

EXHIBIT A

**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR’S OFFICE OF GENERAL COUNSEL**

PA FAIR ELECTIONS AND
STACEY REDFIELD,

Complainants,

v.

PENNSYLVANIA DEPARTMENT
OF STATE, *et al.*

Respondents.

Docket Number 2023-002

FINAL DETERMINATION

I. RELEVANT BACKGROUND AND PROCEDURAL HISTORY

Complainants Pennsylvania Fair Elections and Stacey Redfield (collectively “Complainants”) commenced this action on November 22, 2023 by filing with the Commonwealth of Pennsylvania Department of State a verified Statement of Complaint Form (“Complaint” or “Complt.”) under Section 1206.2 of the Pennsylvania Election Code. The Complaint alleged violations of Title III of the Help America Vote Act of 2002 (“HAVA”), 52 U.S.C. § 21081 *et seq.*, against the Department of State and Secretary of State Al Schmidt (collectively the “Department” or “Dep’t”); against Northampton County, the Northampton County Election Commission Board, Northampton County Executive Lamont McClure, and Registrar Christopher Commini (collectively “Northampton County”); and against Election Systems & Software (“ES&S”). In accordance with the Election Code, 25 P.S. § 3046.2(c)(1), the Department forwarded the Complaint to the Governor’s Office of General Counsel on or about November 28, 2023. On December 12, 2023, the Department filed a written response in

accordance with 25 P.S. § 3046.2(c)(2). Northampton County filed its response on December 15, 2023.

On January 9, 2024, the Department sent a letter observing that (i) no notarized affidavit had been filed by a representative of Complainant PA Fair Elections, as required by 25 P.S. § 3046.2, and that (ii) no attorney had entered an appearance for PA Fair Elections. As to the latter point, the Department argued that an entity like PA Fair Elections is required by law to be represented by counsel. PA Fair Elections, through its representative Heather Honey, responded by letter on January 22, 2024.¹ On January 26, 2024, the undersigned issued a Pre-Hearing Order allowing Honey to act as a representative of PA Fair Elections, but limiting her role to providing factual information.

The Complaint requested an informal hearing, which a complainant is entitled to under 25 P.S. § 3046.2(c)(3). Following a prehearing scheduling order, the Department, Northampton County, and Complainants each respectively filed prehearing memoranda, along with a witness and exhibit list, on February 2, 2024. A hearing was conducted before the undersigned on February 6, 2024. The parties were also permitted to file post-hearing memoranda, which they did on February 9, 2024. Having considered the written submissions of the parties and the arguments and evidence advanced at the February 6 hearing, the undersigned Deputy General Counsel, Stephen R. Kovatis, Esq., submits this Final Determination and Order.

For the reasons set forth below, the Complainants have not established a violation of Title III of HAVA, and Complaint is therefore dismissed.

¹ Honey provided the notarized affidavit required by the Election Code at this time, and the Department subsequently withdrew its objection on this particular basis.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Findings of Fact

1. Redfield is a resident of Northampton County, a voter, and an appointed judge of elections for the November 2023 municipal election (the “2023 Election”). Transcript of February 6, 2024 Hearing (“H’rg Tr.”) at 40.

2. Heather Honey is member and authorized representative of PA Fair Elections, an association of individuals in Pennsylvania. H’rg Tr. at 22, 27.²

3. ES&S is a private company. It is a vendor of Northampton County, but itself is not a state or municipal election administrator. H’rg Tr. at 23-26.

4. In the 2023 Election, Northampton County used the ExpressVote XL, a “hybrid paper-based polling place device” manufactured by ES&S. The ExpressVote XL is a hardware component of the EVS 6.3.0.0 electronic voting system (the “EVS 6300”). Dep’t Resp. to Compl’t. at 1; Dep’t Ex. 1 at 2.

5. The 2023 Election was a municipal, and not federal, election.

6. On January 13, 2023, the Department tested and conditionally certified the EVS 6300 pursuant to Article XI-A of the Pennsylvania Election Code. Dep’t Ex. 1 (the “Certification Report”).

7. The conditions to which certification is subject are set forth in Section IV of the Certification Report. Dep’t Ex. 1 at 25-37.

