

FILED

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

CLERK, US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE, FLORIDA

American Association of People with
Disabilities, Daniel W. O'Conner,
Kent Bell, and Beth Bowen

CIVIL ACTION NO. 3:01-CV-1275-J2/FJ

Plaintiffs, on behalf of themselves and
others similarly situated

v.

Katherine Harris, as Secretary of State for the
State of Florida; L. Clayton Roberts, as Director,
Division of Elections; John Stafford, as
Supervisor of Elections in Duval County,
Florida; Warren Alvarez; Elaine Brown; Matt
Carlucci; Doyle D. Carter; Gwen Chandler-
Thompson; Lad Daniels; Reggie Fullwood;
Alberta Hipps; Jerry Holland; King Holzendorf;
Suzanne Jenkins; Pat Lockett-Felder; Jim
Overton; Lake Ray, III; Faye Rustin; Lynette
Self; Ginger Soud; Mary A. Southwell; and
Gwen Yates, as Members of the Jacksonville,
Florida City Council,

Defendants.

**COMPLAINT FOR INJUNCTIVE AND DECLARATORY
RELIEF AND DEMAND FOR JURY TRIAL**

NATURE OF ACTION

"The Administration ... supports improving access to polling places and ballot secrecy for people with disabilities The story of America ... is the story of ever-widening circle of inclusion ... That circle was widened ten years ago, when Congress passed the Americans with Disabilities Act. Because of the ADA, discrimination against a person with a disability is not just unkind or cruel or wrong: It is an infringement of federal law, and a violation of civil rights."
President George W. Bush, February 1, 2001.

1. By this action, blind and manually impaired voters in Duval County, Florida seek to ensure their basic right to cast a direct and secret ballot. Through the action and inaction of the bodies that govern the Duval County voting process, voters with visual and manual disabilities have been denied their right to vote for the candidates of their choice in the free and unimpaired manner enjoyed by non-disabled citizens. They have been denied that right because the voting equipment certified, used and recently purchased by Defendants is not accessible to voters with visual or manual impairments. The barriers imposed by that voting equipment vanish through the use of existing and readily available technology. Accessible voting equipment is the only method of ensuring that voters with visual or manual disabilities can exercise their right to cast a direct and secret ballot. Plaintiffs seek the Court's assistance in assuring that such equipment becomes a standard part of the voting process.

JURISDICTION AND VENUE

2. This action arises under the Americans with Disabilities Act ("ADA"), 42 U.S.C. Section 12133, Section 504 of the Rehabilitation Act of 1973 ("Rehabilitation Act"), 29 U.S.C. Section 794, and the Florida Constitution. Accordingly, subject matter jurisdiction is founded upon 28 U.S.C. Sections 1331 and 1343.

3. Venue is proper in this judicial district pursuant to 28 U.S.C. Sections 1391(b)(1) and (b)(2) because (a) some of the Defendants reside in this judicial district and all Defendants reside in Florida, and (b) a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred and are occurring within this judicial district.

THE PARTIES

A. Individual Plaintiffs

4. Plaintiff, Daniel W. O’Conner (“O’Conner”), a voter with manual impairments, is a citizen of and is registered to vote in Duval County, Florida.

5. Plaintiff, Kent Bell (“Bell”), a voter with visual impairments, is a citizen of and is registered to vote in Duval County, Florida.

6. Plaintiff, Beth Bowen (“Bowen”), a voter with visual impairments, is a citizen of and is registered to vote in Duval County, Florida.

B. Organizational Plaintiff

7. Plaintiff, American Association of People with Disabilities (“AAPD”), is a national nonprofit membership organization dedicated to promoting the economic and political empowerment of all people with disabilities; educating business and the general public about disability issues; and providing membership benefits, such as financial services and product discounts. A group of cross-disability leaders founded AAPD in 1995 to unite the diverse community of people with disabilities -- including their families, friends and supporters -- and to be a local and national voice for change in implementing the goals of the ADA, equality of opportunity, full participation, independent living, and economic self-sufficiency.

