

Tre Hargett, Secretary of State
State of Tennessee



Division of Elections
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Mark Goins
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August 13, 2012

Lisa A. Spells
611 N. 5th Street
Nashville, TN 37207

RE: TITLE III HAVA and General Complaint

Ms. Spells,

Our office received your Title III Help America Vote Act (hereinafter HAVA) complaint and general complaint on June 29, 2012, regarding provisional voting and the presidential preference primary election. Both complaints address the same issues, therefore I will answer them both pursuant to Section 402 of the Help America Vote Act. Your complaint is two-fold in that you are challenging the constitutionality of the photo ID law and objecting to your vote not counting in the presidential preference primary election on March 6, 2012.

According to Section 402 of Title IV of the Help America Vote Act, 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

After reviewing both complaints in this matter, it is determined that a violation of Title III has not occurred. According to the complaint procedure, if no violation of Title III is found the complaint must be dismissed. Therefore, both the HAVA and general complaints are dismissed for the following reasons.

The constitutionality of the photo ID law has been challenged in Crawford v. Marion County Election Board, 553 U.S. 181 (2008), a case that originated out of Indiana. In Crawford, the Supreme Court held that the photo ID law was constitutional and that the

state's interest in preventing voter fraud and safeguarding voter confidence was closely related to the photo ID requirement. Even without this ruling from the court, the HAVA or general complaint procedures are not the proper venue for a constitutional challenge to Tennessee's photo ID law. Instead a registered voter with standing, i.e., a registered voter who could not meet the requirements of the law, would have to file a lawsuit challenging the law in court. Registered voters who have a religious objection to being photographed, who are indigent and cannot obtain a photo ID without paying a fee, who vote absentee by-mail, who permanently reside at a licensed nursing home or assisted living center and vote at the facility, and who are hospitalized are exempt from the photo ID requirement. In addition, Tennessee's general assembly passed a law that allows registered voters to obtain a free photo ID through the Department of Safety for voting purposes. Therefore, a registered voter who possessed a state or federal issued photo ID but refused to provide the ID would not have standing to challenge the law.

According to the documents you provided, your provisional vote did not count because you did not present a valid state or federal issued photo ID in a timely manner to the Davidson County Election Commission office. Tennessee Code Annotated § 2-7-112(e) allows a person who is unable to present valid evidence of identification to vote a provisional ballot. The law also requires the voter to be given a written statement informing the voter that the voter has until the second business after the election to provide evidence of identification, a state or federal issued photo ID. Finally, the law requires the voter to be informed if the provisional ballot is rejected and the reason for the rejection. You were, as required by law, allowed to vote a provisional paper ballot when you were unable to present a state or federal issued photo ID. You were provided the appropriate information as to what forms of ID were acceptable, how to obtain a free photo ID for voting purposes and the timeframe for which you had to return to the election commission office and present an acceptable form of photo ID. From the rejection notice that was sent on March 15, 2012, you were informed that your provisional ballot was rejected because you did not return with an acceptable form of photo ID within the two (2) business days after the election.

The provisions set forth in Tennessee Code Annotated § 2-7-112(e) were followed by the Davidson County Election Commission office and therefore no violation of Title III is found. Our records indicate that you have been issued a valid Tennessee driver license which would be an acceptable form of photo ID for voting purposes. If you have misplaced that acceptable photo ID, the Department of Safety will issue a duplicate license.

According to the complaint procedure, if no violation of Title III is found, the complaint must be dismissed. As stated above, this office has no jurisdiction to decide whether the photo ID law is constitutional but rather this office is charged with implementing the law as passed by the Tennessee general assembly. As to your provisional ballot, there is no indication that state law was not followed as set forth in Tennessee Code Annotated § 2-7-112(e). Instead from your complaint and the documents you provided with your complaint, the procedures set forth in Tennessee Code Annotated § 2-7-112(e) were fully complied with when you voted in the presidential preference primary.

Therefore, it is determined that a violation of Title III has not occurred and therefore the HAVA complaint, which includes the general complaint, is dismissed.

If you have any questions, please contact our office.

Sincerely,



Cara E. Harr
HAVA Attorney