² In accordance with a pre-hearing Order of the undersigned Hearing Officer, Honey was permitted to appear as a non-attorney representative of PA Fair Elections for the purpose of presenting factual information in the knowledge of the organization.

8. The EVS 6300 with the ExpressVote XL used in Northampton County works as follows:
- a. The voter inserts a blank paper card into a slot;
 - b. The voter makes selections by touching a screen, where the selections turn to green;
 - c. When the voter has made all desired selections, he or she touches “PRINT” on the screen, and the selections are printed onto the blank paper card and displayed behind a clear window;
 - d. If the voter wishes to make changes, he or she hits “QUIT VOTING,” which will spoil the ballot and start the voting process over; and
 - e. If the voter is satisfied with the selections, he or she hits “CAST” to submit both the electronic record and paper printed ballot.

Complainants Ex. 4.

9. For the EVS 6300 voting machines used by Northampton County for the 2023 Election, there was an error “during the programming of the election by the voting system manufacturer.” Northampton Cty. Ex. B ¶ 7.

10. This error inverted the names of two Superior Court judges up for retention on the printed paper record, but it did not affect the proper recording of the voter’s intended selection in the computer’s system. Northampton Cty. Ex. B ¶¶ 8-9.

11. Prior to the 2023 Election, Northampton County conducted logic and accuracy testing of their voting machines, but the testing did not reveal the problem with the Superior Court retention races. Northampton Cty. Ex. B ¶ 6.

12. On the morning of the 2023 Election, this problem was brought to the attention of a Northampton County judge, who ordered voters to be instructed to use the EVS 6300 machines with the error, and that “the paper receipt will record their selection for retention to the Pennsylvania Superior Court one candidate to the other candidate.” Northampton Cty. Ex. C.

13. Throughout the day, other judges issues slightly different orders, including instructing voters to be told that they should “ask for help” if their paper printout did not match their intended vote. Northampton Cty. Ex. C.

14. The instructions in these orders were not always clear and consistent, which caused confusion for voters throughout the day. H’rg Tr. at 45-46.

15. Northampton County intends to change its logic and accuracy testing prior to the 2024 elections, Northampton Cty. Ex. B ¶ 14, but no party introduced any further evidence showing what changes would be made or how those changes would prevent the same programming error from happening again.

B. Conclusions of Law

1. HAVA was enacted after the 2000 U.S. Presidential election, designed “to improve our country’s election system.” *See* H.R. REP. No. 107-329, at 31 (2001). HAVA was passed to ensure that eligible voters would not be disenfranchised and that voting and election administration systems will “be the most convenient, accessible, and easy to use for voters” and “will be nondiscriminatory and afford each registered and eligible voter an equal opportunity to vote and have that vote counted.” 52 U.S.C. § 20981(a).

2. HAVA requires states to establish an administrative complaint procedure to remedy any grievances for those who believe that a violation of any provision of Title III has

occurred, is occurring, or will occur. 52 U.S.C. § 21112(a). Pennsylvania has done so in its Election Code. 25 P.S. § 3046.2.

3. Title III of HAVA, entitled “Uniform and Nondiscriminatory Election Technology and Administration Requirements,” addresses voting systems standards; provisional voting and voting information requirements; and the creation of a computerized statewide voter registration list, including requirements for voters who register by mail. 52 U.S.C. §§ 21081-21102.

4. HAVA sets “minimum requirements” for election administration and it grants states discretion to set “election technology and administration requirements that are more strict” than those in HAVA. 52 U.S.C. § 21084.

5. Further, HAVA leaves “[t]he specific choices on the methods of complying with the requirements of this subchapter” to the discretion of each state. 52 U.S.C. § 21085.

6. In accordance with the procedure Pennsylvania has established, Complainants bring this claim under Title III of HAVA. Specifically, Complainants contend that the EVS 6300 does not meet HAVA’s minimum requirements for voting machines.

7. HAVA provides, in relevant part, that each voting system “used in an election for Federal office” must:

- (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.

52 U.S.C. § 21081(a)(1)(A).

8. As a threshold matter, because Title III governs voting systems used in federal elections, this forum may consider only whether the EVS 6300 as it will be used in federal elections complies with HAVA. The Hearing Officer no jurisdiction to consider particular issues or concerns relating to the 2023 Election, which was solely a state and municipal election. 52 U.S.C. § 21081(a).

