

Tre Hargett, Secretary of State
State of Tennessee



Division of Elections
312 Rosa L. Parks Avenue, 9th Floor
Nashville, Tennessee 37243-0305

Mark Goins
Coordinator of Elections

615-741-7956
Mark.Goins@tn.gov

October 29, 2010

Mr. Brett A. Sago
1029 Oldham Court
Kingsport, TN 37660

RE: TITLE III HAVA COMPLAINT

Mr. Sago,

Our office received your Title III HAVA Complaint on August 9, 2010. I have reviewed your statement contained in the complaint and have spoken with Jason Booher, Sullivan County Administrator of Elections.

According to Section 402 of Title IV of the Help America Vote Act (hereinafter HAVA), each state must establish a state-based administrative complaint procedure. Pursuant to that section, the Coordinator of Elections or designee must determine if a violation of Title III has occurred. A violation of Title III includes the following categories:

- voting systems standards
- provisional voting
- voter information requirements
- computerized statewide voter registration list
- accessibility for individuals with disabilities

Pursuant to Section 301 of Title III of HAVA, each voting system shall permit the voter to verify the votes selected by the voter on the ballot before the ballot is cast and counted. The voting system must also provide the voter with the opportunity to change the ballot or correct any error before the ballot is cast and counted. Finally, if the voter votes for more than one candidate for a single office race, the voting system must notify the voter before the ballot is cast and counted that the voter has voted for more than one candidate and provide the voter with the opportunity to correct the ballot.

It appears from the statements that you, as well as others, provided, and the access code ticket included with your complaint that there was no Title III violation but instead an error was made by the machine operator in entering the ballot information that corresponded to the access code you entered which did not include the primary ballot. As required by HAVA, the Eslate voting machine does provide a ballot summary page prior to the voter casting his ballot. There is no allegation that the Eslate machine did not produce such a summary page on August 5, 2010. However, the primary candidates would not have been listed on this summary page since the ballot information entered did not produce an access code that included a primary ballot.

Once the voter casts the ballot, the voter is not able to vote another ballot. In this situation, the poll officials were not alerted to the problem until after the vote was cast. Although there is no reason to doubt that the document you provided is your access code ticket, individuals could exchange tickets and fraudulently claim not to have received their ballot or parts of their ballot. Since the ballot is a secret ballot, there is no way to track the voter back to the ballot and determine what offices were included on the ballot. If a voter alerts the election official prior to casting their ballot, the election official can back the voter out of the machine and reissue a correct ballot.

Once the election official realized that there was a potential issue with the correct ballot being displayed, the error was immediately reported and corrected. Jason Booher was contacted at the election commission office and, in response, sent two election commissioners-- the chair and the secretary -- along with an inspector to the Traders Village polling location. Once those individuals arrived at the polling location, the deputy at the election commission office was contacted by phone and all parties spoke to the election official regarding the situation and how to properly key in the ballot information. Our office was also alerted to the issue and spoke with several individuals affected by the situation. Subsequent to the election, Mr. Booher and the Election Commission chair met with the election official again to review the situation.

It does appear that the Sullivan County Election Commission office has taken proactive steps to reduce these errors since the August election. All officers of elections are now trained on an individual basis instead of in a group setting. This training includes how to assign a ballot. Signs and posters have been added to every polling location that alerts the voter to ask for assistance if there is a question with their ballot prior to casting their ballot.

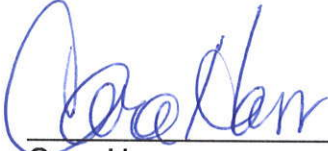
I do not find that Title III Section 302 of the Help America Vote Act was violated on August 5, 2010. The Act, therefore, requires this office to dismiss the HAVA complaint. I have addressed your general complaint in this response and appreciate you bringing

HAVA Complaint – Sullivan County
October 29, 2010

this matter to the attention of this office. Our office will continue to work with the counties to make sure the election officials are properly trained on all aspects of the election process.

If you have any questions, please contact our office.

Sincerely,



Cara Harr
HAVA Attorney

Cc: Jason Booher, Sullivan County Election Commission



**STATE OF TENNESSEE
TITLE III HELP AMERICA VOTE ACT (HAVA)
COMPLAINT FORM**

This complaint form is for violations of Title III of HAVA that you believe has occurred, is occurring or is about to occur.

