BEFORE THE SECRETARY OF THE STATE ELECTION BOARD
STATE OF OKLAHOMA

IN THE MATTER OF THE COMPLAINT	)	
ALLEGING VIOLATIONS OF TITLE III	)	
OF THE HELP AMERICA VOTE ACT	)	COMPLAINT NO. 2023-01
COMPLAINANT: SHANA BREAZEALE	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER

The above-styled complaint was heard by the Secretary of the State Election Board, Paul Ziriax, on Tuesday, January 24, 2023, pursuant to Oklahoma Administrative Code 230:35-9-21 *et seq.* All testimony was taken under oath. The hearing was electronically recorded, and will be maintained as part of the record. Complainant, Shana Breazeale, appeared for herself.

The Secretary made the following findings of fact and conclusions of law:

1. Complainant filed Complaint 2023-01 via certified mail with the Secretary of the State Election Board which was received on January 3, 2023, and requested a hearing pursuant to OAC 230:35-9-22.
2. Secretary Ziriax issued an Order for Hearing on January 9, 2023, setting the matter for 10:00 a.m. on Tuesday, January 24, 2023 and requesting proposed exhibits be provided no later than January 19, 2023.
3. Complainant submitted numerous proposed exhibits[1] both electronically and by hand-delivery on January 19, 2023.
4. As required by OAC 230:35-9-24, Secretary Ziriax reviewed the complaint and assigned a member of the State Election Board staff to investigate the allegations contained in the complaint. The specific investigatory procedures were determined in consultation with assigned legal counsel from the Office of the Attorney General.

[1] This included approximately 161 files sent electronically (Exhibits entitled 00 through 6A4) along with other materials that were utilized during the Complainant's oral presentation during the hearing.

5. An investigatory report was finalized on January 23, 2023, a copy of which was provided to the Complainant at the hearing. *See attached hereinafter referred to as "Investigation Report."*
6. The Secretary heard all the testimony, reviewed all the proposed evidence offered by the Complainant, and reviewed the investigation completed on the matter. Complainant's proposed exhibits were afforded the proper weight necessary given the Secretary's experience, technical competence, and specialized knowledge.[2]
7. In general, The Help America Vote Act of 2002 requires that a state's voting system provide individuals with the ability to vote in a private and independent manner. More specifically, as cited by the Complainant and as it relates to this complaint, a(2) requires that a state's voting system have the capability of producing a "permanent paper record with a manual audit capacity" which must be "available as an official record for any recount conducted with respect to any election in which the system is used." 52 USC 21081.
8. Oklahoma's voting system does produce such a paper record with a manual audit capacity. The system utilizes paper ballots, which are generated specifically by and for Oklahoma's voting system for each election conducted in this state, just as state law requires. 26 O.S. § 6-102.1. Those paper records, the hand-marked ballots (or ballots substituted for ATI audio ballot records), are secured after the election and made available for all manual

[2] The Complainant's exhibits contained numerous unsubstantiated claims about Oklahoma's voting system, including many that were false or misleading in nature. For example, Exhibits 00, 00a, 00b, 00c, and 00d purported to show that the Wagoner County Election Board posted absentee voting results prior to 7:00 p.m. on Election Day in violation of state law – yet the images in the exhibits show that *no election results are printed on the tapes.* Another example, Exhibit 43B (labeled "Mike Lindell Target geolocation data for Oklahoma"), purports to show that specific IP addresses were "targeted" in Oklahoma – yet Oklahoma Cyber Command *independently investigated and debunked these same claims in 2021*, noting that only five of the alleged "target" IP addresses are actually located in the State of Oklahoma and that none of these are associated with Oklahoma's election infrastructure. In a final example, graphs presented by the complainant in a slideshow (apparently based on Exhibit 4C1abc) purported to show alleged anomalies related to the 2022 Midterm election results, yet *the complainant admitted these were not based on actual results data obtained from the State Election Board*, but rather from a private firm that provides election results to certain media outlets – any alleged issues with a private firm's data are not evidence of issues with the unofficial or official election results tabulated by Oklahoma election officials.

recounts and post-election tabulation audits conducted by the county election boards according to state law. *See* 26 O.S. §8-112 *et seq.* and 26 O.S. §3-130.

9. Further, the Oklahoma Legislature has put in place strict chain of custody requirements for the preservation and maintenance of those paper records (ballots) so that recounts or post-election audits can be conducted to ensure the accuracy of the election and the voting system. *See for example* 26 O.S. Sections 7-134, 8-110, 14-115.4, 14-125, and 7-116.1.

10. Neither the Oklahoma statutes nor the Help America Vote Act make any mention of "Cast Vote Records," let alone a requirement to be created, maintained, provided to the public, or used as part of the audit process.[3] Complainant presented no evidence to support these allegations.

11. Therefore, the Secretary finds that none of the Complainant's first three enumerated complaints, even if true, would constitute a violation of Title III of HAVA considering the way in which Oklahoma's voting system generates, tabulates, counts, and maintains the permanent paper record of election – the ballots. In fact, the Secretary stipulated to the claim that the Complainant, as well as many other individuals, were denied access to so-called "Cast Vote Records" under the applicable portion of the Open Records Act because their disclosure "could reasonably be expected to be useful to persons with intent to interfere with the conduct of an election, voter registration or other election processes." *See Joint Determination attached to the Investigation Report.*

12. Finally, the Complaint alleges that Oklahoma's voting system does not meet the error rate standards established under Section 3.2.1 of the Voting Systems Standards issued by the

[3] The only references to "Cast Vote Records" in the Administrative Code relate to maintaining a printed paper record of an ATI audio ballot that is cast and using the printout to mark a substitute ballot for election night recounts. OAC 230:35-3-85.1 and 230:35-3-85.4.

Federal Election Commission which were in effect on the date of the enactment of HAVA (2002), but presented no evidence to corroborate this allegation.

13. Independent testing facilities confirmed that the error rate of the voting system Oklahoma purchased from Hart Intercivic does meet the standard required by HAVA. The Hart InterCivic system in use by the Oklahoma State Election Board was tested successfully thousands of times to the specification of near 1 error in 10,000,000 ballot positions, which is the highest end of the target error rate prescribed by 3.2.1 of the VSS. *See Affidavit of Assistant Secretary Rusty Clark.* Further, numerous recounts and post-election audits conducted in this state continue to confirm the accuracy of the voting system in Oklahoma even considering those errors attributable to an act of the voter. *See the Audit Reports attached to the Investigation Report.*
14. Accordingly, considering all the proposed evidence and testimony presented, the Secretary finds and concludes that there has been no violation of Title III of HAVA.
15. Therefore, Complaint 2023-01 is **DISMISSED**, and this shall constitute a final determination on this matter as it relates to all the proposed evidence and testimony reviewed as part of this hearing process.

2/2/23
Date

PAUL ZIRIAX
Secretary of the Oklahoma State Election Board

CERTIFICATE OF MAILING

I hereby certify that on the 2nd day of February 2023, the above and foregoing Findings of Fact, Conclusions of Law, and Final Order in the above-captioned matter was mailed to:

Shana Breazeale
33176 E. 696 Dr.
Wagoner, OK 74467

COMPLAINANT

PAUL ZIRIAX
Secretary of the ~~Oklahoma~~ State Election Board