9. As an additional threshold matter, ES&S is not a proper respondent to a Title III action using the procedures established by the Pennsylvania Election Code. 25 P.S. § 3046.2.

10. On the merits, the EVS 6300 as designed and approved complies with HAVA in that it permits the voter to privately and independently verify his or her vote via a printed, readable paper card before their vote is cast. 52 U.S.C. § 21081(a)(1)(A)(i).

11. The EVS 6300 as designed and approved complies with HAVA in that it permits the voter to change the ballot or correct any error before the ballot is cast and counted. 52 U.S.C. § 21081(a)(1)(A)(ii).

12. The EVS 6300 as designed and approved complies with HAVA in that it produces a permanent paper record with a manual audit capacity. 52 U.S.C. § 21081(a)(2).

13. Title III of HAVA does not require logic and accuracy testing of voting systems or set any minimum standard or procedure for logic and accuracy testing.

14. The weight of evidence introduced in this proceeding does not support the conclusion that the EVS 6300 is not accessible for those with visual disabilities. 52 U.S.C. § 21081(a)(3).

15. Consequently, the Complaint is dismissed.

III. ANALYSIS AND DISCUSSION

Preliminary Matters

Jurisdiction

The Hearing Examiner, *sua sponte*, raised the issue of whether Title III, which applies to “voting system used in an election for **Federal** office,” 52 U.S.C. § 21081(a) (emphasis added), can be the basis for claims related to the November 2023 **municipal** election, and thus whether this dispute can be heard in the context of a Title III proceeding. *See Blackwell v. Com., State Ethics Comm'n*, 523 Pa. 347, 358, 567 A.2d 630, 636 (1989) (“Since an issue of subject matter jurisdiction is not waivable, it may be raised at any stage of a proceeding by a party, or *sua sponte* by the court or agency.”).

The large majority of the Complaint focuses on specific concerns related to the performance of the EVS 6300 in the 2023 Election. *See* Compl. ¶¶ 14-39. All parties agreed that the 2023 Election was a municipal, and not federal, election. The Department and Northampton County, however, acknowledged that the EVS 6300 will be used in federal elections, and thus prospective questions as to whether future use of the machines complies with HAVA are properly before the Hearing Examiner. Complainants agreed with this position, clarifying that they are not seeking relief related to the 2023 Election. Honey confirmed that PA Fair Elections is seeking “action not regarding a past election, not regarding the municipal election,” but rather it wants “action for future elections, which happen to be a federal election.” H’rg Tr. at 38.

Further, Northampton County submitted un rebutted evidence that the issue in the 2023 Election was caused by a human programming error particular to that election, in which names for one judicial race were inverted on the printed paper ballot but not the recorded vote. Northampton Cty. Ex. B ¶¶ 7-9.

Title III proceedings regarding voting systems are limited to deciding whether the systems meet the minimum requirements set forth in 52 U.S.C. § 21081(a). And those requirements apply only to voting systems used in federal elections. Consequently, issues related to a municipal election, like the 2023 Election, fall outside the scope of this Title III action. This is especially true when, like here, the issues relate to a programming error that was specific to a particular race in that particular election. Whether or not the erroneously programmed machines used in the 2023 Election were HAVA-compliant as they performed on that day cannot be the question here. Those questions were handled by the Northampton County courts on the day of the election, as they should have been.

As acknowledged by Respondents, this alone does not require dismissal of this action in its entirety. It is appropriate in this forum to decide whether the EVS 6300, as it will be used during the 2024 federal elections and beyond, complies with HAVA. And evidence of the performance of the EVS 6300 in the 2023 Election can be relevant to the question, but only to the extent that it is indicative of continuing HAVA violations. The question is whether the system design falls short of HAVA's standards, not whether a prior error caused its performance to fall short of HAVA's standards in one election.

Complainants' claim is thus dismissed in part for lack of jurisdiction, but the remainder of their claim will be analyzed through this jurisdictional lens.

