

STATE OF IDAHO
OFFICE OF THE SECRETARY OF STATE
Lawrence Denney

Findings

Final Determination and Remedy

Of one (1) administrative complaint filed with the Idaho Secretary of State February 2, 2017.
under the Help America Vote Act of 2002

Betsie Kimbrough, State Election Director

3/9/2017

This document concerns one (1) complaint filed in the office of the Secretary of State by DisAbility Rights Idaho on behalf of one (1) voter who is visually impaired. The voter attempted to vote on the Hart InterCivic TouchWriter in Ada County in the November 8th General Election. The complaint alleges that the voter was not able to vote privately and independently as required by the Help America Vote Act, HAVA, Section 301(a), Accessibility for Individuals with Disabilities.

February 28, 2017

Final Determination and Remedy

Of one (1) administrative complaint filed with the Idaho Secretary of State February 2, 2017.
under the Help America Vote Act of 2002

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 Betsie Kimbrough, State Election Director, Office of the Secretary of State.

IDAPA 34.02.02.010. Definitions.

01. Complainant:

Scott Hoover, State PAVA Coordinator, DisAbility Rights Idaho. One (1) complaint was filed by Mr. Hoover on behalf of Ms. Deborah Allen.

02. Respondent:

Ada County, Idaho. Mr. Chris Rich, Clerk of the District Court, Ada County.

IDAPA 34.02.02.012. Form of Complaint.

01. Writing and notarization.

The complaint was prepared using the Secretary of State form and was signed and notarized. 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 the complaint.

The complainant also alleges, in the complaint, 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 of the Help America Vote Act in a federal election."

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

01. Place for Filing.

The complaint was filed with the Secretary of State, Election Division as required. Following a request of this office on February 6th, 2017, a copy of the complaint was sent from DisAbility Rights Idaho to Ada County.

02. Time for Filing.

The complaint from Ms. Deborah Allen concerns the General Election of November 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". The General Election was certified on November 18, 2016. The 90 day period would have ended February 9th. The Allen complaint was received in this office on February 2nd, 2017, which is within the 90 day period.

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 an email request with Phil McGrane, Chief Deputy for Ada County, it was agreed the county would respond by March 8th, 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 February 2nd, 2017. The final determination must be completed by May 3rd, 2017.

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 the original application specifies that "No hearing is requested under Section III of HAVA".

No hearing has been scheduled.

The Allen Complaint

1. Ms. Allen arrived at her polling place shortly after 8 am located at the Our Lady of the Rosary Church in Boise, Ada County, Idaho. Ms. Allen was met at the door and offered assistance to the room where voting was taking place. The individual who offered assistance did not identify herself as a poll worker.
2. Ms. Allen was assisted incorrectly in the voting room as an individual took her arm to guide her. Ms. Allen explained to the individual the correct way to assist someone who is blind and was taken to the line to sign in and receive a ballot.
3. Once signed in, Ms. Allen was taken to the Touch Writer ballot marking machine to cast her vote. Poll workers asked Ms. Allen if she was familiar with the machine. She stated that she had used accessible machines in the past and did not expect to have any problems. She was then told to ask for someone named 'Gary' if she encountered any problems.
4. Ms. Allen felt her way around the machine and quickly realized it was an unfamiliar machine. She also discovered that there was no headset nor could she find the port for the headset that

she brought with her. She spoke up and asked if Gary was nearby. A man came and asked if she needed assistance. She asked if there was a headset she could use. He looked for a few moments and said that he found the headset. The headset was not in any close location where Ms. Allen would have been able to find it herself.

