

STATE OF IDAHO
OFFICE OF THE SECRETARY OF STATE
Lawrence Denney

Findings

Final Determination and Remedy

Of two (2) administrative complaints filed with the Idaho Secretary of State August 11, 2016.
under the Help America Vote Act of 2002

Jim Mairs, HAVA Coordinator

10/20/2016

This document concerns two (2) complaints filed in the office of the Secretary of State by DisAbility Rights Idaho on behalf of two (2) blind voters. One voter attempted to vote on the Hart InterCivic TouchWriter in Ada County in the March 8th Presidential Primary election and the other voter attempted to vote on the TouchWriter in the May 17th Primary election. The complaints allege that the voters were not able to vote privately and independently as required by the Help America Vote Act, HAVA, Section 301(3), Accessibility for Individuals with Disabilities. This report documents the preparation for the first use of the Hart TouchWriter by Ada County for the March 8th Presidential Primary election and the May 17th Primary election, and the steps taken by Ada County elections, DisabilityRights Idaho, and the Idaho Commission for the Blind and Visually Impaired to develop appropriate poll worker training for the TouchWriter ballot marking device.

October 20, 2016

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IDAPA 34.02.02.000 Legal Authority.

Under the authority of IDAPA 34, Title 02, Chapter 02 requiring the Secretary of State to establish an administrative complaint procedure to remedy grievances under the Help America Vote Act of 2002, and to provide a uniform and nondiscriminatory procedure for the resolution of any complaint alleging a violation of any provision of Title III, the following record and written decision has been prepared by Jim Mairs, HAVA Coordinator, Office of the Secretary of State.

IDAPA 34.02.02.010. Definitions.

01. Complainant:

Scott Hoover, Senior Advocate/PAVA Coordinator, DisAbility Rights Idaho. Two (2) complaints were filed by Mr. Hoover on behalf of Ms. Sharon Henderson and Mr. Willis "Bill" Morgan.

02. Respondent:

Ada County, Idaho. Mr. Phil McGrane, Chief Deputy, Ada County.

IDAPA 34.02.02.012. Form of Complaint.

01. Writing and notarization.

Both complaints were prepared using the Secretary of State form and are notarized and signed. The complainant has identified "Section 301(a) Accessibility for Individuals with a Disability" as the section of Title III for which a violation is alleged. The allegation is clear and concise as required for both complaints.

The complainant also alleges, in both complaints, violations of Section 202 of Title II of the Americans with Disabilities Act, 42 U.S.C. Section 12132.

Section 3012.01 of the administrative rule governing the complaint procedure states "The complaint procedure is limited to allegations of violations of Title III in a federal election." The referenced ADA violation will be addressed by the appropriate authority as a separate complaint also on file with this office.

IDAPA 34.02.02.013. Place and Time for Filing, Copy for Respondent.

01. Place for Filing.

Both complaints were filed with the Secretary of State, Election Division as required. Following a request of this office on August 18th, a copy of the complaint was sent from DisAbility Rights Idaho to Ada County.

02. Time for Filing.

The complaint from Ms. Sharon Henderson concerns the Presidential Primary election of March 8, 2016. According to the administrative rule, "a complaint may be filed no later than 90 days after the final certification of the federal election at issue". March 18th, 2016 the Presidential Primary was certified. The 90 day period ended June 16th. The Henderson complaint was received in this office August 12th.

This complaint could be rejected under 013.04d of the administrative rule as it was filed after the 90 day cutoff period. However, both complaints will be addressed as the remedy can be applied to both situations in the interest of the "improvement of processes and procedures" as required by section 016.03a of the governing administrative rule.

IDAPA 34.02.02.014. Processing of Complaint.

02. Preparing the Complaint for Determination.

The administrative rule requires establishing a schedule for the procedure in coordination with the Complainant and Respondent. In a phone conversation with Phil McGrane, Chief Deputy for Ada County, it was agreed the county would respond by September 16th, 30 days after receiving the complaint.

The administrative rule requires that the complaint process be completed 90 days following the receipt of the complaint. The complaint was received on August 12th, 2016. The final determination must be completed by November 10th, 2016.

03. Record.

The office of the Secretary of State will compile a complete record of the complaint process.

IDAPA 34.02.02.015. Hearing.

