UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

Case No. _____

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,

6:05-cv-997-ORL-28DAB

v.

VOLUSIA COUNTY, and ANN McFALL, as Supervisor of Elections of Volusia County,

Defendants.
_____/

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

INTRODUCTION

1. **The National Federation of the Blind ("NFB"), The NFB of Florida ("NFBF")** (collectively, the "Organizational Plaintiffs"), **Katheryn Davis, John David Townsend, Chad Buckins, Peter Cerullo,** and **Ryan Mann** (collectively, the "Individual Plaintiffs") seek injunctive and declaratory relief to require the Defendants to comply with the Americans with Disabilities Act, the Rehabilitation Act and Florida Statutes section 101.56062 (2005), by providing voting machines that are accessible to blind people in Volusia County.

2. Members of the Organizational Plaintiffs and the Individual Plaintiff are blind persons who are registered to vote in Volusia County.

Case No. _____

3. The Individual Plaintiffs and members of the Organizational Plaintiffs seek to vote in the same way that sighted Floridians cast their ballots – secretly and independently and at their local polling places.

4. Because the voting machines in Volusia County use ballots that must be visually read, blind voters in Volusia County cannot secretly and independently cast their votes. They are forced to tell third-parties their voting selections and rely on third-parties to cast their ballots.

5. Although the barriers imposed by Defendant's current voting systems and ballots

Case No. _____

PARTIES

9. Plaintiff NFB is the leading national organization of blind persons. NFB and its affiliates, including NFB, are widely recognized by the public, the Congress, executive agencies of state and federal governments, and the courts, as a collective and representative voice of blind Americans and their families. NFB promotes the general welfare of the blind by (1) assisting the blind in their efforts to integrate themselves into society on terms of equality and (2) removing barriers and changing social attitudes, stereotypes and mistaken beliefs held by sighted and blind persons concerning the limitations created by blindness that result in the denial of opportunity to blind persons in virtually every sphere of life, including education, employment, family and community life, transportation and recreation.

10. Plaintiff NFBF is the State affiliate of the NFB. It is a non-profit organization duly organized under the laws of Florida. The majority of NFBF's members are blind.

11. Plaintiff Katheryn Davis is a blind person who is registered to vote in Volusia County. She is an individual with a disability and a physical impairment under 42 U.S.C. §12102(2) and 29 U.S.C. § 794. Because Defendants have failed to implement accessible voting machines, Plaintiff Davis is unable to cast a ballot independently and secretly, unlike other Volusia County voters.

12. Plaintiff John David Townsend is a blind person who is registered to vote in Volusia County. He is an individual with a disability and a physical impairment under 42 U.S.C. §12102(2) and 29 U.S.C. § 794. Because Defendants have failed to implement accessible voting

Case No. _____

machines, Plaintiff Townsend is unable to cast a ballot independently and secretly, unlike other Volusia County voters.

13. Plaintiff Chad Buckins is a blind person who is registered to vote in Volusia County. He is an individual with a disability and a physical impairment under 42 U.S.C. §12102(2) and 29 U.S.C. § 794. Because Defendants have failed to implement accessible voting machines, Plaintiff Buckins is unable to cast a ballot independently and secretly, unlike other Volusia County voters.

14. Plaintiff Peter Cerullo is a blind person who is registered to vote in Volusia County. He is an individual with a disability and a physical impairment under 42 U.S.C. §12102(2) and 29 U.S.C. § 794. Because Defendants have failed to implement accessible voting machines, Plaintiff Cerullo is unable to cast a ballot independently and secretly, unlike other Volusia County voters.

15. Plaintiff Ryan Mann is a blind person who is registered to vote in Volusia County. He is an individual with a disability and a physical impairment under 42 U.S.C. §12102(2) and 29 U.S.C. § 794. Because Defendants have failed to implement accessible voting machines, Plaintiff Mann is unable to cast a ballot independently and secretly, unlike other Volusia County voters.

16. Defendant Volusia County is a political subdivision of the State of Florida. It regularly holds elections for voters to choose their federal, state, and local officials.

17. Defendant McFall is the Supervisor of Elections of Volusia County. As Supervisor of Elections, Defendant McFall is responsible for overseeing elections in Volusia

Case No. _____

County and ensuring that all aspects of the election process in Volusia County comply with the law. Defendant McFall is sued in her official capacity only.

FACTS COMMON TO ALL COUNTS

18. Individual Plaintiffs and members of the Organizational Plaintiffs want to cast their votes in Volusia County for the candidates of their choice, independently and secretly, in the same or similar manner as non-disabled voters.

19. In 1994, Volusia County began using the Accu-Vote optical scan voting system for all elections in the County. This system requires voters to read and mark a printed paper ballot.

20. Blind voters cannot secretly and independently cast a vote with the Accu-Vote system. They must have third-parties read the ballots to them. They then are forced to reveal their voting selections to third-parties and rely on third-parties to cast their votes for them.

21. The State of Florida has certified new "touchscreen" voting machines that enable blind voters to vote independently and secretly, like non-disabled voters.

22. Moreover, the State of Florida has provided Volusia County with a grant of $699,884 to purchase touchscreen machines so blind voters in Volusia County can vote independently and secretly, like non-disabled voters.

23. Volusia County has failed and refused to provide accessible touchscreen voting machines that would enable the Individual Plaintiffs and members of the Organizational Plaintiffs to vote in the same or similar manner as non-disabled persons.