C. Defendants

8. Defendant, Katherine Harris (“Harris”), is the Florida Secretary of State. Defendant Harris is sued in her official capacity only.

9. Defendant, L. Clayton Roberts (“Roberts”), is the Director for the Division of Elections within the Florida Department of State. Defendant Roberts is sued in his official capacity only.

10. Defendant, John Stafford (“Stafford”), is the Supervisor of Elections for Duval County, Florida. Defendant Stafford is sued in his official capacity only.

11. Defendant, Warren Alvarez (“Alvarez”), is a Member of the Jacksonville City Council. Alvarez is sued in his official capacity only.

12. Defendant, Elaine Brown (“Brown”), is a Member of the Jacksonville City Council. Brown is sued in her official capacity only.

13. Defendant, Matt Carlucci (“Carlucci”), is a Member of the Jacksonville City Council. Carlucci is sued in his official capacity only.

14. Defendant, Doyle D. Carter (“Carter”), is a Member of the Jacksonville City Council. Carter is sued in his official capacity only.

15. Defendant, Gwen Chandler-Thompson (“Chandler-Thompson”), is a Member of the Jacksonville City Council. Chandler-Thompson is sued in her official capacity only.

16. Defendant, Lad Daniels (“Daniels”), is a Member of the Jacksonville City Council. Daniels is sued in his official capacity only.

17. Defendant, Reggie Fullwood (“Fullwood”), is a Member of the Jacksonville City Council. Fullwood is sued in his official capacity only.

18. Defendant, Alberta Hipps (“Hipps”), is a Member of the Jacksonville City Council. Hipps is sued in her official capacity only.

19. Defendant, Jerry Holland (“Holland”), is a Member of the Jacksonville City Council. Holland is sued in his official capacity only.

20. Defendant, King Holzendorf (“Holzendorf”), is a Member of the Jacksonville City Council. Holzendorf is sued in his official capacity only.

21. Defendant, Suzanne Jenkins (“Jenkins”), is a Member of the Jacksonville City Council. Jenkins is sued in her official capacity only.

22. Defendant, Pat Lockett-Felder (“Lockett-Felder”), is a Member of the Jacksonville City Council. Lockett-Felder is sued in her official capacity only.

23. Defendant, Jim Overton (“Overton”), is a Member of the Jacksonville City Council. Overton is sued in his official capacity only.

24. Defendant, Lake Ray, III (“Ray”), is a Member of the Jacksonville City Council. Ray is sued in his official capacity only.

25. Defendant, Faye Rustin (“Rustin”), is a Member of the Jacksonville City Council. Rustin is sued in her official capacity only.

26. Defendant, Lynette Self (“Self”), is a Member of the Jacksonville City Council. Self is sued in her official capacity only.

27. Defendant, Ginger Soud (“Soud”), is a Member of the Jacksonville City Council. Soud is sued in her official capacity only.

28. Defendant, Mary A. Southwell (“Southwell”), is a Member of the Jacksonville City Council. Southwell is sued in her official capacity only.

29. Defendant, Gwen Yates (“Yates”), is a Member of the Jacksonville City Council. Yates is sued in her official capacity only.

30. The Defendant Council Members listed in paragraphs 12 through 29 above are referred to herein collectively as the “Council”.

D. Class Action Allegations

31. Plaintiffs bring this action on their own behalf and on behalf of all other persons similarly situated, pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(2). The class consists of all persons who are citizens of Duval County, Florida, who are registered to vote in that county, and who have either visual or manual impairments that have prevented them from voting directly and secretly in the past and will do so in the future if the county fails to procure accessible voting equipment.

1. Subclasses

32. The class consists of two subclasses.

a. Plaintiffs with visual impairments

33. The first subclass consists of citizens of Duval County, Florida who are registered to vote in that county and who have visual impairments that prevent them from voting directly and secretly using either the current voting system or the voting system Duval County has decided to purchase.

