

**DEPARTMENT OF THE SECRETARY OF STATE
BUREAU OF CORPORATIONS, ELECTIONS AND COMMISSIONS
DIVISION OF ELECTIONS AND COMMISSIONS**

**Chapter 510: ADMINISTRATIVE COMPLAINT PROCEDURE FOR TITLE III OF THE
HELP AMERICA VOTE ACT OF 2002 (HAVA)**

SUMMARY: This rule establishes an administrative complaint procedure as required by the Help America Vote Act of 2002 (HAVA). The rule describes the procedure for the Secretary of State to follow in resolving complaints of alleged violations of Title III of HAVA.

§1. Definitions.

1. “Complainant” means the person who files a complaint under this chapter.
2. “Federal election” means a primary or general election in which a federal office appears on the ballot.
3. “Respondent” means any state or local election official whose actions or inactions are alleged, in a written complaint filed as provided in this chapter, to be in violation of Title III of the Help America Vote Act of 2002.
4. “Title III” means Title III of the Help America Vote Act of 2002, Public Law 107-252, 116 Stat., 1666 (2002), codified at 42 United States Code, sections 15481-15485.

§2. Scope.

1. Complaints about the conduct of state elections or concerning violations of requirements outside the scope of Title III of HAVA are outside the scope of this rule.
2. The complaint procedure outlined in this rule is intended to supplement, not substitute for, the current processes by which the Secretary of State’s office receives and responds to complaints about election practices.

§3. Complaints.

1. **Who may file.** Any person who believes that a violation of any provision of Title III has occurred, is occurring, or is about to occur in a federal election may file a complaint as provided under this rule.
2. **Form of complaint.** A complaint shall be in writing, on a form provided by the Secretary of State, and shall contain the following information:
 - A. The full name, telephone number, mailing address, and email address if applicable, of the complainant;

- B. Identification of the local or state official (by name or by reference to the office) who is alleged to have violated Title III (the “respondent”);
- C. A description of the alleged violation of Title III that is alleged to have occurred, is occurring, or is about to occur, sufficient to apprise the Secretary of State and the respondent of the nature and specifics of the complaint;
- D. An indication whether the complainant wishes to request a hearing; and
- E. The signature of the complainant sworn to under oath or affirmation before a notary public or attorney at law.

The Secretary of State’s office will accommodate an individual’s disability and offer assistance, if appropriate, in this process.

- 3. **Time for filing.** A complaint shall be filed within 60 days after the occurrence of the actions or events that form the basis for the complaint or within 60 days after the complainant reasonably became aware of the alleged violation(s).
- 4. **Place of filing.** Complaints must be filed, either in person or by mail, with the Elections Division of the Department of the Secretary of State, Bureau of Corporations, Elections and Commissions.

(APA Office Note: The Elections Division of the Secretary of State is currently located in the Burton M. Cross State Office Building, 111 Sewall Street, Augusta, Maine. Mail should be addressed to: The Secretary of State, Elections Division, 101 State House Station, Augusta, Maine 04333-0101.)

- 5. **Withdrawal of complaint.** At any time, a complainant may withdraw a complaint by providing written notice to the Secretary of State.

§4. **Processing of complaints.**

- 1. **Tracking system.** Upon receipt of a complaint, the Secretary of State’s office shall immediately assign a tracking number to the complaint; and may consolidate any complaints that arise out of the same actions or events, raise common questions of law or fact, or involve the same respondents.
- 2. **Notification to complainant of incomplete filing.** If the complaint form is not properly completed or lacks the information necessary to process the complaint, the Secretary of State’s office shall notify the complainant that he/she must submit a corrected or completed complaint in order for it to be accepted for filing.
- 3. **Complaint accepted for filing.** Upon receipt of a completed or corrected complaint, the Secretary of State’s Office shall accept the complaint for filing.
- 4. **Notification to complainant.** The Secretary of State’s office shall notify the complainant of the tracking number assigned to the complaint, and the date upon which the complaint was accepted for filing.

5. **Notice to respondent and response.** The Secretary of State's office shall send a copy of a complaint that is accepted for filing to the respondent named or referred to in the complaint. The respondent must submit a written response to the Secretary of State's office and the complainant within 10 business days after receipt of the Secretary of State's notice.
6. **Preliminary review and dismissal of complaint.** Any complaint that is not timely filed or does not allege a violation of Title III of HAVA that has occurred, is occurring or is about to occur with regard to a federal election may be dismissed by the Secretary of State in a written determination. Prior to any dismissal, however, the complainant and respondent shall be notified, and if the complainant has requested a hearing on the complaint, the complainant shall have an opportunity to be heard on the proposed dismissal. Such a hearing is not an evidentiary hearing and may be held by telephone, provided it is electronically recorded.

§5. Hearings on complaints.