Respondent ES&S

The Complaint filed in this matter identifies ES&S as a respondent. Complt. at 1. At the hearing, Honey confirmed that it was PA Fair Elections' intent to name ES&S as a respondent, but that PA Fair Elections had not served ES&S, instead expecting the Department to effectuate service, which the Department did not do. *See* H'rg Tr. at 23-26. ES&S did not appear or otherwise engage in the administrative proceedings at all, and the parties agreed that ES&S had no notice of the Complaint.

The issue of notice aside, ES&S is not a proper party to this Title III proceeding. HAVA places obligations on state and municipal election administrators, not on private companies. *See generally* 52 U.S.C. § 21081 (setting requirements for states and jurisdictions effectuating elections). There is no provision of the Election Code or HAVA that gives a Hearing Officer jurisdiction over a private company. Also, because private parties are not subject to a Title III proceeding, there is nothing in the procedures in Section 3046.2 that provides a manner for serving private parties. *See* 25 P.S. § 3046.2 (outlining procedures for handling complaints against the Department and municipalities and their officers, not against private companies).

Because ES&S is not a proper party and there is no jurisdiction over it, it is dismissed as a respondent.

The EVS 6300 Complies with Title III of HAVA

The EVS 6300 Allows Voters to Verify Their Votes Before Being Cast

The gravamen of Complainants' claim is that the EVS 6300 does not comply with HAVA's "requirement that all voting systems produce a permanent paper record with a manual audit capability." Complt. ¶ 12. They argue that the EVS 6300 violates HAVA because it does not allow the voter to verify his or her actual vote which will be cast, because the voter actually verifies a printed paper version of the slate of votes. The voter's actual votes, which are used for

tabulation purposes, lives as an electronic record which is readable only to the computer. In other words, Complainants object to a process where what the voter reviews is a *copy* of the vote and not the actual vote itself. Complainants believe this violates HAVA.

Complainants' argument fails because HAVA does not prohibit voting machines from functioning this way. The text of HAVA itself requires only that the voter be permitted "to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted." 52 U.S.C. § 21081(a)(1)(A)(i). Nothing prescribes any particular method of verification. More to the point, nothing in HAVA says that, when a vote is recorded electronically, it is inadequate for the voter to review a printed copy of that electronic vote. Indeed, when a vote is recorded electronically, one of the most logical ways for the voter to verify that vote would be to review a legible printout of the votes about to be cast.

Further, Complainants' interpretation of HAVA would mean that no voting system could satisfy HAVA if it electronically maintained and counted votes. To be sure, this appears to be the position of PA Fair Elections. H'rg Tr. at 130, 135-36 (noting that voters cannot verify the "barcode" or "QR code" used to tabulate votes and therefore can never truly verify the accuracy of their vote). In fact, its witness testified during the hearing that he believes that the only truly secure method of voting is by paper ballot. H'rg Tr. at 165 ("Q: ... If you were in charge, no jurisdiction would use electronic voting systems, isn't that right? A. Yes, ma'am. If I had my way, yes."). But this evidence shows only personal policy preferences. As a matter of law, HAVA does require the use of paper ballots or prohibit the use of electronic voting systems. In fact, HAVA explicitly notes that acceptable voting systems include a "direct recording electronic system." 52 U.S.C. § 21081(a)(1)(A). By definition, "[a] direct-recording electronic (DRE) voting system records votes by means of a ballot display provided with mechanical or electro-

optical components that can be activated by the voter; that processes data by means of a computer program; and that records voting data and ballot images in memory components.” Compl. Ex. 20 at 25. A DRE system “produces a tabulation of the voting data stored in a removable memory component and *as printed copy*.” *Id.* (emphasis added). Because HAVA expressly allows DRE voting systems, and because DRE voting systems by definition store and count votes electronically and produce printed copies of those votes for auditing and verification purposes, it is impossible to read HAVA as prohibiting a voting system which stores and tabulates votes electronically. Which is to say, HAVA does not bar the use of the EVS 6300.

