hold a post-election meeting after every federal election to discuss any issues



Final Approval

- In Illinois, all such settlement agreements are subject to the approval of the State Board of Elections
- The State Board of Elections entered an Order approving the settlement in this matter in May 2015.



For More Information

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HAVA COMPLAINTS

Disability Rights California

By Fred Nisen

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August 23, 2016

HELP AMERICA VOTE ACT (HAVA) OF 2002

Title III of HAVA requires accessible, independent, and private voting for all eligible voters by ensuring (i) equal access to polling places that are accessible to all and (ii) voting systems that allow for independent and private voting.

A HAVA Complaint may be filed with the Secretary of State if Title III of HAVA has been, or is about to be, violated.

We often identify potential HAVA Complaints via our Election Day Hotline.

For example:

- Accessible voting systems malfunctioning or not plugged in.
- Accessible voting systems not placed so they can cast ballot privately.
- Inaccessible Polling Place.
- Failure to provide reasonable accommodations, such as assistance at polls.
- Callers being turned away due to misconceptions of ability to vote.

EXAMPLES OF WAYS WE PUBLICIZE THE HOTLINE

- Blurb with hotline # in several County Sample Ballots/Voter Information Guides.
- Social Media
- Press Release
- Flyers
- Blurbs with our hotline # with numerous Community Based Organizations, such as:
 1. California Council of the Blind
 2. Lighthouse for the Blind
 3. Independent Living Centers.

DISABILITY RIGHTS CALIFORNIA OPERATES A HOTLINE FOR ALL MAJOR ELECTIONS.

Are You Having Difficulty Voting Because of a Disability?

Call: 1-888-569-7955

Disability Rights California will operate a Statewide Election Day Hotline:

7:00AM – 8:00PM on Election Day: November 8, 2016



We will help Voters with Disabilities Have a Successful Voting Experience and Identify Issues. We can Address prior to the November General Election.

WE RECEIVE CALLS THAT COULD RISE TO THE LEVEL OF A HAVA COMPLAINT:

BEFORE

DURING

And

AFTER ELECTION DAY

“THE DISAPPEARING HAVA COMPLAINT”

- In November 2012, I had arrived at my polling place and was told the accessible voting system was not working, (it was) !
- I was not given any justification and I had to travel to the County Registrar’s Office in the next town in order to cast my ballot privately and independently on an accessible voting system.

“THE DISAPPEARING HAVA COMPLAINT,” CON’T

I followed all the proper procedures for filing a HAVA Complaint, including, notarization and filing within the allotted time period

- The Secretary of State’s Office informed me they were dismissing my complaint because my experience did not rise to the level of a HAVA Complaint, and they referred me back to the county.
- Upon later inquiry, we were informed that there were no HAVA Complaints filed for that Election Cycle in the State! After I sent a copy of my complaint and their response, the complaint was reinstated.
- We cannot help but wonder how many other HAVA Complaints met a similar fate!

Case Study 2014:

A blind couple called Disability Rights California who encountered an inoperable accessible voting system. It took hours and many phone calls before the situation was resolved.

There are many barriers
to the requirement that
the HAVA Complaint be
notarized!

Barriers of the notarization requirement

- Finding the Form in an Accessible Format
 - Locating a Notary
 - Traveling to the Notary
 - The cost of a Notary

In the case of the blind couple, Disability Rights California drafted the HAVA Complaints.

- Put the Complaints in an accessible format.
- Emailed the Complaints to the client.
- Located a Notary, paid for the notary, and helped to draft a cover letter and to mail the complaints to the CA Secretary of State.

We believe that providing the HAVA Complaint Form in an Accessible Format and removing the requirement of notarization of the HAVA Complaint would result in far more filings.

When All Else Fails: The HAVA Complaints Process

Thank you!

Questions?