34. On information and belief, Plaintiffs believe the subclass to number no less than 30,000 persons.

2. Plaintiffs with manual impairments

35. The second subclass consists of citizens of Duval County, Florida who are registered to vote in that county and who have manual impairments that prevent them from voting directly and secretly using either the current voting system or the voting system Duval County has decided to purchase.

36. On information and belief, Plaintiffs believe the subclass to number no less than 10,000 persons.

E. Class Action Prerequisites

37. The questions of law or fact common to the class include whether Defendants have violated the ADA, the Rehabilitation Act, and/or the Florida Constitution by denying class members full participation in the voting process by, among other things, failing to provide voting machines that are accessible and independently usable by persons with visual or manual impairments so as to allow them to vote directly and secretly.

38. The claims of the named Plaintiffs – that Defendants violate their rights under the ADA, the Rehabilitation Act, and the Florida Constitution by failing to provide voting machines accessible to and independently usable by persons with visual and manual impairments – are typical of all putative class members' claims.

39. The named Plaintiffs will fairly and adequately protect the interests of the class. The named Plaintiffs wish to exercise their right to a direct and secret ballot under the same conditions as non-disabled persons and seek to secure this right for themselves and all similarly situated persons. They have no interests that conflict with other class members. Plaintiffs' counsel is experienced in litigating class actions, including enforcement of the civil rights of people with disabilities.

40. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making injunctive and declaratory relief appropriate.

FACTS COMMON TO ALL COUNTS

A. Plaintiffs With Disabilities in Duval County, Florida

41. Individual Plaintiffs are all persons with disabilities who desire to participate fully and equally in the voting process in Duval County, Florida. They are legally entitled to vote as

non-disabled voters do - in person using accessible voting machines that permit them to cast direct and secret ballots.

42. Plaintiffs Bell and Bowen are voters with visual impairments. Because of their disabilities, they cannot cast a direct and secret ballot with the equipment currently in use or the equipment Duval County has decided to purchase. In order to cast their ballots, they must be assisted by a third party of their choosing or provided by the polling place. The third party reads the ballot to the voter. Then the voter chooses a candidate and tells the third party the choice. Finally, the third party must mark the ballot with the voter's choice. The voter has no way of assuring that the ballot was correctly cast. His or her vote is neither direct nor secret.

43. Plaintiff O'Conner is a voter with manual impairments. Because he cannot manipulate a writing instrument or touchscreen, he cannot cast a direct and secret ballot with the equipment currently in use or the equipment Duval County has decided to purchase. In order to cast his ballot, he must be assisted by a third party of his choosing or provided by the polling place. The voter chooses a candidate and tells the third party the choice. The third party must then mark the ballot with the voter's choice. His or her vote, therefore, is neither direct nor secret.

44. Plaintiff AAPD has members with visual and manual impairments who are citizens of and are registered to vote in Duval County, Florida. These members are required to vote under the conditions described in Paragraphs 42 and 43 above and, therefore, their votes are neither direct nor secret.

B. Voting Systems

45. In Florida, a county cannot purchase or use a voting machine until it has been certified by the Florida Department of State.

46. The Florida Department of State only authorizes counties to purchase and use two types of voting systems.

47. The two types of voting systems currently authorized are optical scan and touchscreen.

Optical Scan Machines

48. With an optical scan voting system, the voter selects a candidate by using a pencil or pen to darken the oval, rectangle, or square on the ballot. The ballot is then fed into an optical reader, which detects and counts the votes.

49. Optical scan voting systems are not accessible to voters with visual or manual impairments sufficient to ensure a direct and secret ballot.

50. If a county implemented the inaccessible optical scan system, voters with visual or manual disabilities could not complete, verify, and cast direct and secret ballots or otherwise vote under the same conditions as non-disabled persons.