The Complainant, Disability Rights Idaho, on both original applications specifies that "No hearing is requested under Section III of HAVA".

No hearing has been scheduled.

The Henderson Complaint

1. Ms. Henderson arrived at her polling place located in the front lobby of Cynthia Mann Elementary School in Boise, Ada County, Idaho. She was accompanied by a friend, who ultimately had to help her complete her ballot.
2. Ms. Henderson was directed to the Touch Writer ballot marking machine to cast her vote. Poll workers informed Ms. Henderson that the Touch Writer was new, and they were still learning the process of how to mark the ballot on the new equipment. She was not provided written instructions in Braille or any other format.
3. Ms. Henderson put on the headphones to begin the process; however, there was no audio nor any other instructions on how to begin. Multiple poll workers attempted to get the audio

working but failed. Eventually, Ms. Henderson accidentally moved the 'move' wheel one notch to the right herself, which triggered the audio to work. There were no instructions, audio or otherwise, that to begin the audio instructions, the wheel must be moved one click clockwise, and polling staff were unaware of this requirement.

4. Ms. Henderson discovered on her own that she needed to move the wheel clockwise to navigate the ballot and move from one option to the next. Once a selection is made, the screen displays a "next" button, but provides no audio instructions on how to "click" on it or move to the next contest on the ballot. Ms. Henderson required the assistance of a sighted individual to know what to do next to complete her ballot.
5. Once voting was complete and Ms. Henderson was ready to print her ballot, the Touch Writer indicated it was printing the ballot. However, the screen displays a final prompt stating "yes, print my ballot" and the voter must make that selection before the ballot is actually printed. The audio instruction stopped with the statement "printing ballot" and did not indicate to the voter that confirmation, i.e. selecting the "yes, print my ballot" button, was required to get the ballot printed. Again, Ms. Henderson had to rely on the assistance of a sighted person to get her ballot printed.
6. The location of the printed ballot in relation to the location of the Touch Writer was never pointed out or made clear to Ms. Henderson prior to voting by any poll worker. Ms. Henderson was able to locate the printer by hearing and was able to retrieve the ballot from the printer. She indicated concern that anyone near the printer could potentially see, read or take her ballot.
7. After locating her ballot, Ms. Henderson required the assistance of a 'sighted' person who came with her that day in order to submit her ballot into the ballot counter/scanning machine. That machine did not have any Braille instructions nor was she informed of any specific instructions as to how to insert the ballot in the ballot counter, and required assistance from a sighted person.
8. Ms. Henderson also complained about the Touch Writer machine being located in the school lobby, with lots of background noise and in close proximity to other voters and poll workers in the immediate area. Due to the crowded room and noise levels in the room, Ms. Henderson felt she was unable to even effectively hear the instructions being given by the machine nor did she feel she was afforded a private and independent voting experience.
9. Polling workers were not sufficiently trained to provide effective assistance, and admitted they were not familiar with the Touch Writer.

The Morgan Complaint

1. Mr. Morgan arrived at Summerwind Elementary School on May 17, 2016 to vote in the Idaho General Primary election.
2. He was directed to vote using the Hart Touch Writer, as he is blind in both eyes. There was no chair at the booth, so he was given a child's chair to sit in.

3. No written Braille instructions or oral instructions were provided.
4. When Mr. Morgan put on the headphones, he was not able to hear anything; after about 15 minutes of examining the Touch Writer, poll workers did not know how to get the audio started and told him the headphones must be malfunctioning, so he must complete a paper ballot if he wanted to vote.
5. Mr. Morgan required the assistance of a sighted person to complete and submit his paper ballot.
6. Polling workers were not sufficiently trained to provide effective assistance, and admitted they were not familiar with the Touch Writer.
7. The election was held in the front hall of Summerwind Elementary School during the school day, which was crowded and noisy, interfering with his ability to hear what was being read to him so he could make his selections on the paper ballot. Mr. Morgan was interviewed by a KTVB Channel 7 news reporter about his experience, which aired on 05/18/2016.

Ada County Response

A response from Mr. Phil McGrane, Ada County Chief Deputy, was received by this office September 16, 2016, as agreed, 30 days from the receipt of the initial complaints. The Ada County Elections “Two Year Plan” and “Two Year Plan – Priorities” documents accompanied the county response to both the Henderson and Morgan complaints. The complete Ada County Response is included at the conclusion of this report.