1. **Scheduling the hearing.** The Secretary of State's office shall schedule a hearing if one has been requested by the complainant or is deemed by the Secretary of State's office as necessary to resolve the complaint. The Secretary of State's office shall attempt to schedule the hearing at a time mutually convenient to all parties.
2. **Final written notice of hearing.** The Secretary of State's office shall provide final written notice of the date, time and place of the hearing to the complainant and respondent not less than 5 business days prior to the date of the hearing.
3. **Hearing officer.** The hearing shall be conducted by a hearing officer designated by the Secretary of State. The Secretary of State may delegate to the hearing officer authority to make a final determination of the complaint.
4. **Conduct of hearing.** Hearings on complaints are non-adjudicatory. At the hearing, the complainant shall have an opportunity to testify, to present other witnesses, documents or other evidence relevant to the allegations in the complaint, and to argue his/her position. The respondent shall also be given an opportunity to testify, present witnesses, documents or other evidence and to argue his/her position in response to the complaint. The Hearing Officer and staff from the Secretary of State's office may ask questions of both parties to elicit information relevant to a determination of the complaint. Any witnesses who testify shall be sworn.
5. **Ability to recess and continue hearing.** The hearing may be recessed and continued to a later time or day, at the discretion of the hearing officer, and may be held by telephone with agreement of both parties.
6. **Record of hearings.** All hearings shall be electronically recorded, and a record of the proceedings shall be compiled by the Secretary of State's office. The record of the proceedings shall include:
 - A. The electronic recording of the hearing;

- B. Any documents or other tangible items introduced into evidence at the hearing;
- C. The complaint and written response;
- D. All notices and correspondence between the Secretary of State's office, the hearing officer, the complainant and the respondent; and
- E. The results of any investigation conducted by Secretary of State's office staff in response to the complaint.

§6. Determinations of complaints.

1. **Determinations without hearing.** If no hearing has been requested by the complainant, then the Secretary of State or his/her designee may make a determination based on the written submissions of the complainant and respondent and any other relevant information obtained by the Secretary of State's office.
 - A. **Withdrawal of request for a hearing.** The complainant may withdraw his/her initial request for a hearing at any time or agree to resolve the complaint through an informal conference or based on written submissions.
 - B. **Notice and comment prior to final determination.** Prior to issuing a final determination of a complaint without hearing, the Secretary of State or his/her designee shall give notice to the complainant and respondent and offer them an opportunity to comment on the proposed determination within 5 business days.
2. **Determinations after hearing.** The Secretary of State or the designee who conducted the hearing shall issue a final, written determination of the complaint.
3. **Requirements for all determinations.**
 - A. **Deadline for final determination.** The final, written determination must be made no later than 90 days after the complaint was accepted for filing, unless the complainant consents to a longer period of time.
 - B. **Scope of the determination.** The final determination shall include findings of fact regarding the alleged violations, based on a preponderance of the evidence standard, and shall specify an appropriate remedy if a Title III violation is found. If no violation is found, then the final determination shall dismiss the complaint.
 - C. **Copies of determination.** The Secretary of State's office shall provide copies of the final determination to the complainant and respondent.

§7. Remedies.

1. **Remedy may include corrective action.** Remedies available under this procedure shall be directed to the improvement or correction of election procedures governed by Title III and must be consistent with state law. Remedies may consist of an order directing the

local or state election official to undertake or to refrain from certain actions or to alter certain procedures pertaining to federal elections.

2. **Remedy may not include damages or costs.** A remedy provided for under this rule may not include any award of damages or payment of costs, penalties or attorneys fees.
3. **Complaint procedure not exclusive.** This complaint procedure is not exclusive and is not intended to preclude the complainant from pursuing any other cause of action or seeking any other remedies they may have by statute or under the state or federal constitution.

§8. Alternative dispute resolution.

1. **Referral of unresolved complaint to arbitrator.** The Secretary of State shall establish a roster of arbitrators to provide alternative dispute resolution services pursuant to this rule. Arbitrators shall serve on a rotating basis. If the Secretary of State or his/her designee fails to make a final determination on a complaint within 90 days after the complaint was accepted for filing, then the matter must be referred to the next available arbitrator on the roster.
2. **Notice to parties of referral.** The Secretary of State's office shall give notice of the referral to the complainant and the respondent.
3. **Arbitrator to review the record and render determination.** The arbitrator shall review the record and conduct such further proceedings as he/she may deem necessary to resolve the complaint. The arbitrator shall render a determination on the complaint, following the requirements in Section 6, subsection 3 of this chapter, except that the determination of the arbitrator must be rendered within 60 days of the referral.

STATUTORY AUTHORITY: 21-A MRSA § 222 (Enacted June 3, 2003, as PL 2003, c. 407)

EFFECTIVE DATE:

July 26, 2003 - filing 2003-247