Touchscreen Machines

51. With a touchscreen voting system, the voter uses a keyboard to select a candidate and then presses "vote." The ballot is registered and processed through the system much like a computer or ATM.

52. Touchscreen voting systems are not accessible to voters with visual impairments without using an audio option whereby the voter listens to the candidates' names on headphones and then selects a candidate on a key that is distinctively shaped.

53. Touchscreen systems also are not accessible to voters with manual impairments without the option of selecting a candidate by blowing into a puff stick device or using some other accessible switch technology.

54. If a county implemented the potentially accessible touchscreen system with the audio and puff stick modifications, voters with disabilities could complete, verify, and cast direct and secret ballots.

55. Duval County, Florida has decided to purchase approximately 300 optical scan machines and may purchase no more than three or four touchscreen voting machines to be located only at voting headquarters.

56. There are 147,000 people with disabilities in Duval County, Florida. On information and belief, there are no less than 40,000 voters with visual or manual impairments. The three or four touchscreen machines, even if purchased, will cover 268 precincts (upon redistricting approximately 300 precincts), 268 polling places, and all of Jacksonville, Florida, which is the largest land area city in the United States.

C. Denial of Rights

57. Defendants have failed to ensure that voters with visual or manual impairments may cast a direct and secret ballot or otherwise vote under the same conditions as non-disabled persons.

58. By failing to guarantee voters with visual and manual impairments a direct and secret ballot, Defendants have discriminated and continue to discriminate against Plaintiffs and others similarly situated on the basis of their disabilities.

1. Defendants Harris and Roberts

59. Defendants Harris and Roberts oversee elections, prescribe rules and regulations to implement election laws, and ensure that all aspects of the election process comply with Florida law.

60. Defendants Harris and Roberts must approve all voting systems used in any state or federal election in Florida. This approval is known as certification of voting systems.

61. A county can only purchase a voting system that Defendants Harris and Roberts have certified.

62. Currently, six optical scan systems and one touchscreen system are certified for purchase by the counties in Florida.

63. Only the touchscreen system is potentially accessible to voters with visual and manual impairments, and it is accessible to members of the Plaintiff class only if modified with the audio and puff stick options.

64. Plaintiffs have asked Defendants Harris and Roberts to certify only voting systems that are accessible to persons with visual and manual impairments.

65. Defendants Harris and Roberts have certified voting systems that are not accessible to voters with visual or manual impairments and, thus, have authorized counties to purchase inaccessible voting systems.

66. By certifying inaccessible voting systems, and thereby allowing counties to continue purchasing inaccessible voting systems, Defendants Harris and Roberts have denied Plaintiffs and others similarly situated their right to a direct and secret ballot and discriminated against Plaintiffs and others similarly situated based on their disabilities.

2. Defendants Stafford and Council

67. Defendants Stafford and Council are responsible for supervising all elections in Duval County, Florida, and for choosing and purchasing voting systems used in those elections.

68. Recently, Defendants Stafford and Council decided to purchase optical scan voting systems for Duval County.

69. Despite the knowledge that the optical scan voting system is not accessible and independently useable by voters with visual or manual impairments, Defendants Stafford and

Council decided to purchase optical scan systems and failed to provide voters with disabilities full access to the voting process.

70. By deciding to purchase optical scan systems, Defendants Stafford and Council perpetuated a voting system inaccessible to voters with visual and manual impairments, denied Plaintiffs and others similarly situated their right to a direct and secret ballot and discriminated against Plaintiffs and others similarly situated based on their disabilities.

71. Recently, Defendants Stafford and Council also decided that Duval County may purchase nor more than three or four touchscreen systems for Duval County.

72. Despite the knowledge that the touchscreen voting system is accessible and independently useable by voters with visual or manual impairments only with the audio and puff stick options or other switch modifications, Defendants Stafford and Council decided that Duval County may purchase nor more than three or four touchscreen systems to be located only at voting headquarters thereby depriving Plaintiffs and others similarly situated of their right to vote through a direct and secret ballot under the same conditions as non-disabled persons.

