

Tre Hargett, Secretary of State

State of Tennessee



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April 15, 2011

Ms. Paula Tyler
17105 E. Meadow Creek Road
Monterey, TN 38574

RE: TITLE III HAVA COMPLAINT

Ms. Tyler,

On September 27, 2010, a Help America Vote Act (herein HAVA) complaint was filed by Ms. Paula Tyler and Ms. Rhonda Bissonnette. The complaint alleged that a violation of Title III occurred during the August 5, 2010, primary election in that the Rutherford County Election Commission did not conduct early voting on July 17, 2010, and therefore violated the requirements of §302(b)(1) and (2)(B). The complaint further alleged that due to this violation a new election should be held for the 6th Congressional District.

Section 402 of Title IV of HAVA establishes 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 once a complaint is filed. The complainants requested a hearing on this matter. The hearing was scheduled by agreement of the parties for February 18, 2011. On February 18, 2011, this matter was heard before Cara Harr, HAVA Attorney, sitting for the Coordinator of Elections, to determine if a violation of Title III did occur on July 17, 2010.

After consideration of the record in this matter, it is determined that the complainants failed to show that a violation of Title III occurred. According to the complaint procedure, if no violation of Title III is found the complaint must be dismissed. Therefore, the complaint is dismissed based on the following findings of fact and conclusions of law:

1. Title III Section 302(b)(1) of the Act requires the following:

[t]he appropriate State or local election official shall cause voting information to be publicly posted at each polling place on the day of each election for Federal office.

2. Section 302(b)(2)(B) states that voting information means

information regarding the date of the election and the hours during which polling places will be open

3. The Rutherford County Election Commission failed to conduct early voting on Saturday, July 17, 2010, in violation of Tennessee Code Annotated §2-6-103(a)(1) which requires the county election commission to be open a minimum of three hours each weekday including Saturdays during the period of early voting.
4. Tennessee Code Annotated §2-12-111 requires the county election commission to publish the day, time and polling places for the election not more than ten (10) days and not less than three (3) days before the election.
5. Tennessee Code Annotated §2-6-103(c) requires the county election commission to publish the early voting schedule not less than twenty-five (25) days before the election.
6. The Rutherford County Election Commission published the dates, time and locations of the early voting period as required by §2-6-103(c). See Exhibit C of the complaint.
7. Tennessee Code Annotated §2-17-104 allows a candidate to contest the primary election of the candidate's party by filing a contest of election within five (5) days after the certification of results by the county election commission. The state primary board hears and determines the contest of election and may set aside the election if necessary.
8. No contest of election was filed by any candidate in relation to the August 5, 2010, primary election in the 6th Congressional District.

The requirement in HAVA relating to the posting of voting information addresses what must be posted on the day of the election for a Federal office. The complaint does not allege that any violation of HAVA occurred on election day. Rather the complaint alleges that certain information was not posted during the early voting period. The evidence showed that it was not a failure to post the required information as demonstrated in Exhibit C of the complaint but rather a failure to conduct early voting on

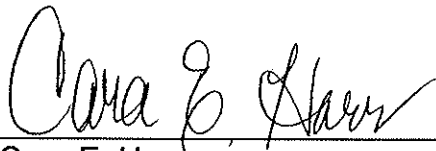
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July 17, 2010, in violation of T.C.A. §2-6-103(a)(1). The violation was therefore not in the posting of the information but rather in the administrative decision to not open for the required three hours of early voting on July 17, 2010.

The complaint asked that the election be declared void and a new election be held in the 6th Congressional District. The remedy sought in this complaint could only be granted by the state primary board if a contest of election was timely filed and the state primary board determined that such a remedy was necessary. There was no contest of election filed by any candidate in relation to the August 5, 2010, primary election.

Based on the foregoing, it is determined that a violation of Title III did not occur on July 17, 2010, and therefore the complaint is dismissed.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cara E. Harr", written over a horizontal line.

Cara E. Harr
HAVA Attorney