In summary, the Ada County response emphasizes the on-going commitment of the county to accessible voting for all voters. The “Two Year Plan” document describes the “need for improved accessibility” from their voting equipment and the public demand for “greater accessibility”.

The county has experienced the challenges of providing accessible options for voters with disabilities in the past and has a history of providing ballot access to all voters. The county acknowledges there is “room for improvement” and their “disappointment” in the inability of the poll workers mentioned in the complaints “to provide a voting experience for Mr. Morgan and Ms. Henderson that met our collective expectations.”

The county response also points out the “history of working with the Idaho Commission for the Blind and Visually Impaired as well as DisAbility Rights Idaho.” The county has partnered with access organizations to provide pre-election voter education for voters with disabilities and intends to continue the relationships and expand their outreach effort.

The county response indicates a committed attitude to improving the voting experience for all voters, including those who have difficulty seeing or marking a ballot, by evaluating training needs and materials following each election. “Braille Machine Instructions” were developed following the March Presidential Primary election in preparation for the state Primary election in May. The Braille instructions were developed by the county, the Blind Commission and DisAbility Rights Idaho and were available at the polls for the May Primary election.

IDAPA 34.02.02.016. Final Determination.

01. If No Hearing is Held.

“If there has been no hearing under Section 015, the Secretary of State or his designee shall review the record and determine whether, under a preponderance of the evidence standard, a violation of Title III has been established.”

02. Determination of Violation.

“Accessibility for Individuals with Disabilities. – The Voting system shall –

(A) be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters;”

Both voters with visual disabilities were unable to vote privately and independently with the TouchWriter ballot marking device. Both voters were able to cast a ballot with assistance of another person of their choice. However, the poll workers in question could not satisfactorily assist the voters to use the TouchWriter on Election Day.

It is understandable that, under Election Day pressure, the operation of a newly implemented and unfamiliar machine could be difficult for even a seasoned poll worker. This does not mitigate the responsibility of the county to insure poll workers are adequately prepared to assist voters with the operation of the accessible device in compliance with Section III (A) of HAVA.

03. Form of Determination.

“If the Secretary of State or his designee, whether acting as hearing officer or otherwise, determines that a violation has occurred, the Secretary of State shall provide the appropriate remedy. The remedy shall be directed to the improvement of processes or procedures governed by Title III.

In the interest of “improvement of processes and procedures governed by Title III”, the initial training efforts of the county with collaboration from the disability community should be considered in this report and encouraged in the future.

Remedy.

Ada County must submit a report to the office of the Secretary of State detailing:

1. Improvements to poll worker training used for the November 8th General election thirty (30) days following the election.
2. The “improvements” to poll worker training must include lessons learned from the issues raised by the Henderson and Morgan complaints.
3. Finally the report shall include a plan for continued improvement of poll worker training for voters with difficulty seeing or marking a ballot.

Background.

The TouchWriter ballot marking device from Hart InterCivic Inc. is new to Idaho. Originally certified for use by the Election Assistance Commission in May, 2015, the TouchWriter was certified for use in Idaho by the office of the Secretary of State in September of that year.

Ada County was the first county in the state to use the TouchWriter for the Presidential Primary election March 8th, 2016. This election is the focus of the first complaint from DisAbility Rights Idaho on behalf of Ms. Sharon Henderson, a blind voter. The second use of the Hart ballot marking device by Ada County was the state Primary election May 17th, 2016. This election is the focus of the second complaint from DisAbility Rights Idaho on behalf of Willis "Bill" Morgan, also a blind voter.

Before the elections in question, Ada County recognized the importance of developing effective training and, in association with Disability Rights Idaho and the Idaho Commission for the Blind and Visually Impaired, cooperatively developed a trouble shooting document, an online video and Braille "Ballot Machine Instructions" for each polling place.

These instructions included "turning the wheel" to activate the audio ballot instructions. Unfortunately on Election Day the poll workers in question did not take advantage of these materials provided by the county to assist blind voters and poll workers. Both complaints contend poll workers did not understand how to activate the audio ballot by "turning the wheel".

