

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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No. 372 CD 2024

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PA FAIR ELECTIONS, HEATHER HONEY, AND STACY REDFIELD  
PETITIONERS,

v.

PENNSYLVANIA DEPARTMENT OF STATE AND SECRETARY OF THE  
COMMONWEALTH AL SCHMIDT; NORTHAMPTON COUNTY,  
NORTHAMPTON COUNTY ELECTION COMMISSION BOARD,  
NORTHAMPTON COUNTY EXECUTIVE LAMONT McCLURE, AND  
NORTHAMPTON COUNTY REGISTRAR CHRISTOPHER COMMINI  
RESPONDENTS.

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BRIEF FOR RESPONDENTS NORTHAMPTON COUNTY, NORTHAMPTON  
COUNTY ELECTION COMMISSION BOARD, NORTHAMPTON COUNTY  
EXECUTIVE LAMONT McCLURE, and NORTHAMPTON COUNTY  
REGISTRAR CHRISTOPHER COMMINI

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On Appeal from Final Determination of Office of General Counsel Hearing Officer  
Steven R. Kovacs of HAVA Complaint entered on February 20, 2024, Case No.  
2023-002.

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## **I. COUNTER-STATEMENT OF THE QUESTIONS INVOLVED**

1. Did the Hearing Officer for the Office of General Counsel err in determining that the EVS 6300 meets the minimum requirements for voting machines under Title III of the Help America Vote Act ("HAVA")?

**Suggested Answer: No.**

## **II. COUNTER-STATEMENT OF THE CASE**

### **A. Statement of Facts**

For purposes of this appeal Northampton County, the Northampton County Elections Commission, Northampton County Executive Lamont McClure and Northampton County Registrar Christopher Commini ("Northampton County") adopt the finding of facts by the Hearing Officer as the statement of facts relevant to this appeal and incorporate them herein by reference.

## **III. SUMMARY OF ARGUMENT**

Northampton County adopts the position of the Department of State and the Secretary of the Commonwealth ("the Commonwealth of Pennsylvania") and to the extent not inconsistent with that position, the position of General Counsel Hearing Officer as expressed in any brief or determination by those individuals or entities. The legal analysis and

defenses offered by the Commonwealth of Pennsylvania applies to Northampton County. In the interest of economy, Northampton County will not seek to duplicate the arguments, and requests that the Appeal be denied.

#### IV. ARGUMENT

The Northampton County Board of Elections incorporates by reference and adopts any brief filed by the Commonwealth of Pennsylvania and, to the extent not inconsistent with such brief, the Final Determination of the Office of General Counsel Hearing Officer Steven R. Kovacs entered on February 20, 2024, as if the same were set forth fully herein.

It is not disputed that HAVA imposes the following requirements on non-paper ballot voting systems used in federal elections:

- (i) permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted;
- (ii) provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any

error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error); and

(iii) if the voter selects votes for more than one candidate for a single office —

(I) notify the voter that the voter has selected more than one candidate for a single office on the ballot;

(II) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and

(III) provide the voter with the opportunity to correct the ballot before the ballot is cast and counted.

...

(i) The voting system shall produce a permanent paper record with a manual audit capacity for such system.

(ii) The voting system shall provide the voter with an opportunity to change the ballot or correct any error before the permanent paper record is produced.

52 U.S. Code § 21081.

The evidence in this matter establishes that the voting system that Northampton County intends to be used in 2024 election complies with these requirements. It is not disputed that the paper ballot produced by the voting machine is displayed to the voter before the voter cast a vote and that the voter has opportunity to correct the ballot before casting.

The voting system used by Northampton County has been examined several times by the DOS Respondents and has been certified and recertified. Northampton County discharged its obligation to select a voting system which is certified in conformity with the Pennsylvania Election Code and complies with HAVA.

Furthermore, HAVA does not authorize any of the requests for relief by the Appellants. The Appellants cannot interfere with the Northampton County's contract with ES&S or determine what voting machine Northampton County should select. The county boards of election, or the officials or board performing such functions, are vested with authority to select and purchase voting machines and equipment. See 25 P.S. §§ 2641, 2642.

The Appellants are not third-party beneficiaries of the contract between the Northampton County Respondents and ES&S; as a result, they lack standing to modify, enforce, or interfere with the contract between the Northampton County Respondents and ES&S. See e.g. Konyk v. Pennsylvania State Police of Commonwealth of Pennsylvania, 183 A.3d 981, 988 (Pa. 2018). The Appellant's requests for relief in the underlying complaint with respect to the contract with ES&S and the selection of the voting system used in the County of Northampton is far beyond the jurisdiction of the proceeding underlying this appeal.

The HAVA complaint process utilized by Appellants is not the proper venue to air alleged violations of the Pennsylvania Election Code. The Attorney General and the District Attorney of Northampton County have concurrent powers and responsibilities to prosecute violations of the Pennsylvania Election Code. See 25 P.S. § 3555. The county boards of election, or the officials or board performing such functions, are directed to report suspected violations of the Election Code to the district attorney. See 25 P.S. §§ 2641, 2642.

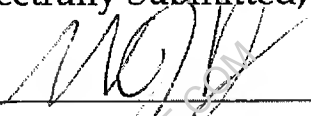


V. CONCLUSION

Northampton County respectfully requests that this Court affirm the Final Determination of Office of General Counsel Hearing Officer Steven R. Kovacs entered on February 20, 2024, which denied the Appellant's HAVA Complaint.

Respectfully Submitted,

Date: 09/25/2024

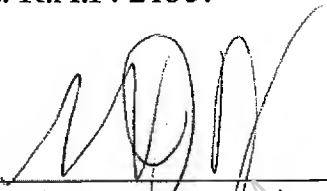
  
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**Pa. R.A.P. 2135 CERTIFICATE OF COMPLIANCE**

I, Michael J. Vargo, Esquire, counsel for the Appellee, herein certify that on the date indicated below, the foregoing Brief was written utilizing Microsoft Word. A word count function was performed and the foregoing Brief is less than 14,000 words (1,136 words) in compliance with Pa. R.A.P. 2135.

Date: 09/25/2024



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