

STATE OF NEW YORK  
NEW YORK STATE BOARD OF ELECTIONS

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In the Matter of:

GRACIE CHAMBERS,

Complainant,

HAVA Complaint No. 22-05  
Determination

-v-

NIAGARA COUNTY BOARD OF ELECTIONS,

Respondent.

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**Procedural Background**

On December 13, 2022, the New York State Board of Elections (hereinafter “SBOE”) received a written, sworn, signed, and notarized Complaint (hereinafter “Complaint”) dated December 7, 2022, filed by Gracie Chambers, alleging violation of Title III of the Help America Vote Act of 2002 (52 U.S.C. § 21081) (hereinafter “HAVA”).

According to the Complaint: On August 23, 2022, Ms. Chambers attempted to vote at her polling place at the Cristoforo Columbo Society at 223 Pine Avenue in Niagara Falls. After alerting poll workers that she wished to use the Ballot Marking Device (hereinafter “BMD”) and attempting to do so, poll workers told her that parts were missing from the machine and that it would take over an hour to get the machine running. After Ms. Chambers declined an offer to have a poll worker assist her in filling out her ballot, a machine technician was called to assist.

After about an hour of waiting, a machine technician arrived and was able to begin an accessible voting session. The ballot jammed in the machine when Ms. Chambers attempted to scan it, but the technician was able to retrieve the ballot, after which it scanned properly. The entirety of the voting process took approximately four hours. Ms. Chambers also alleges that the voting site did not have an accessible bathroom on site, making her wait more difficult.

On January 9, 2023, SBOE received a written response (hereinafter “Response”) to the Complaint from the Niagara County Board of Elections (hereinafter “CBOE”). The Response stated all election inspectors are trained on the use of the BMDs, which are tested prior to deployment to ensure they are in working condition. Further, CBOE is aware that the BMD is utilized in this poll site, and an additional effort was made to ensure the machine was set up properly, which they claim it was.

CBOE further stated that the inspectors should not have instructed Ms. Chambers to wait while they contacted the machine custodian, which goes against the training that inspectors receive. Due to the Complaint, inspectors received additional hands-on training with the BMD and were explicitly informed of their duties in assisting voters who request accessible voting assistance. To CBOE’s knowledge, there were no such issues with accessible voting during the 2022 general election.

A hearing was held on February 17, 2023. In attendance was Ms. Chambers, as well as her advocate from Disability Rights New York, Jenessa Seymour. Todd Vaarwerk, Chief Policy Officer of Western New York Independent Living also appeared on behalf of Ms. Chambers. CBOE was represented by Commissioners Lora Allen and Jennifer Sandonato. SBOE Deputy Counsels Kevin Murphy and Aaron Suggs served as Hearing Officers.

During the hearing, Ms. Chambers reaffirmed the allegations made in the Complaint, adding that she typically relies on paratransit services to go to and from the polls, which require a reservation made twenty-four hours in advance. This would make it difficult to return home and come back to the polling place at a later time. Ms. Chambers also commented on the layout of the space, indicating that it was difficult to maneuver her chair into the space designated for the BMD, which could use some adjustment to better suit people in larger chairs like her own. There were also informal concerns raised as to Ms. Chambers voting experience at the November general election, including a staffer not knowing how to adjust the screen size on the BMD when asked.

The testimony of CBOE reaffirmed its Response to the Complaint, and further testified that hands-on training with the BMD was paused during the COVID-19 pandemic. This training has since resumed. Further, the manual provided to poll workers lays out the procedure for accessible voting and instructs them not to tell voters they must wait until BMD issues are resolved. This direction was given in error. At this time, all inspectors go through hands-on training with the BMD and complete a voting session so they are fully aware of how the machine is operated. The poll site layout is predetermined, and a chart is provided to all parties to ensure that it is set up according to the CBOE's direction.

### **Jurisdiction**

Section 402 of HAVA (52 U.S.C. § 21112) requires the State to create a state-based administrative complaint procedure to assure compliance with Title III of HAVA. 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 certain conduct that constitutes a violation of Title III of HAVA, SBOE determines that Gracie Chambers has standing to bring a Complaint.

### **Issues Raised by the Complainant**

The Complainant, Gracie Chambers, alleges the following:

1. On the day of the August Primary Election Day in 2022, Ms. Chambers attempted to use a BMD to vote independently and privately, but was unable to do so because the BMD had not been properly set up.

2. After being told she would have to wait at the poll site until a technician could come and get the machine operational, Ms. Chambers waited nearly four hours to complete her voting session.

3. Poll workers attempted to get Ms. Chambers to have a poll worker assist her in filling out a ballot despite her request to utilize the BMD to vote.

4. The BMD malfunctioned when Ms. Chambers attempted to scan her ballot, but the ballot was retrieved from the machine and eventually scanned properly.

5. The poll site layout was cramped in the area designated for accessible voting, making it difficult to navigate in her chair.

6. The poll site in question was not equipped with an accessible bathroom.

### **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 was not operational and then malfunctioned:

The BMD was not operational at the time Ms. Chambers attempted to utilize it, and it required a call to the machine custodian to get the machine operational. The BMD then malfunctioned when Ms. Chambers attempted to scan her ballot, but this issue was rectified in short order. However, it took nearly an hour for the custodian to arrive to the poll site, and Ms. Chambers’ full voting experience took nearly four hours.

#### Poll workers told Ms. Chambers she would have to wait at the poll site for an operational BMD:

Poll workers should not have told Ms. Chambers that her only option to utilize the BMD was to wait for a technician to arrive and get the machine operational. Options for assistance should have included the ability to return to the polling place once the BMD had been repaired. While it was not inappropriate to alert Ms. Chambers of the option to receive assistance by a bipartisan team of election inspectors to fill out a replacement ballot, this option should not have been framed as the only alternative to waiting at the poll site for the machine to be fixed.

Given the above, SBOE determines that this factual background constitutes a violation of Title III of HAVA, as the Complainant was denied access to vote independently and privately. Without further evidence, SBOE is unable to conclude that the poll site layout constitutes a violation of Title III of HAVA. To the extent that the provisions of HAVA relate to voting accessibility, SBOE will not be making a determination on the bathroom accessibility at the poll site in question.

### **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 CBOE to do the following:

1. Instruct poll workers on procedures relating to the checking of BMDs to ensure they are operational both prior to the opening of the polls and throughout the day;

2. Thoroughly inform poll workers of their obligations with regard to BMDs, including explicit instructions regarding a voter’s options when a BMD malfunctions or is otherwise non-operational; and

SBOE also recommends that CBOE undertake a review of the layout of voting sites to ensure sufficient wheelchair access and of the bathrooms at poll sites to ensure they are accessible, particularly in those poll sites where it is known that BMDs are utilized.

**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 CBOE to comply with the Remedy section of these findings.

Dated: March 15, 2023

Kevin G. Murphy  
Deputy Counsel, New York State Board of Elections

Aaron Suggs  
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