



DISABILITY RIGHTS NEW YORK



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TO: Jerry Hartman, Barbara McDowell and Gerald S. Hartman Foundation

FROM: Jennifer Monthie, Legal Director Disability Rights New York

DATE: April 15, 2021

RE: Interim Report, NYS Accessible Absentee Voting Litigation

Hernandez et. al. v. New York State Board of Elections et. al. (SDNY 20-cv-4003)

Case Summary

All New Yorkers deserve to vote safely and independently, especially during the COVID-19 pandemic. DRNY led a coalition of disability right groups -including the American Council of the Blind—New York, Inc., Center for Independence of the Disabled, New York, National Federation of the Blind of New York State, Inc., and several New York voters with disabilities, including Rasheta Bunting, Karen Gourgey, Keith Gurgui, and Jose Hernandez - in filing a lawsuit against the New York State Board of Elections (“NYS BOE”) for excluding New Yorkers with disabilities as their Absentee Ballot program expanded in response to COVID-19. Disability Rights Advocates and Brown Goldstein Levy are co-counsel in this lawsuit.

The lawsuit charges the NYS Board of Elections with discrimination against voters who are unable to independently and privately mark a paper ballot due to print disabilities, including blindness and low vision, or physical disabilities such as paralysis, dystonia, and tremors.

The lawsuit and preliminary injunction were filed on May 22, 2020. On June 3, 2020, the federal court approved an agreement between parties that provided voters a more accessible absentee ballot for the upcoming June 23 Primary Election. For the June Primary Election, voters with print disabilities had access to an electronically requested and delivered absentee ballot. This system proved problematic, so Plaintiffs sought a more functional system in advance of the November 3, 2020 General Election through a Second Motion for Preliminary Injection, filed on July 24, 2020. Defendants agreed to provide and the judge accepted relief similar to the accessible absentee ballot system in place in the Primary Election.

Case Progress

The Parties began meaningful settlement discussions in December 2020. The Parties have met twice monthly to discuss terms and resolutions, most recently on Friday, April 9, 2021 to discuss several remaining unresolved terms. The details of the settlement agreement are not yet finalized to publish. The Parties continue to work in good faith and will soon circulate a draft settlement agreement. We anticipate a settlement agreement to be finalized over the next few months.

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Immediate Impacts

For the 2021 elections, the Defendants have agreed to provide the Plaintiffs and other voters with print disabilities the same accessible absentee ballot that each County Board of Elections office provided during the 2020 General Election pending the final settlement agreement negotiation process. Parties came to this resolution absent motion practice. Plaintiffs across NYS will be able to request and receive an accessible absentee ballot through a Remote Access Vote by Mail (RAVBM) system or an accessible PDF ballot by email for the Primary and General elections in 2021.

Significant Case Decisions

Stipulation of Settlement for Preliminary Injunction for June 23, 2021 Primary Election, ECF 37

Preliminary Injunction Decision and Order, ECF 100

Media Coverage

<https://www.forbes.com/sites/peterslatin/2020/05/27/disability-equals-disenfranchisement-lawsuit-says/?sh=2af7280b4f5a>

<https://citylimits.org/2020/06/25/new-yorks-new-accessible-absentee-ballots-arent-accessible-enough-voters-say/>

<https://prospect.org/politics/new-york-voters-with-disabilities-left-out-of-absentee-voting/>

<https://cortlandvoice.com/2020/06/03/new-york-state-board-of-elections-unveils-accessible-absentee-ballot-application/>

Message of Gratitude

Funding from the Barbara McDowell and Gerald S. Hartman Foundation has allowed DRNY to pursue its fight for New Yorkers with disabilities to have accessible voting options during all upcoming elections. Ensuring the right to vote privately and independently requires time, funding, and strategic advocacy. DRNY is able to pursue this voting rights litigation because of the Foundation's generous funding and support.

Contact Information

For additional information related to this case, contact Christina Asbee, Program Director at DRNY, by email at Christina.Asbee@DRNY.org or by phone at 518.432.7861.

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