During the development of these materials, the Blind Commission staff provided a blackout blindfold for Ada County staff to wear while using the device to more fully appreciate the difficulties a blind voter might have operating the TouchWriter.

In the "Voter Education Script" provided by the vendor for training poll workers to assist voters with disabilities emphasized "turning the wheel" as the first response to any issue with the device. This first response, although included, was not emphasized in the training developed by the county.

The complaints boil down to training issues. As the county improves training, and as poll workers become more familiar with the device, the outcomes for all voters would be expected to improve. In regard to the design of the TouchWriter device and improving the accessibility features, the county, and DisAbility Rights Idaho, and the Idaho Commission for the Blind and Visually Impaired, and this office have been in contact with the manufacturer and expressed concerns and made suggestions.

The county does have the option to customize the audio features of the device including instructions and navigation prompts.

The hope from all parties is for improvements with the next generation of the TouchWriter. Until that time, the device must be operated as specified by the manufacturer to meet the requirements of state certification.

Suggestions.

1. Training recommended by the manufacturer should be used as the basis for county training.

County should review the “Verity Voter Education Script” from Hart InterCivic. Although training time is limited, the Hart approach to making the voter the focus of the training is as important as properly setting up the machine. More time could be spent on disability etiquette and making the voter feel comfortable with the device.

2. Assign one poll worker per precinct to focus on the voter who may need to use the TouchWriter and leave the setup of the device and printer to other poll workers.

County could provide specific training and support materials that address the needs of a blind voter unfamiliar with the ballot marking device.

The manufacturer provides a “script” for poll workers to introduce the TouchWriter to blind voters. The “Verity Voter Education Script” is a step by step introduction to the device focused on the voter. It should be the basis for county training.

3. Develop outreach efforts to educate voters on the operation of ballot marking devices and accessible voting options before Election Day.

An innovative program was established by DisAbility Rights Idaho in collaboration with Ada County and several other counties. Ballot marking devices were demonstrated before Election Day at county poll worker trainings, at the Idaho Commission for the Blind and Visually Impaired, the Idaho Commission on Developmental Disabilities, Independent Living Centers statewide, and other locations where voters with a disability may congregate. This outreach effort should be supported and expanded.

4. Use the vendor’s certified training materials as a starting point for county customized materials.

The intention of Ada County, DisAbility Rights Idaho and the Idaho Commission for the Blind and Visually Impaired to develop custom training titled: “Hart Touchwriter Troubleshooting Guide” was admirable.

However, the vendor’s evaluation of this custom “Troubleshooting Guide” in the “Memorandum of May 4th, 2016” requested by this office concludes:

“Virtually all of the concerns/issues identified in the guide for Ada County are addressed in the standard voter education script that Hart recommends in order to provide orientation and instruction to persons with disabilities.”

As mentioned above, the vendor’s “script” presents a step by step approach to educating the blind voter. The “script” focuses on the voter and their understanding of the entire voting process, including using the device, finding the printer, getting their ballot to the tabulator.

At several points in the vendor’s “script”, turning the “MOVE” wheel is discussed:

“2.2.5 Explain what each button does, using specific directions such as:

On the far right is the circular “MOVE” wheel; turn it clockwise to advance through the ballot. Every time you turn the wheel a click you will hear audio. The wheel acts as a trigger for the audio”.

“3.2 If you turn the wheel clockwise you will hear that every click plays the next audio item.”

“3.3 If you turn the wheel clockwise until you hear “Audio” or “Screen” you can customize the volume, audio speed, text size, contrast options and other choices.”

“TIP: Emphasize this point” “If you are ever unsure of what to do, just keep turning the wheel clockwise, to keep moving forward through the ballot...”

The concern identified in the Henderson and Morgan complaints, how to start the audio ballot, may have been addressed if the poll workers were more familiar with the vendor’s recommended training.

The Hart Memorandum from May 4, 2016 also recommends:

“As a best practice, Hart recommends following the voter education script, **before** the voter begins his/her voting session.

