



EVERGREEN FREEDOM FOUNDATION

September 5, 2008

Secretary of State Sam Reed
PO Box 40220
Olympia, WA 98504-0220

Re: Help America Vote Act Complaint by Robert Edelman

Dear Secretary Reed:

Pursuant to Washington Administrative Code Section 434-263-070, I request an administrative review of the August 20, 2008, initial decision by Administrative Law Judge Rebekah R. Ross to dismiss the HAVA complaint filed by Mr. Edelman. (Docket #2008-SOS-0001).

A review is necessary because Judge Ross's decision (1) misinterprets the Secretary of State's duties under HAVA, (2) ignores the evidence on record showing that underage voters have been and are being placed on the voter roll as active voters in violation of HAVA, (3) ignores the evidence on record showing that the Secretary's efforts to identify and remove underage voters from the statewide database have not been reasonable, (4) erroneously concludes that the practice of "pending" underage voter registrations does not conflict with HAVA and (5) misinterprets guidance from the Election Assistance Commission to allow the Secretary to expressly a HAVA mandate. These errors in the initial decision will decrease the accuracy of Washington's statewide voter database, decreasing the integrity of the 2008 general election.

Judge Ross misinterpreted the Secretary's duties under HAVA by concluding that HAVA placed no responsibility on the Secretary to prevent known ineligible voters from being placed on the statewide voter database. 42 USC § 15483 requires states to enact procedures to ensure that statewide voter databases are accurate, containing information on every legally registered voter in the state, and places the duty to operate and maintain an accurate database on the state's chief election officer. To say, as Judge Ross did, that these requirements do not place a duty on the Secretary to take reasonable measures to prevent ineligible voters from being added to the database contradicts both the plain language and spirit of this section of HAVA. Especially where the voters are easily-identifiable and the steps necessary to prevent their registration are simple to carry out, as in the present case. New evidence has also come to light as a result of information the Secretary provided to Judge Ross that indicates the Secretary's has been unreasonable in his actions to identify and remove even those underage voters who are already in the database.

Judge Ross ignored the evidence entered into the record showing that underage voters have been and are being placed on the voter roll as active voters when she concluded that the county auditors' ad hoc system of "pending" underage registrations has prevented any underage voters from actually being placed on the statewide voter database. She accepted without any supporting evidence the Secretary's assertion that most of the 16,000+ underage registrations found by Mr. Edelman only appeared to be active voters because state law requires the date of receipt of the registration to be entered in the database as the date of actual registration. Judge Ross reached this conclusion in spite of clear evidence provided by Mr. Edelman that scores of underage voters had unlawfully cast ballots and the Secretary's own admission that eighteen underage voters were presently entered as active voters in the state database. These things could not have happened if the Secretary's explanation was accurate, and new evidence has come to light since the initial decision was entered indicating that the Secretary's assertions were based on guesses, not known facts.

Judge Ross ignored the evidence entered into the record showing that the Secretary's efforts to identify and remove underage voters have not been reasonable. Evidence submitted by Mr. Edelman indicated that the Secretary has no effective procedures in place to regularly identify and remove underage voters, or even to prevent them from voting. The fact that the rate of underage voter registrations has risen since the creation of the statewide voter database is one such piece of evidence, another is that despite repeated warnings in 2007 to the Secretary by Mr. Edelman that underage voters were in the database as active voters, he did not prevent at least four underage voters from casting ballots in the February 19, 2008, presidential primary. And a secondary review of underage registrations in May-June 2008 showed that such voters were continuing to be added to the database and were not being removed by the Secretary.

Judge Ross erroneously concluded that the Washington practice of "pending" underage registrations was not in conflict with HAVA's requirement that registration processing be expedited. Her interpretation of 42 USC § 15483(a)(1)(A)(vi) ignores the mandate that registration information be added into the state database "at the time the information is provided to the local official." There is nothing in that section or any other part of HAVA that would allow Washington's current practice of holding completed applications from underage voters for months before entering them into the database. HAVA's intent is for election officials to reject registrations by ineligible voters, but Judge Ross ignored this by recognizing only two alternatives for complying with HAVA's requirement to expedite registrations: either register the ineligible voter or delay entry with the "pending" system. Neither are lawful alternatives under HAVA and state law.

Judge Ross misinterprets guidance from the Election Assistance Commission to allow the Secretary to ignore a HAVA mandate. She ignored not only the plain language of HAVA, which she admitted is supportive of Mr. Edelman's complaint, but she also ignored the plain language of the Election Assistance Commission's guidance, which interprets 42 USC § 15483(b)(4)(A) to not apply to state voter registration forms. But the EAC guidance correctly does not exempt states from using the mandated HAVA statements on registration forms they are using to comply with the National Voter Registration Act. Washington does not use a separate

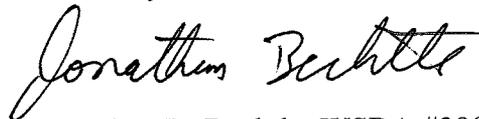
form for complying with NVRA, and thus its mail-in registration form is subject to the requirements of 42 USC § 15483(b)(4)(A).

Based on these errors, we request that the initial decision be reversed and the Secretary be required to remedy his violations of the Help America Vote Act in time to ensure the accuracy and integrity of the 2008 general election.

Under the provisions of WAC 434-263-070, an administrative review will be conducted by “the secretary, the assistant or deputy secretary, or the director of elections.” But as Mr. Edelman’s complaint concerns the actions of the Secretary and his elections staff, none of these individuals are neutral in this matter. As per RCW 34.05.425, therefore, we ask that all of these individuals be disqualified for prejudice and a neutral presiding officer be appointed to conduct the review.

We note that the time constraints dictated by WAC 434-263-070 are very tight, and therefore are prepared to quickly submit a full statement of our “view of the matter” with new supporting evidence in time for the reviewing officer to complete his or her final determination.

Sincerely,

A handwritten signature in black ink that reads "Jonathan D. Bechtle". The signature is written in a cursive style with a large initial 'J' and 'B'.

Jonathan D. Bechtle, WSBA #39074
Representative for Complainant Robert Edelman