

HELP AMERICA VOTE ACT ADMINISTRATIVE COMPLAINT PROCEDURES

I. Filing of Complaint and Response

Any person who believes that a violation of Title III of the Help America Vote Act has occurred, is occurring, or is about to occur may file a written complaint with the Secretary of State.

The complaint must be filed within sixty (60) days of the date of the alleged violation or within sixty (60) days of final certification of the federal election at which the alleged violation took place, whichever is later. The complaint must be signed and sworn to before a notary by the person filing the complaint. The complaint must state the alleged violation and the person or entity responsible for the violation. The Secretary of State shall prescribe the form for filing such complaints, which shall also require the name, address and phone number of the complainant. The form shall also allow the complainant to indicate whether he or she desires a hearing on the record.

If the Secretary of State determines that the complaint (1) fails to allege a violation of Title III of the Help America Vote Act, (2) fails to identify a person or entity responsible for the violation, (3) is not properly executed, or (4) is not timely filed, the Secretary of State shall inform the complainant, in writing, that the complaint is legally insufficient and shall not proceed further to consider the complaint.

When a legally sufficient complaint is filed with the Secretary of State, the Secretary of State may respond to the complainant based upon the complaint and the Secretary of State's own investigation. Such response shall be in writing and may include a remedy. The complainant may waive the request for a hearing upon review of the Secretary of State's response. If the hearing request is not waived, the hearing shall be held as described herein. The response from the Secretary of State, whether or not favorable to the complainant, shall in no way affect the complainant's right to a hearing under these procedures.

II. Hearing Procedure

If a hearing is requested, the Secretary of State shall designate a hearing officer who shall:

- a. Provide the subject of the complaint (respondent) with a copy of the complaint. The respondent shall, within 10 days after receipt of the complaint, file with the hearing officer a written, sworn response to the complaint. If the Secretary of State is the respondent, the Secretary of State shall, within 10 days after designating the hearing officer, file a written, sworn response to the complaint with the hearing officer.

- b. Upon receipt of the response, the hearing officer shall review both sworn filings to determine whether a violation of Title III of the Help America Vote Act of 2002 has occurred, is occurring, or is about to occur. The complaint and the response shall constitute the official hearing record to be considered by the hearing officer. The hearing officer shall provide the complainant with a copy of the response.
- c. At the hearing officer's discretion, the complainant and the respondent may be ordered by the hearing officer to provide additional sworn oral or written statements or additional documents to assist the hearing officer in making his or her determination, subject to the date, time, and place established by the hearing officer. Other relevant witnesses may also be requested by the hearing officer to give sworn testimony or to provide relevant documents to assist the hearing officer in making his or her determination. Any such statements or documents received by the hearing officer shall also become part of the official hearing record.
- d. The hearing officer shall advise both the complainant and respondent in writing of the final determination. If the hearing officer determines that no violation has occurred, is occurring, or is about to occur, the complaint shall be dismissed. If the hearing officer determines that a violation of Title III of the Help America Vote Act has occurred, is occurring, or is about to occur, the hearing officer shall prepare a written finding and suggest potential remedies to the Secretary of State.

Complaints of a similar nature may be combined for purposes of a hearing on the record. The hearing officer may place reasonable limits on the length of the hearing. Any person who is not a party to the hearing shall not be permitted to present oral or written statements, unless requested by the hearing officer.

If no public hearing is requested, the Secretary of State shall investigate the complaint. If the Secretary of State finds that the complaint has merit, the Secretary of State shall issue a written finding and take action to ensure the violation is corrected. If the Secretary of State determines that there is no violation, the Secretary of State shall issue a written finding dismissing the complaint.

Any written finding, whether by the hearing officer or the Secretary of State, shall be issued within 90 days of the filing of the complaint. This deadline may be waived in writing by the person who filed the complaint.

Any hearing in which a hearing officer requests oral statements will be recorded. If the hearing officer requests a transcript of the hearing, the Secretary of State shall pay for the cost of transcription. If the complainant or respondent requests a transcript of the hearing, the requesting party shall pay for the cost of transcription or for a copy of the transcript.

The Secretary of State may recover the costs of any hearing from a complainant who files a complaint that, in connection with the final determination, is found to be frivolous, groundless, or vexatious.

III. Alternative Dispute Resolution Process

Should the final determination not be issued within 90 days of the filing of the complaint, the complaint shall be submitted to a dispute resolution center approved by the Office of Dispute Resolution pursuant to the Dispute Resolution Act (Neb. Rev. Stat. §25-2901 et. seq.) for mediation. Any fees associated with such mediation shall be paid by the Secretary of State. The alternative dispute resolution process shall be completed within 60 days. Any records relating to the complaint shall be made available for the alternative dispute resolution process.

IV. Effective Date

These Administrative Complaint Procedures are effective the date last updated and will apply to any complaints filed pursuant to Title III of the Help America Vote Act on or after such date. These procedures are an update to prior Help America Vote Act Administrative Complaint Procedures of the Secretary of State's office, including any contained in the Secretary of State's Help America Vote Act State Plan or Amended State Plan.