

STATE OF ALABAMA OFFICE OF THE SECRETARY OF STATE
ADMINISTRATIVE CODECHAPTER 820-2-5
PROCEDURE TO COMPLAIN ABOUT VIOLATIONS OF TITLE III OF THE FEDERAL
HELP AMERICA VOTE ACT OF 2002

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820-2-5-.01 Purpose And Definitions.

(1) This Chapter is established pursuant to Alabama Code Section 17-2-3 to provide for the submission and review of complaints regarding the administration of Title III of the Help America Vote Act of 2002 (HAVA), 52 U.S.C. §21081 et seq.

(2) In this Chapter, the following terms have the following meanings:

(a) "Complaint" means the document a complaining person files to initiate proceedings pursuant to this Chapter.

(b) "Complainant" means the person who files or intends to file a complaint pursuant to this Chapter, including persons whose complaints are later consolidated by the Secretary of State pursuant to this Chapter.

(c) "Respondent" means any state or local election official, board, or entity against whom a complaint is filed pursuant to this Chapter.

(d) "Title" means Title III of HAVA, U.S.C. §21081 et seq.

(e) "The Secretary of State" means the Secretary of State or his or her designee.

(f) "Violation" means an occurrence, practice, or procedure that results or imminently shall result in noncompliance with requirements of the Title.

Author: Charles E. Grainger, Jr., Michael L. Jones, Jr., Meridith H. Blackburn, Andrew Mount

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820-2-5-.02 Complaint.

(1) Right to File. Any aggrieved person may file a complaint with the Secretary of State's office alleging a violation of the Title.

(2) Consolidation of Complaints. The Secretary of State may consolidate complaints if such are determined to relate to the same alleged violation(s) or if they raise common questions of law or fact. The Secretary of State shall notify the parties of consolidated complaints within a reasonable period of time. Upon consolidation, the filing date shall be considered the filing date of the last complaint filed of the consolidated complaints.

(3) Date Complaint is Filed. A complaint is deemed filed upon receipt by the Secretary of State, not upon mailing or postmark. Complaints may be delivered to the Secretary of State in person, by U.S. Mail, or common carrier at the following address:

Alabama Secretary of State
State Capitol Building - Suite S-105
600 Dexter Avenue
P.O. Box 5616
Montgomery, Alabama 36103-5616

Or a complaint may be electronically submitted through the official Secretary of State's website (www.sos.alabama.gov), using the online HAVA Complaint form.

For filing to be considered complete, the Complainant(s) shall also mail or deliver a copy of the complaint to each Respondent no later than the date the complaint is filed with the Secretary of State, submitting proof of delivery of the same to the Secretary of State.

(4) Form. A complaint under this Chapter and shall be in writing, signed and sworn by the Complainant(s), and notarized on the prescribed HAVA Complaint form available online through the official website of the Secretary of State (www.sos.alabama.gov). Incomplete or illegible forms will not be considered filed. Complaints attempted over the phone or by electronic email transmission will not be considered official complaints unless or

until they are submitted in writing, signed and sworn by the Complainant(s), and notarized, on the requisite complaint form.

(5) Substance. A complaint filed pursuant to this Chapter shall:

- (a) Identify the alleged violated section or sections of the Title. If multiple violations are alleged, each must be clearly identified in relation to a section or sections of the Title;
- (b) List the first and last name(s) of the Respondent(s) as well as applicable title(s), if known;
- (c) To the extent known, list the first and last name(s) of the individual(s) the Complainant(s) allege(s) failed to comply with the Title;
- (d) To the extent known, identify the location(s) where the alleged violation(s) of the Title occurred;
- (e) Include a short and plain statement describing the facts of the occurrence(s), procedure(s), or practice(s) allegedly violative of a particular section or sections of the Title; and
- (f) Explain how the alleged facts are violative of (a) particular section(s) of the Title.
- (g) Identify the Complainant(s) by first and last name and provide current contact information, including a mailing address, email address, and telephone number for each.

(6) Consequences of Improper Form or Substance. The Secretary of State will review each complaint filed to determine whether the complaint:

- (a) States a violation of the Title; and
- (b) Complies with the other requirements of this Rule.