73. By failing to provide an accessible touchscreen machine in every precinct, Defendants Stafford and Council perpetuated a voting system inaccessible to voters with visual and manual impairments, denied Plaintiffs and others similarly situated their right to a direct and secret ballot, and discriminated against Plaintiffs and others similarly situated based on their disabilities.

74. Failure to implement a voting system that is compliant with the ADA, Rehabilitation Act, and the Florida Constitution by the next election would cause irreparable injury to voters with visual or manual impairments by preventing them from fully exercising their right to vote by direct and secret ballot in that election.

COUNT ONE
AMERICANS WITH DISABILITIES ACT

75. Plaintiffs reallege and incorporate herein the allegations set forth in Paragraphs 1 through 74 above.

76. Individual Plaintiffs are either visually or manually impaired. They are qualified individuals with a disability as defined in 42 U.S.C. § 12131(2) and 28 CFR § 35.104.

77. Defendant Katherine Harris is Florida Secretary of State, Defendant L. Clayton Roberts is Director of the Division of Elections, Defendant John Stafford is the Supervisor of Elections of Duval County, Florida, and Defendant Council are the entities responsible for elections in Duval County. They are public entities in their official capacities and are departments of a local government as defined in 42 U.S.C. § 12131(1) and 28 CFR § 35.104.

1. Denial of Participation

78. The ADA, 42 U.S.C. § 12132, and its implementing regulation at 28 C.F.R. § 35.130, require that no qualified individual with a disability, on the basis of that disability, be excluded from participation in or be denied the benefit of the services, programs, or activities of a public entity.

79. Defendants have discriminated and will continue to discriminate against Plaintiffs and others similarly situated because of their disabilities by excluding them from participation in and denying them the benefits of the Defendants' services, programs or activities, specifically, the right to vote in the same manner as non-disabled persons.

80. FLA. STAT. CH. 101.294 requires Defendants Harris and Roberts to certify all voting systems that are available for purchase by Florida counties.

81. FLA. STAT. CH. 101.5606(1) requires Defendants Harris and Roberts to decline to approve a voting system unless it permits and requires voters to cast a secret ballot.

82. By certifying voting systems that are inaccessible, Defendants Harris and Roberts have denied Plaintiffs and others similarly situated the benefit of voting by direct and secret ballot and, therefore, have not afforded Plaintiffs and others similarly situated the same opportunity to participate in the voting process as non-disabled voters.

83. FLA. STAT. CH. 101.294 authorizes Defendants Stafford and Council to purchase voting equipment that Defendants Harris and Roberts have certified.

84. FLA. STAT. CH. 101.28(1)(a) requires Defendants Stafford and Council to purchase voting equipment that allows voters to cast a secret ballot.

85. By deciding to purchase voting equipment that is not accessible to voters with visual or manual impairments, Defendants Stafford and Council have denied Plaintiffs and others similarly situated the benefit of voting by direct and secret ballot and, therefore, have not afforded Plaintiffs and others similarly situated the same opportunity to participate in the voting process as non-disabled voters.

86. Through the actions and circumstances described above, Defendants have violated and, unless enjoined, will continue to violate the ADA, 42 U.S.C. § 12132 and 28 C.F.R. § 35.130.

2. Failure to Ensure Accessible Design and Construction

87. 28 C.F.R. § 35.151 (a) and (b) requires that facilities constructed or altered for Defendants' use must be designed and constructed to be readily accessible to and usable by people with disabilities.

88. By certifying voting systems that are not designed and constructed to be readily accessible to and usable by voters with visual and manual impairments, Defendants Harris and

Roberts have failed to ensure that the Florida's new voting equipment will be designed and constructed to be readily accessible to and usable by people with disabilities.

