

HAVA Elections Complaint Form Statement of Facts

The Public Interest Legal Foundation (“Foundation”) hereby files this complaint against Todd County and Denise Gaida, the Auditor-Treasurer and Chief Election Official for Todd County, under Minnesota’s administrative complaint procedures alleging that a violation of Title III of the Help America Vote Act has occurred, is occurring, and will continue to occur absent relief. Specifically, Todd County and Denise Gaida are not complying with the requirement to eliminate duplicate names from the official list of eligible voters.

Legal Background

The Help America Vote Act

1. The Help America Vote Act (“HAVA”) was passed in 2002 and, among other things, requires states receiving HAVA grant money to implement “a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State and assigns a unique identifier to each legally registered voter in the State.” 52 U.S.C. § 21083(a)(1)(A).
2. This “computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the State.” 52 U.S.C. § 21083(a)(1)(A)(i). The computerized voter registration list further serves as the “official voter registration list for the conduct of all elections for Federal office in the State.” 52 U.S.C. § 21083(a)(1)(A)(viii).
3. HAVA requires that Minnesota’s computerized voter registration list be maintained so that “voter registration records in the State are accurate and are updated regularly.” 52 U.S.C. § 21083(a)(4).

4. HAVA specifies that the list maintenance performed should ensure that: “(i) the name of each registered voter appears in the computerized list; (ii) only voters who are not registered or who are not eligible to vote are removed from the computerized list; and (iii) duplicate names are *eliminated* from the computerized list.” 52 U.S.C. § 21083(a)(2)(B) (emphasis added).
5. HAVA sets forth the appropriate means by which to remove individuals from the list. 52 U.S.C. § 21083(a)(2)(A).
6. HAVA further specifies the *minimum* standard for accuracy of State voter registration records is that the list maintenance program “makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.” 52 U.S.C. §§ 21083(a)(4)(A), 21084.

Minnesota’s Voter Roll and List Maintenance Procedures

7. When implementing HAVA, Minnesota created the Statewide Voter Registration System (SVRS), which “contains ‘the name and registration information of every legally registered voter in the state.’” *McGrath v. Minn. Sec’y of State*, No. A11-613, 2011 WL 5829345, at *1 (Minn. Ct. App. Nov. 21, 2011).
8. Minnesota state law also mandates that “[l]ist maintenance must include procedures for *eliminating* duplicate names from the official list of eligible voters.” *See* Minn. Stat. Ann. § 201.171 (emphasis added).
9. Minnesota has set up a system of divided responsibilities to carry out its list maintenance programs and activities. *See* Order on Cross Motions for Summary Disposition, Office of Administrative Hearings, OAH 71-3500-38362 (July 29, 2022), 8.

10. The Minnesota Secretary of State creates and administers the SVRS, and provides information and reports to the county auditors to assist them in their functions. The county auditors bear the primary responsibility for entering, verifying, and changing information in the SVRS. *See* Minn. Stat. §§ 201.021 and 201.022; Minn. R. 8200.9305.
11. Even states not subject to the National Voter Registration Act of 1993, like Minnesota, are subject to HAVA and must “remove the names of ineligible voters from the computerized list in accordance with State law.” 52 U.S.C. § 21083(a)(2)(A)(iii).

Minnesota’s HAVA Complaint Procedure

12. Any state that accepts HAVA grant money—funds to be used for specific election activities related to federal elections—must establish a state-based administrative complaint procedure to remedy violations of HAVA’s Title III. 52 U.S.C. § 21112(a)(1).
13. Under HAVA, “any person who believes that there is a violation of any provision of title III [52 USCS §§ 21081 et seq.] (including a violation which has occurred, is occurring, or is about to occur) may file a complaint.” 52 U.S.C. § 21112(a)(2)(B).
14. Minnesota’s HAVA complaint procedure is set forth in Minn. Stat. Ann. § 200.04, and provides a specific form to be completed and filed with Minnesota’s Secretary of State’s Office.
15. Complaints against a county or county official are to be determined by the Secretary of State. Minn. Stat. Ann. § 200.04.
16. The Foundation is a “person” under HAVA.

