IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

THE NATIONAL FEDERATION OF THE BLIND, THE NATIONAL FEDERATION OF THE BLIND OF FLORIDA, KATHERYN DAVIS, JOHN DAVID TOWNSEND, CHAD BUCKINS, PETER CERULLO, AND RYAN MANN, Plaintiffs, v. VOLUSIA COUNTY, and ANN McFALL, as Supervisor of Elections of Volusia County, Defendants.	Case No. 6:05-cv-997-ORL-28DAB

AMICUS CURIAE BRIEF OF HANDICAPPED ADULTS OF VOLUSIA COUNTY IN SUPPORT OF DEFENDANTS

I. INTRODUCTION

On July 5, 2005, Plaintiffs filed this suit to force Volusia County to purchase paperless touchscreen voting machines in advance of a municipal election scheduled for over three months in the future. Amicus Handicapped Adults of Volusia County, a broad-based advocacy organization mindful of the rights and interests of all of the disabled residents in Volusia County, strongly urge that Plaintiffs' demands be denied.

Purportedly in the name of blind voters of Volusia County, Plaintiffs are advocating for an unjustified, premature end to a deliberative process undertaken by the County. County officials have undertaken and continue to undertake a reasonable, legal effort to explore all possible alternatives in order to find a voting system that not only meets the bare minimum requirements of state law but that best protects the rights and interests of *all* County voters, disabled and non-disabled alike.

This effort should be applauded, not condemned.

As viable voting system options exist beyond the single alternative that Plaintiffs have endorsed, and a national, rather than local, nonprofit organization that represents only a small portion of the disabled community should not be able to substitute its technological preference for the informed judgment of duly elected Volusia County officials.

II. INTERESTS OF AMICUS CURIAE

Handicapped Adults of Volusia County ("HAVOC") is a private 501 (c) (3) non-profit corporation, made up of residents of Volusia County, that is a long-time advocate for all members of the disabled community. Founded in 1977, the group's original purpose was to sponsor athletic and social activities and to provide peer support for the physically disabled. Over the years, the role of HAVOC has changed to broadly advocate for individuals with all disabilities and has taken on a greater advocacy role in educating, changing attitudes, and raising awareness about barriers that challenge the disabled and their quality of life. Due to its stability and credibility, organizations such as the United Way and the Council on Aging call on HAVOC to assist disabled individuals with a wide range of issues and concerns that impact their daily lives such as ramps, mobility aids, and other areas in which it can offer insight, collaboration, or expertise. HAVOC also works closely with other disabled groups to address concerns of all disabilities.

HAVOC has been especially interested in the effort to bring to Volusia County voting equipment that is accessible, secure, and auditable. This case squarely impacts the interests of HAVOC members and the interests of the disabled population of Volusia who we seek to protect. As Plaintiffs (as well as Defendant Ann McFall) have repeatedly invoked the interests of the disabled as justification for their urgent demand for the purchase and implementation of paperless touchscreen voting machines, HAVOC believes that it is imperative for the Court to understand that Plaintiffs do not speak for

the disability community as a whole.

III. ARGUMENT

A. The County Has Not Violated the Law.

The County is acting responsibly by exploring all possible voting technology options before it commits to spending nearly $700,000 of non-renewable taxpayer money from the state of Florida. Nothing in the legal authority cited by Plaintiffs imposes the truncated voting technology evaluation and selection timeline that they demand. Indeed, Florida Statute § 101.56062, upon which Plaintiffs so heavily rely, merely demands that long-awaited accessibility requirements are met in the voting technology used in the next election.

Plaintiffs issue solemn warnings of an election at risk if the Court does not immediately grant them their relief, but in their Motion Plaintiffs provide no evidence to back their assertion.[1] Armed with little more than speculation, Plaintiffs demand that this Court ignore the County's pledges (issued most recently in its Opposition to Plaintiff's Motion) that it will be in compliance with state and federal law in time for the October election. The County's options to best protect all voters in the County should not be limited on such a basis.

