

**BEFORE THE STATE BOARD OF ELECTIONS
OF THE STATE OF ILLINOIS**

In the Matter of:

Panizzi,)	
Complainant,)	
)	15 HAVA 1
vs.)	
)	
Bureau County Clerk,)	
Respondent(s).)	

Panizzi,)	
Complainant,)	
)	15 HAVA 2
vs.)	
)	
Bureau County Clerk,)	
Respondent(s).)	

**RECOMMENDATION OF THE HEARING EXAMINER
TO THE GENERAL COUNSEL**

I. BACKGROUND

15 HAVA 01: Cynthia Panizzi has a disability and uses a power chair to assist with mobility. She requested, but was not able to cast her vote using the electronic voting machine, because the election judges could not find the card to activate it. She had to cast her vote on a table with no privacy.

15 HAVA 02: Marla Michalak used an electronic voting machine located near and facing the door with no privacy panels around it. New voters filed past her while she was voting and some asking her questions.

The above two HAVA Complaints were filed with the State Board of Elections and James Tenuto was appointed Hearing Examiner.

Melissa O. Picciola filed an Appearance on behalf of the two complainants and Donna Engels, an Assistant State's Attorney in Bureau County, represented the Bureau County clerk's Office.

Following a telephone conference with the Hearing Examiner and the Parties, the enclosed Settlement Agreement was submitted.

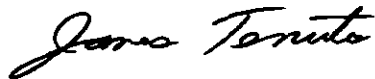
II. SETTLEMENT AGREEMENT

The terms of the Settlement Agreement confirm that the concerns of the Complainants were taken seriously. The steps outlined in the Settlement Agreement should resolve the issues and make a recurrence unlikely in upcoming elections.

III. RECOMMENDATION

It is the Recommendation of the Hearing Examiner that the State Board of Elections accept the Settlement Agreement.

Respectfully submitted,

A handwritten signature in cursive script that reads "James Tenuto".

James Tenuto, Hearing Examiner
May 11, 2015

Settlement Agreement and Release

The Settlement Agreement and Release (“Agreement”) is made and entered into as of the last dates set forth below, by and between Marla Michalak and Cynthia Panizzi (“Complainants”) and the Bureau County Clerk’s Office and the Bureau County Clerk (“Respondent”), collectively the Parties (“Parties”).

Witnesseth:

WHEREAS, on November 4, 2014, Complainants Marla Michalak and Cynthia Panizzi, were properly registered to vote within Bureau County; and

WHEREAS, Respondent, Bureau County Clerk, is responsible for administration of elections in Bureau County, Illinois; and

WHEREAS, on November 4, 2014, Complainant, Marla Michalak cast her vote at the polling place located at 215 Greenwood Street, Spring Valley, Illinois using the electronic voting machine. The electronic voting machine was not positioned to allow privacy for those using the machine. Marla was asked questions by passers-by while casting her vote; and

WHEREAS, on November 4, 2014, Complainant, Cynthia Panizzi cast her vote at the polling place located at 314 South Bureau Street, Ladd, Illinois. She requested but was not able to cast her vote using the electronic voting machine because the election judges could not find the card to activate it. She had to cast her vote on a table with no privacy.

WHEREAS, Complainants Marla Michalak and Cynthia Panizzi each filed a complaint with the Illinois State Board of Elections alleging violations of the Help America Vote Act (HAVA) against Respondent Bureau County Clerk pursuant to 26 Ill Admin Code 150 on January 26, 2015. After review by the State Board of Elections, James V. Tenuto was appointed as the hearing officer on February 5, 2015; and

WHEREAS, the Parties have agreed to negotiate the terms and conditions of a settlement to resolve all issues rather than proceed to a hearing; and

WHEREAS, the Parties desire to and are mutually agreeable to settling any and all pending matters between the parties as further detailed herein.

NOW, THEREFORE, in consideration of the promises and mutual undertakings and agreements of the Parties hereto, it is agreed as follows:

- 1. Training.** Respondent Bureau County Clerk will designate fifteen (15) minutes at the start of each scheduled federal election judge training in order for representatives from the Illinois Valley Center for Independent Living (“IVCIL”) or another disability advocacy group approved by the Parties to provide training. Written notice of the date of each training shall be given by the Respondent to the Complainants at least thirty (30)

days prior to the training to assist with scheduling. All efforts will be made by the Respondent to provide more than 30 days notice.