If a complaint fails to state a violation of the Title or does not otherwise comply with Rule requirements, then the Secretary of State shall dismiss the complaint without further action and notice of the dismissal will be provided to the Complainant(s). A Complainant whose complaint has been dismissed pursuant to this Rule may re-file the complaint only one time.

Author: Charles E. Grainger, Jr., Michael L. Jones, Jr., Meridith H. Blackburn, Andrew Mount

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820-2-5-.03 Standard Of Proof.

A determination of whether a violation of the Title has been established will be based on the preponderance of the evidence standard. The Complainant shall bear the burden of proving a violation of the Title by a preponderance of the evidence.

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820-2-5-.04 Right To Hearing.

A Complainant may request a hearing and must communicate the request in the filed complaint. A Complainant fails to exercise the right to request a hearing if the complaint does not clearly contain a request or if the request for a hearing is communicated in any other manner. If the Complainant exercises the right to request a hearing, the Secretary of State shall schedule and conduct the hearing pursuant to 820-2-5-.06.

Author: Michael L. Jones, Jr., Meridith H. Blackburn, Andrew Mount

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820-2-5-.05 Procedures If Complainant Fails To Request Hearing.

If a Complainant fails to exercise the right to request a hearing, the complaint shall be reviewed in the following manner:

(1) The Secretary of State shall direct the review and investigation of the complaint by an appropriate staff member, who shall issue a written report and recommendation within 60 days of the filing of the complaint.

(2) Upon review of the report and recommendation, additional information or further investigation may be directed by the Secretary of State. Additional information and, if applicable, a supplemental report and/or recommendation shall be promptly submitted.

(3) Within 90 days of the filing of the complaint, and after receiving a final report and recommendation, the Secretary of

State shall issue a final determination pursuant to 820-2-5-.09 or initiate alternative dispute resolution pursuant to 820-2-5-.08.

The final report and recommendation directed by the Secretary of State pursuant to this Rule will be the official record of the fact-finding process conducted in the event of no hearing.

Author: Michael L. Jones, Jr., Meridith H. Blackburn, Andrew Mount

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820-2-5-.06 Procedures If Complainant Requests Hearing.

(1) Hearing Officer. The Secretary of State may elect to serve as the Hearing Officer or appoint a Hearing Officer to conduct the hearing. The Hearing Officer shall be fair and impartial. A Hearing Officer may be appointed from within the Office of the Secretary of State, another state or local government agency, a list of eligibles maintained on a register by the State Personnel Department, or otherwise in accordance with applicable Alabama law and subject to requisite approval(s).

(2) Audio or Visual Recording. Hearings held pursuant to this Chapter shall either be video or audio recorded at the option of the Hearing Officer. No transcription shall be made as a matter of course. Any party or interested person may obtain a copy of the audio or video recording at his/her own expense. If a transcript is produced at the expense of a party, a copy of the same shall be filed with the Secretary of State and be included in the official record of the proceedings.

(3) Scheduling. A hearing shall be scheduled by the Hearing Officer as soon as practicable but no later than 45 days from the filing of the complaint.

(4) Notice. At least 5 days' advance notice of the date, time, and place of the hearing shall be provided by U.S. mail or electronic means to the Complainant(s) and the Respondent(s). Notice of the hearing will also be made online through the Open Meetings Act webpage (www.openmeetings.alabama.gov).

(5) Virtual Hearing. At the discretion of the Hearing Officer, the hearing may be held via telephone or video conference and, in such case, the notice shall so state and provide technical details for participating.