89. By deciding to purchase voting equipment that is not accessible to voters with visual and manual impairments, Defendants Stafford and Council have failed to ensure that the Florida's new voting equipment will be designed and constructed to be readily accessible to and usable by people with disabilities.

90. Through the actions and circumstances described above, Defendants have violated and, unless enjoined, will continue to violate the ADA, 42 U.S.C. § 12132 and 28 C.F.R. § 35.151 (a) and (b).

3. Failure To Provide Auxiliary Aids And Service

91. 28 C.F.R. § 35.160(a) requires Defendants to take appropriate steps to ensure that voters with visual and manual impairments can communicate their vote as effectively as non-disabled voters.

92. By certifying voting systems that are not accessible to voters with visual and manual impairments, Defendants Harris and Roberts have failed to take appropriate steps to ensure that voters with disabilities are able to communicate their votes as effectively as non-disabled voters.

93. By deciding to purchase voting systems that deprive voters with disabilities of their right to vote directly and secretly, Defendants Stafford and Council have failed to take appropriate steps to ensure that voters with disabilities are able to communicate their votes as effectively as non-disabled voters.

94. 28 C.F.R. § 35.160(b)(1) requires Defendants to furnish appropriate auxiliary aids so that voters with disabilities have an equal opportunity to participate in and enjoy the benefits of voting by direct and secret ballot.

95. By certifying voting systems that do not have accessible components, Defendants Harris and Roberts have failed to furnish appropriate auxiliary aids so that voters with disabilities have an equal opportunity to participate in and enjoy the benefits of voting by direct and secret ballot.

96. By deciding to purchase optical scan voting systems that do not have accessible components, Defendants Stafford and Council have failed to furnish appropriate auxiliary aids so that voters with disabilities have an equal opportunity to participate in and enjoy the benefits of voting by direct and secret ballot.

97. 28 C.F.R. § 35.160(b)(2) requires Defendants to give primary consideration to requests of the individual with disabilities in determining the auxiliary aids and services to provide.

98. Plaintiffs have made specific requests of Defendants to certify and purchase only accessible voting systems that ensure Plaintiffs' right and the right of others similarly situated to cast a direct and secret ballot under the same conditions as non-disabled persons.

99. By ignoring Plaintiffs' request to certify only accessible voting systems, Defendants Harris and Roberts have failed to give primary consideration to the requests of voters with disabilities in determining the auxiliary aids and services to provide.

100. By disregarding Plaintiffs' pleas to ban optical scan and by deciding to purchase optical scan systems, Defendants Stafford and Council have failed to give primary consideration

to the requests of voters with disabilities in determining the auxiliary aids and services to provide.

101. Through the actions and circumstances described above, Defendants have violated and, unless enjoined, will continue to violate the ADA, 42 U.S.C. § 12132 and 28 C.F.R. § 35.160(a), (b).

COUNT TWO
ARTICLE VI OF THE FLORIDA CONSTITUTION

102. Plaintiffs reallege and incorporate herein the allegations set forth in Paragraphs 1-74 and 79-85 above.

103. Article VI, Section 1, of the Florida Constitution guarantees each citizen the right to a “direct and secret vote.” FLA. CONST. ART. VI, §1 (1968).

104. By certifying voting systems that are not accessible to voters with visual and manual impairments without third party assistance, Defendants Harris and Roberts have denied such voters (including Plaintiffs) the right to a direct and secret vote in violation of Article VI, § 1 of the Florida Constitution.

105. By deciding to purchase voting systems that prevent voters with visual and manual impairments (including Plaintiffs) from voting without third party assistance, Defendants Stafford and Council are perpetuating a system that denies such voters their right to a direct and secret vote.

106. FLA. STAT. CH. 101.051 permits voters with visual or manual impairments to cast their votes with the assistance of a third person who marks the ballot for the disabled individual. This statute violates the Florida Constitution because it prevents voters with disabilities from secretly and directly casting their own ballots.