- a. Written materials pertaining to the federal election as approved by the respondent may be provided at least five (5) days prior to the federal election training to be distributed to the election judges.
- b. Content of the training is the responsibility of the IVCIL or other disability advocacy group approved by the Parties and IVCIL will hold all copyrights to the training. The Respondent has right to review content of the training and suggest revisions. Content of the training may include, but is not limited to, interacting with people with disabilities in the polling place and the set up of privacy panels around the machine in order to make the polling place accessible and maintain privacy for voters with disabilities.

2. Polling Place Diagrams: Respondent agrees to create diagrams showing the precise recommended placement of the electronic voting machine in each of the polling places in Bureau County. These diagrams will illustrate the proper placement of the electronic voting machine to maximize privacy and independence for voters with disabilities using the electronic voting machine, including a clear path of travel and placement of the screen displaying the ballot so that others may not see it. These diagrams will be included with the election materials given to election judges. The Complainants will have the opportunity to review the diagram and suggest changes prior to their distribution or use.

3. Election Judge Responsible for Accessibility Issues. The Respondent will designate one (1) election judge as responsible for responding to complaints about accessibility in each polling place in Bureau County at each subsequent election. This can be the same election judge who is responsible for setting up the equipment at the polling place, within the Respondent's discretion. If Complainants or others observe an issue regarding accessibility when conducting poll watching or otherwise, this election judge will be designated to respond to their complaints. Appropriate issues to discuss with the designated election judge may include, but are not limited to, placement of the electronic voting machine or set up of the lowered voting booth. All efforts should be made by this election judge to rectify the issue.

4. Recruitment of Election Judges. Complainants may develop an outreach campaign to help recruit people with disabilities, or those knowledgeable about how to appropriately interact with people with disabilities to serve as election judges. The Complainants, upon request to the Respondent, shall be given information to reproduce and distribute regarding the opportunity to serve as an election judge. The Respondent will provide the Complainants with information about the process and requirements for becoming an election judge and the duties involved therein to assist with recruitment for the Complainants to copy and distribute as they so desire.

5. Post-Election meeting. The Parties agree that the Complainants may request to set up a post-election meeting after every subsequent federal election held in Bureau County with the Respondent to discuss any issues that may arise, if such meeting is

determined necessary by the Complainants. The Respondent agrees to work with the Complainants to arrive on a mutually agreeable time for such a meeting.

6. Release. In consideration of the mutual promises and covenants made herein, the Complainants hereby fully, completely, unconditionally, and forever release, acquit and discharge the Respondent from any and all causes of action arising from the general election held on November 4, 2014. It is the intent of the Parties hereto that this release shall be a full and final general mutual release and waiver of all HAVA claims between the Parties and the persons or entities described in this Agreement up to and through the date of this Agreement. Nothing in this paragraph shall be construed to limit the Parties' ability to seek enforcement of this Agreement.

7. Settlement of HAVA Complaints. The Parties agree to present this Agreement to the Illinois State Board of Elections for approval as settlement of the HAVA Complaints filed, 15 HAVA 1 & 15 HAVA 2, pursuant to 26 Ill Admin Code 150.100.

8. Successors. This Agreement shall, as required by law, be binding on any person holding the office of Bureau County Clerk.

9. No Admission of Wrongdoing. The Respondent and the Complainants acknowledge that the settlement of the above-described matters does not constitute an admission of wrongdoing or liability by the Respondent or any of its employees, attorneys, agents or representative. The Parties have entered into this Agreement for the sole purpose of resolving the claims referred to herein and to avoid the burden, expense, delay and uncertainty of a hearing.

10. Complete Understanding. The Agreement sets forth all the promises, agreements, conditions and understandings between the Respondent and the Complainants relative to the subject matter hereof, and there are no promises, agreements or undertakings either oral or written, express or implied, between them other than as set forth herein.

11. Choice of Law. This Agreement shall be interpreted in accordance with the laws of the State of Illinois.

12. Entering Freely into this Agreement. By their signatures below, the Parties represent that they each have read this Agreement fully, have had the opportunity to discuss this Agreement thoroughly with Counsel of their own choosing, and have the full authority to enter into this Agreement. The Parties further represent that they have each entered into this Agreement freely and without compulsion or coercion.

THEREFORE, the Parties cause this Agreement to be executed on the dates written below:

Marla Michalak

Marla Michalak
Complainant

Cynthia Panizzi

Cynthia Panizzi
Complainant

Kamala S. Heisong

Bureau County Clerk
Respondent

Date: 5/4/15

Date: 5/7/15

HAVA Title III Complaint

Complainant:

Cynthia Panizzi
902 E. Cleveland St.
Ladd, IL 61329
Phone Number: 815-993-2812

Respondent:

Bureau County Clerk
700 South Main Street
Room 104
Princeton, Illinois 61356

Pursuant to 26 Ill. Admin Code 150, I am filing a complaint under section Title III of the Help America Vote Act ("HAVA"), 42 USC 15301 et seq.