24. Defendants know that their voting machines are inaccessible to blind voters.

Case No. _____

25. Even though accessible touchscreen voting machines are readily available and already in use throughout Florida, Defendants have failed to implement accessible voting machines.

26. Because the Defendants have failed to provide blind voters with accessible voting machines, the Individual Plaintiff and the organizational Plaintiffs are denied equal access to participate in a service, program and activity of the State of Florida, specifically, equal access to participation in the voting process.

27. Plaintiffs have no remedy at law and require injunctive relief to enjoin the Defendant from violating their civil rights.

CLAIMS FOR RELIEF

COUNT I
Violations of the ADA

28. Plaintiffs reallege and incorporate herein the allegations set forth in the preceding paragraphs.

29. The ADA and its implementing regulations, at 28 C.F.R. § 35.149, guarantee that no individual with a disability shall be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities.

30. The ADA and its implementing regulations, at 28 C.F.R. § 35.150, require public entities to operate each service, program, or activity in a manner that is readily accessible to and useable by individuals with disabilities.

Case No. _____

31. The ADA and its implementing regulations, at 28 C.F.R. §§ 35.151(a)-(b) require public entities to construct or alter their facilities so that they are readily accessible to and useable by individuals with disabilities.

32. Defendants have violated the ADA and discriminated against Plaintiffs by failing to provide voting machines that are readily accessible and useable by blind voters in the same or similar manner as sighted voters.

COUNT II
Violation of the Rehabilitation Act

33. Plaintiffs reallege and incorporate herein the allegations set forth in the preceding paragraphs.

34. Defendants have received and will receive or benefit from federal financial assistance.

35. Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, guarantees that no individual with a disability, on the basis of that disability, shall be excluded from participation in or be denied the benefit of the services, programs, or activities of a public entity.

36. Defendants are violating Section 504 of the Rehabilitation Act by excluding Plaintiffs from voting in the same manner as non-disabled persons in Volusia County.

Case No. _____

COUNT III
Violation of Florida Statutes § 101.56062

37. Plaintiffs reallege and incorporate herein the allegations set forth in the preceding paragraphs.

38. Florida Statutes section 101.56062 (2005) requires that all voting systems in Florida must include at lest one "accessible voter interface device installed in each precinct" that enables blind voters to vote independently and secretly.

39. Defendants' failure to provide at least one accessible voting machine at each precinct in Volusia County violates Florida Statutes section 101.56062.

40. Defendants' violation of Florida Statutes section 101.56062 is deliberate and knowing. Indeed, Defendants purposefully refused to purchase accessible voting machines despite their attorneys' advice that failure to obtain such machines was a clear violation of Florida Statutes section 101.56062 and despite the Florida Legislature making funds available to the Defendants precisely to facilitate their compliance with Florida Statutes section 101.56062.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court enter judgment in their favor as follows:

A. That the Court assume jurisdiction;

B. That this Court enter a declaratory judgment that Defendants have violated and continue to violate Title II of the ADA, Section 504 of the Rehabilitation Act of 1973, and Florida Statutes section 101.56062 (2005).

Case No. _____

C. That the Court issue a preliminary and permanent injunction requiring Defendants to take reasonable steps to ensure that accessible voting machines are in place and operational in time for the October 11, 2005 municipal election;

D. That the Court award compensatory and punitive damages pursuant to Florida Statutes sections 760.07 and 760.11(5) (2005), costs including a reasonable attorney's fee, and interest;

D. That the Court award Plaintiffs their reasonable attorneys' fees and costs, pursuant to 42 U.S.C. § 1988 and 12205 and 29 U.S.C. § 794;

E. That the Court accelerate any hearing for injunctive relief; and

F. That the Court enter such other and further relief as may be just, together with costs and disbursements of this action.

Dated: July 5, 2005

DE LA O & MARKO
Attorneys for Plaintiffs
3001 S.W. 3rd Avenue
Miami, Florida 33129
Telephone: (305) 285-2000
Facsimile: (305) 285-5555

By: _____
Miguel M. de la O (Trial Counsel)
Florida Bar No. 0822700
delao@delao-marko.com

Case No. _____

Brown, Goldstein & Levy, LLP
Attorneys for Plaintiffs[1]
120 E. Baltimore Street, Suite 1700
Baltimore, Maryland 21202
(410) 962-1030
Fax (410) 385-0869

By: _____
Daniel F. Goldstein
dfg@browngold.com
Martin H. Schreiber
mhs@browngold.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the Defendants by Hand via Process Server, and by Telecopy & Electronic Mail on Diego "Woody" Rodriguez, Esq., (Counsel for McFall) Marchena & Graham, 233 S. Semoran Blvd, Orlando, Florida 32807-3232 (407.281.8564) (dwrodriguez@mgfirm.com), and Daniel Eckert, Esq., (Counsel for Volusia County), County Attorney's Office, 123 W Indiana Ave, Deland, Florida 32720-4615 (386.736.5990) (deckert@co.volusia.fl.us), this 5th day of July, 2005.

By: _____
Miguel M. de la O

[1] Messers Goldstein and Schreiber are not admitted to practice in the State of Florida. A Motion for their Admission Pro Hac Vice, pursuant to Local Rule 2.02, will be filed promptly.