107. FLA. STAT. CH. 101.5606 requires that each voting system approved by Defendant Harris and Defendant Roberts “permits and requires voting in secrecy.” This statute does not require a direct and secret vote and, thus, violates the Florida Constitution.

108. FLA. STAT. CH. 101.28 requires that all voting machines purchased “secure to the elector secrecy in the act of voting.” This statute does not require the purchase of voting equipment that ensures a direct and secret vote and, thus, violates the Florida Constitution.

109. Through the actions and circumstances described above, Defendants have violated, and unless enjoined, will continue to violate Plaintiffs’ rights under Article VI, § 1 of the Florida Constitution.

COUNT THREE
REHABILITATION ACT

110. Plaintiffs reallege and incorporate herein the allegations set forth in Paragraphs 1-74 and 79-85 above.

111. Individual Plaintiffs have either visual or manual impairments. They are qualified individuals with disabilities according to 28 C.F.R. Section 42.540(k) and 45 C.F.R. Section 84.3. They are registered to vote in Duval County, Florida.

112. Defendants are an instrumentality of a local government that is a recipient of federal financial assistance.

113. Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and its implementing regulation, 28 CFR § 42.503, require that no qualified individual with a disability, on the basis of that disability, be excluded from participation in or be denied the benefit of the services, programs, or activities of a public entity.

114. Defendants have discriminated and will continue to discriminate against Plaintiffs and others similarly situated because of their disabilities by excluding them from participation in

and denying them the benefits of the Defendants' services, programs or activities, specifically, the right to vote in the same manner as non-disabled persons.

115. By certifying machines that do not enable voters with visual and manual impairments to mark their own ballots without third party assistance, Defendants Harris and Roberts violate the Rehabilitation Act of 1973, Section 504, 29 U.S.C. § 794 and 28 CFR § 42.503.

116. By deciding to purchase voting machines that prevent voters with visual and manual impairments from voting without third party assistance, Defendants Stafford and Council have violated the Rehabilitation Act of 1973, Section 504, 29 U.S.C. § 794 and 28 CFR § 42.503.

117. Through the actions and circumstances described above, Defendants have violated and, unless enjoined, will continue to violate the Rehabilitation Act, Section 504, 29 U.S.C. § 794 and 28 CFR § 42.503. (a).

COUNT FOUR
DECLARATORY RELIEF

118. Plaintiffs reallege and incorporate herein the allegations set forth in Paragraphs 1-74, 76-101, 103-109, and 111-117 above.

119. Plaintiffs on behalf of themselves and all others similarly situated seek a declaratory judgment pursuant to 28 U.S.C. Section 2201 to resolve an actual and justiciable controversy as alleged above.

PRAYER FOR RELIEF

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

- A. That this Court assume jurisdiction;
- B. That this Court certify the case as a class action;
- C. That this Court declare that Defendants' actions and inactions violate the ADA, Rehabilitation Act, and Florida Constitution;
- D. That this Court declare voting machines that do not enable persons with visual or manual disabilities to cast direct and secret votes, without the assistance of another person, violate Article VI, Section 1, of the Florida Constitution.
- E. That this Court declare FLA. STAT. CH. 101.051 (2001), FLA. STAT. CH. 101.5606 (2001), and FLA. STAT. CH. 101.28 (2001) unconstitutional under the Florida Constitution.
- F. That this Court issue preliminary and permanent injunctions enjoining Defendants from continuing their illegal and discriminatory actions, including the purchase of new voting equipment that is inaccessible in violation of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and the Florida Constitution;
- G. That this Court issue such other relief as may be just, equitable and appropriate, including an award of reasonable attorneys' fees, litigation expenses and costs pursuant to 42 U.S.C. § 12205.

JURY TRIAL DEMAND

Pursuant to Federal Rule of Civil Procedure 38, Plaintiffs demand trial by jury of all issues so triable of right.

Respectfully submitted,



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