Check which of the following best describes the reason you believe a Title III violation occurred, is occurring or is about to occur?

- Voting machine/system(s)
- Accessibility for Individuals with Disabilities
- Provisional Voting or Voter Information
- Computerized Statewide Voter Registration List

(If your complaint does not involve one of the above topics, please complete a general complaint form.)

Instruction/checklist: The following information is required in order for the complaint to be processed. Please **PRINT**.

- Complete all information. Failure to complete the required information will result in the complaint being dismissed.
- According to federal law, all HAVA complaints must be in writing and notarized. All complaints must be signed and sworn to by the person filing the complaint.
- You may attach any written material or other information that you believe is relevant to your complaint.
- This complaint is not confidential. Once filed with the Secretary of State, it will be treated as a public record and any decision will be published on the State's official website. You may request a hearing on the record.
- You will receive a written response within 90 days of the complaint being filed.

1. Complainant's Information:

- a. Complainant's Name: Brett A. Sago
- b. Address: 1029 Oldham Court
- c. City Kingsport, State Tennessee Zip Code 37660
- d. Home phone number (423) 288-6105 Business (423) 229-4827

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2. What is the name (if applicable) and/or activity and the location of the Title III violation?

- a. Name of individual who violated Title III: See the attached summary (include in what capacity they served in relation to the violation)
- b. Activity which violated Title III: See the attached summary
- c. Location of Title III violation: See the attached summary
- d. City, County, State and Zip Code where violation occurred, is occurring or will occur: See the attached summary

3. What date(s) did the alleged violation take place? August 5, 2010

4. In your own words, describe the Title III violation. Explain what happened, where it happened and who you believe is responsible. _____

Please see the attached summary. The other five individuals that I understand were also impacted are Scott Barnicki, Bob Woodard, Wilma Woodard, Terry Cunningham and Mike Elliott.

I request a hearing on the record in Sullivan County, Tennessee.

In the event this complaint is determined to not qualify as a HAVA complaint, I request that it be treated as a timely filed general complaint.

I declare under the penalty of perjury that the above information is true and correct.

Brett A. Sago
Complaint's Signature

8-6-2010
Date

CERTIFICATION OF ATTESTATION

State of Tennessee
County of Sullivan

I, the undersigned, under the penalty of perjury, do swear or affirm that the information contained in this complaint is true and correct to the best of my knowledge.

Brett A. Sago
Complaint's signature

Before me personally appeared Brett A. Sago whose signature appears above.

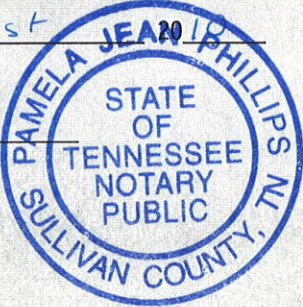
Sworn to and subscribed before me this 6th, day of August

Pamela Jean Phillips
Notary's signature and seal

My commission expires: 6-19-2012

Commission number: _____

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This form and/or information is available in alternative formats. To receive a copy contact the State Coordinator of Elections at (615) 741-7956.

Sago, Brett A.

From: Sago, Brett A.
Sent: Thursday, August 05, 2010 10:28 PM
To: Barnicki, Scott; 'Terry Cunningham'; 'keway@embarqmail.com'
Cc: 'beth.henry-robertson@tn.gov'
Subject: Sullivan County Voting Debacle

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Scott, Terry, Bob & Wilma:

I believe I have been able to piece together what happened that lead to our not being provided the ballots for the Democratic/Republican primaries this morning. Let me also say that I firmly believe this was an inadvertent mistake by one of the election officials, one that is attributable to a lack of training. I currently have neither evidence nor the belief that it was in any way motivated by partisan politics.

To make sure that this does not happen again, I encourage you each to file a formal complaint with the Tennessee Secretary of State's Office. I have been in contact with one of the attorneys in that office (Beth Henry-Robertson, (615) 741-7956 (she is copied on this email)) and she encouraged this step. She directed me to the TN Sec. of State's website, which provides a form for filing such complaints:

<http://state.tn.us/sos/election/hava/index.htm#1>. After describing what happened, she indicated we want to file a "Help America Vote Act" (HAVA) complaint (vs. a general complaint). I recommend that as you prepare your complaints you remember that the folks working the polls are volunteers and doing the best they can. I firmly believe that the problem here was not one of ill-intent but rather one of a lack of training. These folks simply didn't know what they were doing and as a result, six citizens didn't get a chance to cast their ballot in their respective primary.