B. The Paperless Touchscreen Machines are Flawed and Are Not a Viable Long-Term Solution.

Plaintiffs mistakenly seek to obtain advancement for the blind at the possible expense of the overall integrity of the vote. This is simply an unnecessary trade. The

[1] The only support that Plaintiffs point to is a declaration by former Supervisor of Elections Deanie Lowe that it would "ordinarily take approximately ten weeks for the County to implement 210 Diebold touchscreen voting machines." *See* Exhibit B in Support of Plaintiff's Motion For Preliminary Injunction at ¶11. Similarly, neither current Supervisor of Elections McFall (who has expressed a previous preference for the Diebold machines) nor Diebold (which has an interest in procuring Volusia County business) offer even the most cursory explanation as to how or why an equipment purchase date less than two-and-a-half months before the October election would adversely affect the conduct of the election.

Diebold AccuVote machines championed by Plaintiffs produce no contemporaneous paper trail or other tangible record that would allow the County to accurately and reliably audit or reconstruct an election. While Diebold lauds the supposed accuracy of its own machines, and the state has approved their use, county officials are allowed to, and indeed ought to, make their own decisions. Neither they nor the voters should not have to rely on the word of machine vendors that their non-transparent process, using proprietary software maintained by private technicians, are good enough for the public. Here, Diebold's DREs have a well-documented history of malfunction during elections, difficulty of use by election officials and both abled and disabled voters.

Because it believes that their vote should be secure as well as accessible, HAVOC strongly supports the use of a voting system that produces a voter-verified paper ballot. While it supports continuing, vigilant research to as quickly as possible extend the benefits of a voter-verified paper ballot system to all voters, including the blind, HAVOC strongly believes that such a system provides the best current hope to ensure a fair, accurate, and secure voting process. Nothing is accomplished by forcing insecure systems on all voters, disabled and not, as a method to help some subset of disabled voters vote better. The Volusia County officials concluded, rightly amici believe, that the Diebold system backed by Plaintiffs simply doesn't offer this fundamental protection. Their decision should be upheld.

The drive for voter-verified paper ballots does not represent idle concerns. Twenty-three states have now passed legislation requiring paper ballots, and fourteen more are considering such proposals. In addition, a bill in the U.S. House of Representatives that would impose a paper ballot requirement nationwide (and thus force Volusia County to spend future funds to upgrade) currently has attracted 143 co-sponsors. While a paper trail is not yet required in Florida, the County should be permitted, not to mention encouraged, to make decisions that provide the greatest chance that its elections will be free from error or manipulation.

C. The County Continues to Pursue Multiple Viable Technology Options for the October 11 Election

Luckily for County voters, there is no reason that the County should have to purchase the Diebold machines being pushed on it by Plaintiffs. The AutoMARK, a product that combines the benefits of both a touchscreen machine and a paper-based system, may soon be certified. Moreover, the AutoMARK includes better and more comprehensive accessibility features than the touchscreens offered by Diebold. However, even if the AutoMARK is *not* certified, the County has received an offer from its distributor that it would temporarily rent the County its own certified, accessible paperless touchscreen machines until the AutoMARK received its certification.[2] As Defendants correctly point out, even if it is not able to purchase its preferred machine in time for the October 11 election, "[t]he County will be in compliance with the federal and state HAVA requirements as required by law."[3]

IV. CONCLUSION

HAVOC is deeply concerned that the interests of *all* voters – disabled or not – could be compromised if the Court grants Plaintiffs their requested relief. Plaintiffs are risking both election security and auditability with its as well as future accessibility for a wider portion of the disability community with its ill-advised suit. HAVOC respectfully urges the Court to reject Plaintiffs' request and allow the County to get back to doing its job.

Dated: July 14, 2005

Respectfully submitted,

__/s/Jeffrey M. Liggio_____

[2] *See* Defendants' Opposition at pg.7.
[3] *Id.*

Jeffrey M. Liggio
Suite 3B
Barristers Building
1615 Forum Place
West Palm Beach, FL 33401-2320
(561) 616-3333
(561) 616-3266 (fax)

Cindy A. Cohn
Matthew J. Zimmerman
Electronic Frontier Foundation
454 Shotwell St.
San Francisco, CA 94119
(415) 436-9333 x127
(415) 436-9993 (fax)