(6) Powers of the Hearing Officer. The Hearing Officer will preside over the hearing for the purpose of making factual determinations and recommendations. Generally, the Hearing Officer

shall hold broad discretion. The following is a non-exhaustive list of the Hearing Officer's powers:

- (a) Conduct a prehearing conference, if deemed appropriate;
- (b) Permit or deny the parties' requested witness(es) to testify;
- (c) Call a witness or witnesses to testify if deemed appropriate, even if said witness(es) were not requested by either party;
- (d) Exclude a potential witness or potential witnesses, unless a party to the proceedings, from being physically present at the hearing or accessing a virtual hearing prior to testifying;
- (e) Allow the parties the equal opportunity to present witness testimony, question, and/or cross examine (a) witness(es);
- (f) Limit questioning and/or cross examination of (a) witness(es);
- (g) Question and/or cross examine (a) witness(es) directly;
- (h) Allow parties to introduce documentary or other evidence through (a) witness(es);
- (i) Accept and exclude evidence;
- (j) In the case of consolidated complaints, require parties on either or both sides of the dispute to designate a single party to advocate for their side at the hearing; and
- (k) Exercise other such powers as necessary to conduct an efficient hearing.

(7) Conducting the Hearing. Fact finding hearings held pursuant to this Chapter are intended solely for the purpose of receiving evidence to refute or substantiate an alleged violation of the Title and shall proceed as follows:

- (a) Reading of all allegations contained in the complaint;
- (b) Presentation of evidence that substantiates the allegations, including witness testimony and other evidence by the Complainant(s);
- (c) Presentation of evidence that refutes the allegations, including witness testimony and other evidence by the Respondent(s);

(d) If desired by the Complainant(s), presentation of any rebuttal evidence, limited to witness testimony not yet presented or evidence, data, or other records not yet introduced; and

(e) Summation by the parties, if desired by them.

(8) Witnesses. The parties may submit to the Secretary of State a list of proposed witnesses along with their complaint. The list shall contain the first and last name and contact information of each witness, including a current mailing address, telephone number, and email address. The list shall also provide a brief description of each witness's relation to the allegations and their anticipated testimony. Parties are entitled to testify as witnesses and should indicate whether they intend to be included on the witness list in the complaint. The Hearing Officer may indicate which witnesses the parties will be allowed to call in advance of the hearing or the Hearing Officer may reserve the decision for the hearing. Regardless, the parties shall be responsible for notifying their respective proposed witnesses, if any, and coordinating their hearing attendance.

(9) Testimony and Evidence. In taking testimony and in considering the evidence, the Hearing Officer shall follow accepted legal procedure insofar as is practicable but shall not be bound by technical Rules of Evidence or Rules of Procedure observed in courts of law. The Hearing Officer may listen to hearsay testimony and may accept affidavits if such testimony is material and relevant to the issues.

(10) Legal Counsel. The parties may retain legal counsel at their own expense to represent them at the hearing; however, the parties shall be present at the hearing and may be required to provide testimony directly at the discretion of the Hearing Officer.

(11) Failure to Appear. If a Complainant fails to appear at the hearing, the right to a hearing is waived. In such event, the Secretary of State shall dismiss the complaint with prejudice pursuant to 820-2-5-.09.

(12) Post-hearing Briefs. At the discretion and only upon the request of the Hearing Officer, the parties may file written briefs after the conclusion of the hearing by a deadline established by the Hearing Officer. The Hearing Officer shall accept only one post-hearing brief from each side of the dispute. The filing of briefs shall not be the opportunity for the parties to present or otherwise address evidence that was not introduced at the hearing.

(13) Written Report and Recommendation. The Hearing Officer shall provide a written report summarizing the evidence received at the hearing to the Secretary of State no later than 15 days following the conclusion of the hearing. Evidence introduced at the hearing

as exhibits shall be incorporated into the report, as appropriate. The report shall determine whether the allegation(s) was/were supported by sufficient evidence and, if so, recommend an appropriate resolution or appropriate resolutions. The Hearing Officer's report will be the official record of the fact-finding process conducted in the event of a hearing.

Author: Michael L. Jones, Jr., Meridith H. Blackburn, Andrew Mount

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820-2-5-.07 Record.