5. Once she received the headset, she was unable to locate the port for the headset itself. The male assistant got another man to assist him with looking for the location to plug the headset in. After taking more time than Ms. Allen thought was necessary, she asked if there was a number someone could call for assistance and she was told that the person who did the support had just left the polling location. The two men then continued to look and it became obvious that they were not going to seek other assistance.
6. At that point, Ms. Allen called DisAbility Rights Idaho with the hopes that someone could tell her where the headset port was. Scott Hoover, PAVA Coordinator, returned Ms. Allen's phone call and let her know that the port was located on the side of the handset for the Verity TouchWriter. Ms. Allen told the two men, who still could not locate the handset. At this point, Ms. Allen was worried about getting to work and told Mr. Hoover that she was going to have to leave without voting. The entire process took far longer than she had anticipated and unfortunately she would not be able to return to the polling place again during the day as she could not secure another ride in that short time frame. Trying to return that day was not an option.
7. During the day, Mr. Hoover informed Ms. Allen that the polling location had corrected the problem and that reports indicated that the polling location would remain open an additional hour to accommodate heavy voting turnout. She explained to Mr. Hoover that in spite of the extension, returning to the poll was just not an option for her due to 'other' bad experiences at attempting to vote, she did not wish to experience the additional disappointment if she were to encounter additional issues at the polling place.

Ada County Response

A response from Mr. Chris Rich, Clerk of the District Court, Ada County, was received by this office February 27th, 2017, which is prior to the agreed 30 day from the receipt of the initial complaint. The complete Ada County Response is included at the conclusion of this report.

In summary, the Ada County response focuses on the two issues emphasized in the complaint: the Touch Writer and poll worker training.

As far as the Touch Writer issues are concerned, the complaint requested that Ada County and the Idaho Secretary of State's Office, (1) Insist that Hart Intercivic modify the Touch Writer system to include comprehensive audio instructions; or (2) Replace the Hart Touch Writer System with an accessible voting machine... Ada County states "The Hart voting system integrates the ballot produced by the Touch Writer with the precinct tabulators. The system is certified at both the Federal and State levels and I believe the vendor is aware of the issues brought forth in the complaint. There is little I can do. The standards established for voting systems and independent voting equipment are outside my control."

The second part of the complaint requests that Ada County and the Idaho Secretary of State's office adequately train poll workers to provide effective assistance to voters with disabilities. Ada County

states “Poll worker training is an area in which I can do something. Ms. Allen should be treated properly and have the ability to vote independently. Toward that end, I will personally meet with my elections team to ‘provide effective assistance to voters with disabilities’ as Mr. Hoover requests.”

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;”

A voter with a visual disability was unable to vote privately and independently with the TouchWriter ballot marking device. The poll workers in question could not satisfactorily assist the voter in the use the TouchWriter on Election Day.

It is understandable that, under Election Day pressure, the operation of an accessible voting machine could be difficult for even a seasoned poll worker. This does not remove 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 training efforts of the county should be encouraged to be conducted with the collaboration from the disability community 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 to be used for the May 16th election thirty (30) days following the election.
2. The “improvements” to poll worker training must include lessons learned from the issues raised by the Allen complaint.
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. was 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. The November 8th General Election is the fourth election conducted with this accessible voting machine, which is the third complaint from DisAbility Rights Idaho on behalf of three voters who are visually impaired.

Before the election 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.

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. The complaint contends that the poll workers did not know where to locate either the headset for use with the TouchWriter or the port in which to plug the headset in.

The complaint boils down to training issues, which are in the control of the Ada County Clerk's Office. 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 in the past. The Idaho Secretary of State's Office will again reach out to Hart Intercivic to discuss with them accessibility issues with the TouchWriter device.

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 and rely on poll workers to help cover any shortfalls.

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 voter who is blind and 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.

Continuation of the program established by DisAbility Rights Idaho in collaboration with Ada County and several other counties. Ballot marking devices should be demonstrated before Election Day at county poll worker trainings 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.

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.

The Hart Memorandum from May 4, 2016 recommends:

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

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 important points of the Touchwriter including the location of the headset port could visually illustrate the most critical operations of the TouchWriter.

6. 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.

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. The improvements to training, procedures, voter education and performance will be documented by the report required by these findings.

Betsie Kimbrough
State Election Director, Idaho Secretary of State
February 28, 2017

Documents on File with the Secretary of State:

The Allen Complaint

Ada County Response