1. I, Cynthia Panizzi, am a registered voter in Bureau County, Illinois.
2. I am a person with a disability. I have cerebral palsy and use a power chair to assist with mobility.
3. On November 4, 2014, I went to vote at my polling place around 8:35am, located at 314 South Bureau Street, Ladd, Illinois in Bureau County.
4. After going through the check-in line, I asked if the electronic voting machine was working. The election judges informed me it was plugged in, therefore I drove up to it and my co-worker accompanied me. After trying awhile, we adjusted the machine it enough so I could hold it up with one hand and vote with the other. We then realized I needed to insert a card so the machine would start. We asked the election judges for the card. The machine had not been used yet, so they tried to locate the card.
5. After waiting several minutes for the card to be located and concerned that it was taking too much time, we asked about the accessible voting booth and they directed me to the far side of the room where tables were set up and no people were present. Although there was no one close to me while I voted, I had no privacy walls as other voters do.
6. HAVA Sec 301(a)(3)(A) states that the voting system shall "be accessible for individuals with disabilities . . . in a manner that provides the same opportunity for access and participation (including privacy and independent) as for other voters."

2015 JUN 26 09:01
COMMUNICATIONS SECTION

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7. I feel that this provision was violated because I had to vote out in the open without any privacy walls, as other voters have.
8. HAVA Sec 301 (a)(3)(B) states that the voting system shall "satisfy the requirement of subparagraph (A) through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place".
9. I feel that this provision was violated because I was not able to use the electronic voting system because the judges could not locate the card to operate the machine.
10. ~~I am~~ **am not requesting** a hearing on the record before the State Board of Elections.

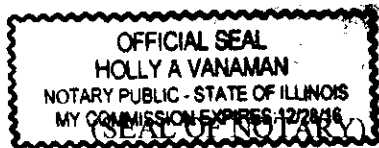
Verification

"I declare that this complaint (including any accompanying exhibits and statements) has been examined by me and to the best of my knowledge and belief is a true and correct complaint as required by Section 402 of the Help America Vote Act."

Cynthia Panizzi
Cynthia Panizzi

Signed and sworn to (or affirmed) by Cynthia Panizzi before me on this 26th day of January 2015

Holly A. Vanaman
Signature of Notary Public



HAVA Title III Complaint

Complainant:

Marla Michalak
419 W. Erie St. Apt. 516
Spring Valley, IL 61362
Phone Number:
Fax Number:

Respondent:

Bureau County Clerk
700 South Main Street
Room 104
Princeton, Illinois 61356

Pursuant to 26 Ill. Admin Code 150, I am filing a complaint under section Title III of the Help America Vote Act ("HAVA"), 42 USC 15301 et seq.

1. I, Marla Michalak, am a registered voter in Bureau County, Illinois.
2. On November 4, 2014, at approximately 12:00 p.m., I went to my polling place, Hall 2 Precinct in Bureau County, located at the City Hall, 215 N Greenwood St., Spring Valley, Illinois, to vote.
3. I asked to use the electronic voting machine. After a 5 - 10 minute wait while the election judges figured out how to get the card ready that I needed to use the machine. I was able to use the machine to cast my vote.
4. The electronic voting machine was located near the door, actually facing the door and had no privacy panels around it, as the other voting booths do. As new voters arrived, they had to file past me while I was voting, some asking me questions. Anyone standing near me or behind me could have read how I was casting my ballot.
5. HAVA Sec 301(a)(3)(A) states that the voting system shall "be accessible for individuals with disabilities . . . in a manner that provides the same opportunity for access and participation (including privacy and independent) as for other voters." HAVA Sec 301 (a)(3)(B) states that the voting system shall "satisfy the requirement of subparagraph (A) through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place".
6. Because of the location and lack of privacy panels on the electronic voting machine, I feel that the above sections of HAVA were violated. When a person with a disability used the electronic voting machine on that day, they would have no privacy.
7. I am requesting a hearing on the record before the State Board of Elections.

2015 JUN 30 PM 9:01

2015 JUN 30 PM 9:01

2015 JUN 30 PM 9:01

Verification

"I declare that this complaint (including any accompanying exhibits and statements) has been examined by me and to the best of my knowledge and belief is a true and correct complaint as required by Section 402 of the Help America Vote Act."

Marla Michalak
Marla Michalak

Signed and sworn to (or affirmed) by Marla Michalak before me on this 26th day of January 2015.

Holly A. Vanaman
Signature of Notary Public

