

2004 WL 1041536  
United States District Court,  
M.D. Florida.

AMERICAN ASSOCIATION OF PEOPLE WITH DISABILITIES; Daniel W. O'Connor; Kent Bell; and Beth Bowen, Plaintiffs, on behalf of themselves and others similarly situated,

v.

Glenda E. HOOD, as Secretary of State for the State of Florida; Edward C. Kast, as Director, Division of Elections; John Stafford, as Supervisor of Elections in Duval County, Florida, Defendants.

No. 3:01CV1275-J. | April 16, 2004.

#### Attorneys and Law Firms

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#### Opinion

#### **ORDER**

ALLEY, J.

\*1 This matter comes before the Court on the Motion for Stay Pending Appeal, filed by Defendant John Stafford, Supervisor of Elections in Duval County, Florida. Plaintiffs responded in opposition to the motion. The Court has considered the parties' submissions and finds as follows.

There are four prerequisites to obtaining a stay pending appeal:

It is, of course, well settled that in order to obtain a stay pending appeal the applicants must demonstrate (1) a substantial likelihood that they will prevail on the merits; (2) that they will suffer irreparable harm if the stay is denied; (3) that issuance of a stay will not substantially harm other parties to the proceeding; and (4) that issuance of the stay will not interfere with the public interest.

*Taylor Diving & Salvage v. U.S. Dept. of Labor*, 537 F.2d 819, 821 n. 8 (5th Cir.1976). Defendant contends it is entitled to a stay because each of these four factors weighs in favor of delaying imposition of the Court's ruling during the pendency of the appeal. Although the Court disagrees that each of these issues weighs heavily in Defendant Stafford's favor, the Court nevertheless finds that a stay is appropriate.

Defendant must first establish a substantial likelihood of success on the merits. Defendant asserts that he must only have presented a substantial case on the merits. This statement of the law is not entirely correct.

Ordinarily the first factor is the most important. A finding that the movant demonstrates a probable likelihood of success on the merits on appeal requires that we determine that the trial court below was clearly erroneous. *In re Grand Jury Proceedings*, 689 F.2d 1351, 1353 (11th Cir.1982) (per curiam). But the movant may also have his motion granted upon a lesser showing of a "substantial case on the merits" when "the balance of the equities [identified in factors 2, 3, and 4] weighs heavily in favor of granting the stay ." *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir.1981) (per curiam), *cert. denied*, 460 U.S. 1042, 103 S.Ct. 1438, 75 L.Ed.2d 795 (1983).

## **American Ass'n of People with Disabilities v. Hood, Not Reported in F.Supp.2d (2004)**

*Garcia-Mir v. Meese*, 781 F.2d 1450, 1453 (11th Cir.1986). The Court finds that under this lesser standard, a stay of the Court's prior order granting relief to Plaintiffs is warranted.

This case clearly presented a difficult issue, heavily litigated by the parties over a course of years. Defendant presented a substantial case on the merits, although the Court is unwilling to conclude that is the likely winner on the merits. However, given the nature of the relief fashioned by the Court, Defendant would suffer irreparable injury should a stay not be granted.

If Defendant Stafford purchases the mandated machines, clearly the County's budget will suffer significantly. Furthermore, purchase could moot the Defendant's appeal. Although Defendant would be free to remove the machines from use in the event that he prevails on appeal, once the machines are purchased, there is little or no likelihood that the County could recoup the monies expended on the accessible equipment. This harm would be irreparable.<sup>1</sup>

\*2 Although the Court finds that the Plaintiff's will suffer injury by the stay, the irreparable harm to the County's budget and the potential harm to its appeal are sufficient to overcome the Plaintiffs' interest. The status quo voting situation in Duval County is not optimal, however, Plaintiffs will not be denied the opportunity to cast ballots on behalf of their chosen candidates in the event of stay. The method in place is not the preferred one, however, their substantive right to vote will not be abrogated.

Finally, the public interest in this matter weighs in favor of granting the stay. Clearly the citizens of Duval County would be greatly impacted to the potential expenditure of monies to purchase voting machines that might be rendered useless in the event Defendant Stafford prevails on appeal. County budgets are zero-sum games. With only a finite amount to be spent on all County services, expending monies toward an effort that is subsequently determined to be unnecessary deprives the public of other government services, perhaps in areas of crucial importance. Although the Court feels there is a public interest in preserving the rights of all citizens, including Plaintiffs, the more pointed public interest in this case is fiscal, blue-lighted bridges notwithstanding.

As an aside, the Court notes that it finds Defendant's position with respect to this litigation and to the stay puzzling. Although HAVA might render the instant action moot in two years, during the interim period, Plaintiffs are citizens whose rights are entitled to protection. The Court hereby GRANTS Defendant's Motion to Stay, reluctantly.

### **Parallel Citations**

17 Fla. L. Weekly Fed. D 810

### **Footnotes**

<sup>1</sup> The Court takes issue with Defendant's repeated reference to the uncertified voting machines and the implication that he was an innocent bystander during the acquisition process for those machines. Defendant Stafford is solely responsible for having selected and purchased machines that had not yet been certified when other machines with similar capabilities had been certified by the State of Florida.