After further investigation, I believe the following is what happened. We were among the first voters into Trader's Village this morning. When I checked in, Mr. Doyle Salyer helpfully filled out my "Ballot Request Card" and at my request, checked that I was there to vote in both the County General Election as well as the Republican Primary. I then went to the table that was segregated alphabetically to have the next election official record certain information on my Ballot Request Card. There I was in line behind you, Bob. As I stood there, I distinctly recall watching the woman (I did not get her name) at that table fumble around trying to figure out what to do with Bob's Ballot Request Card. In fact, she had to be told what to do the entire time by another woman sitting next to her. When it was my turn, it was clear she still didn't fully grasp what she needed to be doing and again relied heavily on the woman sitting next to her.

She then sent me over to the next table to obtain my "Access Code" ticket. This is the ticket that had the code on it that you had to key in to the election machine in order to get your ballot. Recall also that I encouraged you all to retain this ticket when we were speaking with the precinct election official in charge, Ms. Dianne Love, about the problem we encountered this morning. (Ms. Love is also the woman that called Blountville on her cell phone and allowed us to give our names and phone numbers so that we'd be called back by the appropriate Sullivan County Election officials.) I understand that at the Access Code table the person running the machine that issued the Access Code tickets was supposed to key in one of 6 different codes depending on which school zone we live in, whether we were voting in a primary, and then, of course, which primary we wanted to vote in. The codes were assigned to each of the following categories:

General County Election

General County Election and School Zone II

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Republican Primary and General County Election
Democratic Primary and General County Election
Republican Primary, General County Election and School Zone II
Democratic Primary, General County Election and School Zone II

If you look at your Access Code ticket, you'll note that the last line starts with the letters "Pct:". I believe this stands for "Precinct". The first set of characters after that on my ticket are "11T", which I believe stands for our voting precinct. In fact, on my voter registration card, after "Voting Prec." it says "P11T". The next series of characters is "GEN", which I believe stands for the "General County Election". Last, my Access Code ticket has the characters "SB2", which I suspect stands for school zone II.

After we spoke with Ms. Love this morning, recall that I asked another voter that apparently had no problem voting if I could see her Access Code ticket. She showed it to me and told me she had voted in both the General County Election and the Republican Primary. On her Access Code ticket it had "Pct: 11T-REP". I do not recall whether it had "SB2" or not. What this suggests is that when I was given my Access Code ticket, the gentleman that was running that machine (Mr. Eddie Taylor) punched in the code for the "General County Election and School Zone II" ballot. Had he punched in the code for the primary I requested and the General County Election, the characters on my Access Ticket would have been "REP" instead of "GEN". In other words, Mr. Taylor appears to have mistakenly entered the wrong code into the Access Code ticket machine, which then issued to me an Access Code that only allowed me to access the "General County Election and School Zone II" ballot. When I finished entering my votes on this ballot, I followed the prompts thinking I would next be directed to the primary ballot. Instead, I was prompted to cast my ballot thereby ending my voting session and foreclosing my opportunity to vote in a primary. It was only at this point I realized I hadn't been given the opportunity to vote in the Republican primary as I had desired.

In an effort to confirm the root cause of the problem, I spoke with the election staff at Trader's Village this evening. I spoke with several of these folks and in the interest of avoiding them getting into what they perceive to be trouble, I will not name them. In short, they essentially confirmed to me that this is precisely what happened. From their perspective, the cause was a simple lack of training. According to the personnel I spoke with, they received very little training in how to administer the ballots in this election. This was essential since this was what they referred to as a "split ballot", which I understand to be one where there is both a general election and a primary at the same time. Further, while Mr. Taylor had worked two-three previous elections, this was his first split ballot election. This further explains why the first several voters that entered Trader's Village this morning when he was running the Access Code ticket machine were not given the correct Access Codes. As soon as we started notifying the election staff of our problem, it appears that Mr. Taylor may have realized what was happening and corrected his error since the next several voters didn't appear to complain. Again, I do not blame Mr. Taylor, but rather cite the lack of training he received on how to issue Access Codes.