Complainants’ reliance on the United States Election Assistance Commission’s (the “Commission’s”) Voluntary Voting System Guidelines (“VVSG”) is misplaced. Compl. Pre-H’rg Mem. at 3. As a threshold matter, it is far from clear that the VVSG can be used as a baseline for a Title III complaint. The authority and function of the Commission lies outside of Title III, and nothing in Title III provides that the Commission’s guidelines are enforceable in this forum. Additionally, it is not even clear that the Commission’s guidelines could be considered mandatory—HAVA states that testing and certification of voting machines by the Commission is “[a]t the option of a State.” 52 U.S.C. § 20971(a)(2); *accord Graeff v. Ashcroft*, No. 4:22-cv-971 RLW, 2023 WL 2424266, at *2 n.1 (E.D. Mo. Mar. 9, 2023) (“Under HAVA, states may choose to participate in [the Commission’s] Testing and Certification Program.”). Thus, even if a complainant could show that the EVS 6300 did not meet the VVSG standards, that alone would not establish a violation of Title III.³

³ PA Fair Elections responds that “adhering to the VVSG is voluntary **except in select states where it is required by their own state law**.” Compl. Pre-H’rg Mem. at 3 (emphasis in original). But it does not provide a citation to Pennsylvania law mandating compliance with the VVSG or, more specifically, legal authority which removes discretion from the Secretary of

That said, the Department has submitted compelling evidence that the EVS 6300 meets the VVSG standards. To wit, on November 17, 2022, the Commission certified that the EVS 6300 “has been evaluated at an accredited voting system testing laboratory for conformance to the *Voluntary Voting System Guidelines Version 1.0*.” Dep’t Ex. 1 at 40. Complainants point to particular findings in the Scope of Certification that accompanies this certificate, arguing that they show that the EVS 6300 should not have been certified to meet the VVSG standards. *See* H’rg Tr. at 142-46. But, of course, this argument ignores that the Commission *did* certify these machines. Complainants attempt to downplay certification by arguing that Commission certification is not sufficient to comply with HAVA standards. Compl. Post-H’rg Mem. at 1 (pointing out that “[Commission] certification is **not** HAVA certification” (emphasis in original)). But by both relying on VVSG standards as the basis of their HAVA claim and then dismissing those standards as irrelevant to HAVA compliance, Complainants’ argument is circular and self-defeating. If the VVSG standards are incorporated into HAVA, then the EVS 6300 meets the minimum standards; if the VVSG standards are independent of HAVA, then the evidence related to compliance with those standards is irrelevant to a HAVA claim. At bottom, Complainants have failed to demonstrate how the EVS 6300 fails to meet HAVA’s minimum standard for a voter-verification requirement. *See* 52 U.S.C. §§ 21084-21085 (noting that HAVA sets minimum standards and leaves methods of compliance to the discretion of the states).

The EVS 6300 thus complies with HAVA’s requirement that each voter be permitted to verify his or her votes before they are cast.

State to decide whether counties must comply with the VVSG. Thus, the question of VVSG compliance is for the Secretary of State, not a Title III Hearing Officer.

The EVS 6300 Produces an Auditable Paper Trail

Complainants alternatively argue that the EVS 6300 “does not produce a paper record that can be reliably used for a manual audit.” Complt. Pre-H’rg Mem. at 1. However, they have presented no evidence in support of this claim. There is clear evidence that the EVS 6300 produces a printed paper copy of each voter’s votes, and that each voter is given the opportunity to verify his or her votes on this paper. And as set forth in the Department’s approval of the EVS 6300, Northampton County is required by the Election Code to conduct an audit “exclusively via a manual count of the voter marked paper ballots.” Dep’t Ex. 1 at 26. Complainants have produced no credible evidence that Northampton County does not perform the required audit.

Complainants’ challenge to the EVS 6300’s audit capabilities appears directly related to the issues with the 2023 Election. They contend that the system “was not compliant with HAVA on November 7th, 2023” because the paper record with the inverted judicial candidates could not be used to audit those races. Complt. ¶ 15; Complt. Pre-H’rg Mem. at 13. But, as set forth above, whether the machine as erroneously programmed complied with HAVA during the municipal election is not at issue in this matter. Importantly, the record is clear that voters had access to the courts during that time, and orders issued by Northampton County judges on election day are not reviewable here. Instead, the question is whether the EVS 6300 as approved for use in future elections complies with HAVA’s auditability requirement. The evidence indicates that it does, and Complainants offer no persuasive evidence to the contrary.

Thus, Complainants’ claims alleging violations of HAVA’s audit capacity requirement are dismissed.