Factual Allegations

17. Minnesota receives HAVA grant money. *See* Minn. Stat. Ann. § 5.30; U.S. Election Assistance Commission 2021 Grant Expenditure Report, July 2022, found online at

https://www.eac.gov/sites/default/files/paymentgrants/expenditures/EAC_2021_Grant_Expenditure_Report_FINAL.pdf (last accessed Sept. 25, 2022).

18. Minnesota has a voter registration requirement. *See* Minn. Stat. Ann. § 201.018.
19. In Minnesota, the Secretary of State “provides the centralized computer system that hosts the SVRS, the network and the software, but each county is responsible for voter registration and for updating SVRS.” *McGrath v. Minn. Sec’y of State*, No. A11-613, 2011 WL 5829345 at *2 (Minn. Ct. App. Nov. 21, 2011), review denied (Minn. Feb. 14, 2012).
20. Denise Gaida is the Auditor-Treasurer and Chief Election Official for Todd County. *See* Auditor-Treasurer, <https://www.co.todd.mn.us/divisions/property-records/auditor-treasurer/> (last accessed Sept. 26, 2022).
21. County officials must ensure that duplicate names are “eliminated” from its county’s voter registration list pursuant to 52 U.S.C. § 21083(a)(2)(B)(iii).
22. However, Todd County’s voter registration list contains 22 apparent duplicated registration records sets, meaning it appears that registrants are registered more than once in the county. *See* Attachment 1 – Spreadsheet of Apparent Duplicates.
23. These duplicates were identified by a data scientist, who implemented the following four different queries to identify potential duplicate sets: (1) identification of all records that share the exact same address information, and also have the exact same last name, first name, and year of birth; (2) identification of all records that share the exact same address information and also have the exact same first name and year of birth and have the last name of one record fully incorporated into the last name of the other record; (3) identification of all records that share the exact same address information and also have the exact same first name and year of birth and have the last name of one record be 2 characters

or fewer different than the last name of the other record, and; (4) all records that share the exact same address information and also have the exact same last name and year of birth and have the first name of one record be 2 characters or fewer different than the first name of the other record.

24. Using these methodologies, the Foundation identified 22 pairs of apparent duplicated registration sets in Todd County from the SVRS the Foundation received on August 21, 2022.
25. These duplicate registrations exist despite the Secretary of State's express direction in an email on January 12, 2022, to all county auditors that they must use available tools in the SVRS to eliminate duplicates, and recommendations from the Secretary of the State to review and merge duplicates monthly in the County Election Administration Guide.
26. Todd County and Denise Gaida are not eliminating duplicate names as HAVA requires. 52 U.S.C. § 21083(a)(2)(B).
27. The presence of duplicate registrants on the official list of eligible voters demonstrates that the county current list maintenance system does not make a reasonable effort to remove duplicate registrants pursuant to 52 U.S.C. § 21083(a)(4)(A).
28. Todd County and Denise Gaida are violating Title III of the Help America Vote Act by not maintaining the voter registration list as required by law.
29. Absent relief, the election on November 8, 2022, will be conducted using an inaccurate voter registration list.

Prayer for Relief

WHEREFORE, the Foundation requests a hearing on the matter before the Secretary of State, and prays for an expedited hearing and an entry of a judgment:

30. Declaring Todd County and Denise Gaida to be in violation of the Help America Vote Act by failing to eliminate duplicate names from the official list of eligible voters;
31. Declaring Todd County and Denise Gaida to be in violation of the Help America Vote Act by failing to make reasonable efforts to maintain a current and accurate voter registration list;
32. Ordering Todd County and Denise Gaida to immediately and thoroughly investigate the duplicated registration records identified by the Foundation and remove or merge confirmed duplicated records from the official list of eligible voters;
33. Ordering Todd County and Denise Gaida to implement and follow a reasonable and effective list maintenance program to cure the violations identified herein and bring the county's voter registration list into compliance with 52 U.S.C. § 21083;
34. Granting the Foundation such further relief as the Secretary of State deems just and proper, including all other injunctive relief available.