The Hart Memorandum also clarifies a final point from their evaluation of the Ada County/Disability Rights/Blind Commission “Troubleshooting Guide” concerning confusion concerning the “printing of the ballot” screen:

Problem	Solution	Hart InterCivic Comments
<p>Voter is at end of contest and gets 'printing ballot' message but no ballot is printed..</p>	<p>PollWorker will need to explain to Voter that they will need to scroll to the 'right' to get final print instructions...and will need to select 'yes' to print ballot...</p>	<p>The reported behavior is not an accurate description of how the Touch Writer actually works.</p> <p>The "printing ballot" message is only presented after the voter has already selected "Yes, print my ballot."</p> <p>Here is the sequence, which Hart verified in its lab:</p> <p>Voter selects "Print" from the review screen. (Note that the option is "Print," not "Printing ballot..."</p> <ol style="list-style-type: none"> 1. On the following page, audio plays: “You cannot make any changes after you print your ballot. Do you want to print your ballot?” 2. Available options are "Yes, print my ballot" or "No, go back" 3. Voter selects "Yes, print my ballot"; audio repeats: "Printing ballot, please wait" until ballot has printed. 4. Ballot prints, and audio reads "Your ballot has printed. Please retrieve your ballot from the printer. "

5. Consider developing visual quick start guides for poll workers.

Illustrated support materials could be effective in the busy polling place environment to help poll workers to remember key points from their training. A simple quick start document showing the blue poll worker button, the MOVE wheel and the vote screen could visually illustrate the most critical operations of the TouchWriter.

6. Consider producing a video from the point of view of the voter with a disability in their own words.

An interview style close captioned video would demonstrate the operation and accessible features of the TouchWriter from the point of view of the voter, not the poll worker. Feature several voters with a range of disabilities, including blindness, describing the voting process on the TouchWriter in their own words. The office of the Secretary of State would collaborate with the county on this production.

Post the video on county and state websites and make computer versions available to access organizations and other counties. Use this first person video as training for the poll worker assigned to present the TouchWriter as recommended above.

7. Develop an assessment tool to evaluate poll worker knowledge and critical tasks.

The poll worker assessment tool should be based on the most common difficulties encountered by voters with disabilities at the polls based on the experience of previous elections. Poll workers should be able to demonstrate the skills necessary to set up and test the ballot marking device.

The poll worker assigned to demonstrate the TouchWriter should have a command of disability etiquette and “person first” language.

For example: The poll worker should be able to quickly answer: “What do you do to start the audio voter instruction?”

For example: The poll worker assigned to the TouchWriter should be able to demonstrate at least two (2) scenarios to assist a blind voter with the TouchWriter access code.

Assisting a person with a disability at the polls should become a prized responsibility, rather than the last job of the last poll worker, to meet the “collective expectations” referenced in Ada County’s response.

Conclusion.

Training needs to improve. Effective training for poll workers to assist voters with disabilities to use the TouchWriter, the AutoMark, the ExpressVote, or any future ballot marking device, is best developed through partnerships between election officials with expert knowledge of voting procedures and advocacy organizations, with specific knowledge of accessibility issues.

Although the county is responsible for training, the current collaborative relationship between several Idaho counties, DisAbility Rights Idaho, the Idaho Commission for the Blind and Visually Impaired, The

Idaho Commission on Disabilities, as well as the members of the various councils and the disability community at large, is an asset.

Ada County and its partners have proactively begun the process of improving the effectiveness of their training. I am confident that voters with disabilities will be better served at the November 8th General election. The improvements to training, procedures, voter education and performance will be documented by the report required by these findings.

Jim Mairs
HAVA Coordinator, Idaho Secretary of State
October 20, 2016

Documents on File with the Secretary of State:

The Henderson Complaint

The Morgan Complaint

Ada County Response

Ada County Two Year Plan

Ada County Two Year Plan – Priorities

Ada County TouchWriter Troubleshooting Guide - Developed by Ada County Elections, Disability Rights Idaho and the Idaho State Commission for the Blind and Visually Impaired.

Ada County Braille Machine Instructions - Developed by Ada County Elections, Disability Rights Idaho and the Idaho State Commission for the Blind and Visually Impaired.

Ada County Poll Worker Instructions - Opening Polls Verity Scan

Ada County Poll Working Instructions - New Equipment: Verity Scan and Verity TouchWriter

Hart InterCivic May 4, 2016 Memorandum Regarding Assisting Voters with Disabilities

Hart InterCivic TouchWriter Poll Worker “Verity Voter Education Script”