Title III of HAVA Does Not Require Logic and Accuracy Testing

Complainants argue that HAVA requires logic and accuracy testing of voting machines prior to each election, which means “testing every ballot position, including write-ins for every

contest, over votes, undervotes and other error conditions, all permutations for each contest on the ballot.” Compl. Pre-H’rg Mem. at 16. But Complainants do not cite any provision in Title III as the basis for their contention. The Department, on the other hand, argues that HAVA does not require logic and accuracy testing, and that this testing requirement originates from a directive of the Department. Dep’t Pre-H’rg Mem. at 6.

Logic and accuracy testing, while important, is not a requirement in Title III of HAVA. Nothing in the statutory text creates a federal requirement that would be enforceable in this forum. Thus, Complainants’ claims alleging inadequate logic and accuracy testing of the EVS 6300 are dismissed.⁴

There Is Insufficient Evidence to Rebut Respondents’ Evidence That the EVS 6300 Complies with HAVA Requirements for Persons with Disabilities

Finally, Complainants argue that the EVS 6300 does not meet HAVA’s standard of accessibility for voters with disabilities. *See* Compl. Pre-H’rg Mem. at 6 (citing 52 U.S.C. § 21081(a)(3)(A)). However, they presented no evidence from any person with a disability who had trouble using the EVS 6300. Instead, they relied on the section in the Certification Report which “identified three problems that could reduce the ability of people with disabilities to vote independently and privately.” Dep’t Ex. 1 at 67; *accord* H’rg Tr. at 142-44.

HAVA requires that a voting system “be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters.” 52 U.S.C. § 21081(a)(3)(A). To accomplish this, a county must provide at least one system at each precinct for those with disabilities. 52 U.S.C. § 21081(a)(3)(B). Here, the

⁴ This decision reaches no conclusion as to whether logic and accuracy testing by Northampton County prior to the 2023 Election was proper or adequate.

Certification Report identifies *potential* issues with the exclusive use of the EVS 6300 for blind voters, but there is insufficient evidence that any such problem actually manifested. The EVS 6300, for example, has the ability to produce an “audio ballot” for the visually impaired. *See* Dep’t Ex. 1 at 30. Thus, the Department and Northampton County have produced evidence that the EVS 6300 complies with HAVA for visually impaired voters, and Complainants have failed to produce sufficient persuasive, non-speculative evidence that a problem actually exists.

IV. CONCLUSION AND DETERMINATION

Wherefore, for the reasons stated above, Complainants have failed to show that the EVS 6300, as approved by the Department, violates Title III of HAVA. The Complaint is therefore **DISMISSED**. It is further determined that, because no violation of HAVA has been established, no remedial plan is necessary. This shall be considered a final determination of the Office of General Counsel under 25 P.S. § 3046.2(c).

DATED: February 20, 2024

SUBMITTED BY:



Stephen R. Kovatis
Deputy General Counsel

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v.	:	
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PENNSYLVANIA DEPARTMENT OF STATE, <i>et al.</i>	:	
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Respondents.	:	
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WHEREAS, Complainants Pennsylvania Fair Elections and Stacey Redfield (“Complainants”) commenced this action on November 22, 2023, by filing with the Commonwealth of Pennsylvania Department of State (“Department”) a verified Statement of Complaint Form (“Complaint”) under Section 1206.2 of the Pennsylvania Election Code;

WHEREAS, the parties were each afforded the opportunity to submit both pre-hearing and post-hearing memoranda; and

EXHIBIT A

AND NOW, having considered the arguments and evidence advanced in the written submissions of the parties and at the hearing in this matter, it is **ORDERED** and **DECREED** as follows:

1. Respondent Election Systems & Software is **DISMISSED** for lack of jurisdiction against this private party in a Title III HAVA complaint.

2. The Complainants have failed to establish that the Department and/or Northampton County has or is violating HAVA. This matter is therefore **DISMISSED**.

3. The request of Northampton County to dismiss the Northampton County Election Commission Board, Lamont McClure, and Christopher Commini from this action is **DENIED AS MOOT**.

4. This shall constitute a final agency determination of this matter in accordance with 25 P.S. § 3046.2(c)(5).

DATED: February 20, 2024

SUBMITTED BY:



Stephen R. Kovatis
Deputy General Counsel