Ms. Henry-Robertson called me back around 4:45 this evening to follow up on our discussion earlier in the day. She told me that they had conducted an investigation and that Sullivan County Election officials indicated that this was a case of "voter error" and that we had in fact voted in our respective primaries. I suggested to Ms. Henry-Robertson that I for one was willing to sign an affidavit under oath and subject to the penalties of law for false statements attesting that I did not vote in the primary if that would give me the opportunity to do so – but that is not something they apparently can do. She also said that the idea of us casting provision ballots was discussed but that too was decided against.

Could have

My understanding is that the Sullivan County Election officials cited the fact that we purportedly left the precinct and then came back to complain that we weren't given the chance to vote in the primaries. Since they can't connect our Access Tickets to our ballots to confirm we didn't vote in a primary, they contend that we left Trader's Village and traded Access Code tickets with someone else that only voted in the County General Election so that we could vote twice in a primary. When I asked the election staff about this tonight, they indicated that they had told the Sullivan County Election officials they spoke with that Scott had left the building, not the rest of us. However, the County Election officials apparently attributed this to all six of us. Scott, I do not know if you left the building or not but I don't think it matters. The fact is that you told Ms. Love of the problem you experienced right after you voted just like the rest of us. And while we stood there in their presence, without any opportunity to trade Access Code tickets with third parties, they had no solution for what turns out to have been their own error. Instead, we were told there was nothing they could do, we had cast our ballots and that we should take it up with the election officials in Blountville.

What really bothers me in all of this is that when I returned to Trader's Village this evening, I was told by the election officials that they had been directed not to talk to any of us if we returned. They were to direct us to Blountville. My suspicion after talking with them, however, is that the precinct staff told certain Sullivan County Election officials that a precinct worker made an error and the Sullivan County Election officials told them that the story they were to go with was that it was voter error. I also believe that when the Tennessee Secretary of State's Office investigates our complaints, they should interview the precinct election officials working at Trader's Village today. I suspect that these folks will confirm what I have outlined in this email. They will also confirm that the root cause of the problem is a fundamental lack of training in how to run an election. More specifically, the problem is with the Sullivan County Election officials that are supposed to provide the necessary training.

I hope this helps.

Best regards,

Brett Sago

PS: Bob and Wilma, if you are able to get "Mike's" last name and an email address for him please forward this along so he too can file a complaint.

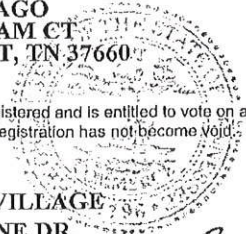
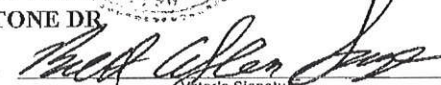
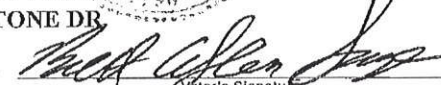
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**THIS IS YOUR
VOTER REGISTRATION CARD**

IF ANY OF THE INFORMATION ON THIS
VOTER'S REGISTRATION CARD IS INCORRECT,
PLEASE CALL THE SULLIVAN COUNTY
ELECTION COMMISSION OFFICE AT 323-6444.

STATE OF TENNESSEE VOTER REGISTRATION CARD		128393	Date Issued: 12/19/2005	
BRETT A SAGO 1029 OLDHAM CT KINGSPORT, TN 37660			D.O.B.: 8/28/1970	
<p>The above was duly registered and is entitled to vote on and after the issuance of this card, provided the registration has not become void.</p>			VOTER INFORMATION:	
Voting Location:	Date of Registration:	FOLD HERE		
TRADERS VILLAGE 2745 E STONE DR	3/1/2004	County: Com. Dist. X	Voting Prec. P11T	School Zone II
GENA FRYE Admin. of Elections SULLIVAN CO. TN 	Voter's Signature 	State: Senate Dist. S02	House Dist. H01	Jud. Dist. J02
		Constable Zone 10	Fed: Cong. Dist. C01	City: Ward/ Dist. KP

*This is the Access Code ticket I was issued
by Mr. Eddie Taylor on August 5, 2010.*

ACCESS CODE
Clave de Acceso
0137

Brett Sago

Date: 08-05-2010
Time: 08:10:08
Place: TRADERS VILLAGE
Pct: 11T-GEN-SB2

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