The Hearing Officer's report and all exhibits attached to it or, in the event of no hearing, the report and recommendation submitted pursuant to Rule 820-2-5-.05, shall be combined with the following items or copies thereof, as applicable, to create the official record of the complaint proceedings to be maintained by the Office of the Secretary of State:

- (1) The complaint filed by the Complainant(s) and any supplemental submissions;
- (2) Submissions by the Respondent(s) in response to the complaint;
- (3) Written orders of the Secretary of State;
- (4) Pre-hearing correspondence between and among the Hearing Officer and the parties;
- (5) Copies of any public notifications made in connection to the complaint and/or hearing;
- (6) A copy of any transcript produced for any party and submitted in accordance with this Chapter;
- (7) Orders issued by the Hearing Officer to the parties or otherwise;
- (8) Responsive filings/post-hearing briefs submitted to the Hearing Officer by the parties;
- (9) Any record of alternate dispute resolution initiated by the Secretary of State; and
- (10) The Secretary of State's final determination issued pursuant to this Chapter.

Author: Michael L. Jones, Jr., Meridith H. Blackburn, Andrew Mount

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820-2-5-.08 Alternative Dispute Resolution.

(1) Initiation. If the Secretary of State is unable to render a final determination on a complaint filed pursuant to 820-2-5-.02 within 90 days, the Secretary of State shall immediately issue a written order initiating alternative dispute resolution, selecting 3 arbitrators to serve as a panel. Arbitrators shall be selected from the Arbitrator Roster maintained by the Alabama Center for Dispute Resolution.

(2) Notice. The Secretary of State shall notify the Complainant(s) and Respondent(s) of the initiation of alternative dispute resolution within a reasonable period of time following initiation.

(3) Duties of the Arbitration Panel. Within 45 days from initiation, the Arbitration Panel shall:

(a) Review the official hearing record compiled pursuant to 820-2-5-.07 or, in the event of no hearing, review the Rule 820-2-5-.05 report and recommendation;

(b) By majority vote, agree on an appropriate resolution or appropriate resolutions; and

(c) Issue a written recommendation to the Secretary of State as to the manner in which the complaint should be resolved.

(4) Limitation on Arbitration Panel. The Arbitration Panel shall be limited in its review to the Rule 820-2-5-.07 Record, which must include either the fact-finding hearing record compiled pursuant to 820-2-5-.06 or the report compiled pursuant to 820-2-5-.05, as applicable.

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Statutory Authority: Code of Ala. 1975, §17-2-3.

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820-2-5-.09 Final Determination.

(1) The Secretary of State may issue a final determination by written order:

- (a) Following the receipt of a written report and recommendation provided without a hearing pursuant to 820-2-5-.05;
 - (b) Following receipt of a report and recommendation provided by an appointed Hearing Officer pursuant to 820-2-5-.06; or
 - (c) In lieu of providing a recommendation, having served as the Hearing Officer directly, and after having conducted a hearing and compiled a Hearing Officer report pursuant to 820-2-5-.06.
- (2) The Secretary of State shall issue a final determination by written order:
- (a) After finding grounds for dismissal pursuant to 820-2-5-.02;
 - (b) After finding grounds for dismissal pursuant to 820-2-5-.06; and
 - (c) Following receipt of a written recommendation provided by an alternative dispute resolution panel pursuant to 820-2-5-.08.
- (3) Any written order of final determination by the Secretary of State shall address:
- (a) Whether a complaint is dismissed, with or without prejudice, and the basis; or
 - (b) Whether a violation or violations of the Title has/have occurred, and if so, prescribe a remedy or remedies as appropriate.
- (4) Effect of Final Determination. A final determination issued by the Secretary of State pursuant to this Rule has the effect of:
- (a) Dismissing a complaint, with or without prejudice; or
 - (b) Declaring a violation or violations of the Title and prescribing a remedy or remedies.
- (5) Limitation on Remedies. Prescribed remedies shall be directed to the improvement of processes and/or procedures governed by the Title and relevant Alabama Law. Any remedy so prescribed shall not provide for the:
- (a) Award of monetary damages;
 - (b) Payment of costs, penalties, or attorneys' fees;
 - (c) Invalidation of any vote or ballot; or

(d) Disqualification of any candidate.

(6) Notice and Publication. The final determination of the Secretary of State shall be posted on the website of the Secretary of State within 150 days of complaint filing. Notice of the same shall promptly be issued to the parties of record.

(7) Availability of Appeal. A final determination issued pursuant to this Chapter is not subject to appellate review in any state or federal court or any other forum.

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Statutory Authority: Code of Ala. 1975, §17-2-3.

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