

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
Tuscaloosa Division**

DAVID RISSLING, ERIC PEEBLES, GAIL
CLAYTON, GILLEY PRESSLEY, and THE
NATIONAL FEDERATION OF THE
BLIND OF ALABAMA,

Plaintiffs,

vs.

MAGARIA BOBO *in her official capacity as
Absentee Election Manager of Tuscaloosa
County, Alabama*, SUSAN POTTS *in her
official capacity as Absentee Election Manager of
Mobile County*, and JACQUELIN
ANDERSON-SMITH *in her official capacity
as Absentee Election Manager of Jefferson
County, Birmingham Division*,

Defendants.

Case No.: _____

**COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF**

Mobile County: and Jacquelin Anderson-Smith, the Absentee Election Manager of Jefferson County, Birmingham Division—all use absentee ballot programs that require voters with vision and print disabilities to secure another person’s assistance to complete their absentee ballot. This requirement violates federal law.

2. Alabama is among the top eight states in the country for its percentage of residents with vision impairments (3.1%).³ This percentage exceeds the national average of 2.5%.

3. Blind and print disabled Alabamians, like U.S. citizens across the country, are proud to exercise the duty and right to vote for their elected representatives. Yet, when trying to vote in person, they face major barriers, including, but not limited to transportation, untrained poll workers, and inaccessible voting technology.

4. While Alabama law purports to make absentee voting accessible to voters who are blind or who have print disabilities, Defendants fall well short of their promise and legal obligation to do so. Defendants exclude blind and print disabled Alabamians from their absentee voting system because their absentee ballots are transmitted, marked, and returned entirely on paper and are thus inaccessible to those who are blind or have print disabilities and thus require assistance to complete these absentee ballots.

5. To vote privately and independently by absentee ballot, Plaintiffs and other voters with vision and print disabilities need an accessible electronic ballot that they can read and mark

³ Rehabilitation Research and Training Center on Disability Statistics and Demographics, *2023 Annual Disability Statistics Compendium 23*, https://disabilitycompendium.org/sites/default/files/user-uploads/v1-Accessible_2023_Annual_Disability_Statistics_Compendium_ALL_Final.pdf.

on their own computers or smart devices, using their own assistive technology. Accessible electronic ballots are available and widely used across the country.

6. In fact, Alabama law already makes absentee ballots available electronically to citizens living overseas and citizens in the military. Alabama also allows overseas and military voters to return their absentee ballots electronically. Thus, Defendants have the technological means available to provide ballots

10. Venue is proper in the Northern District of Alabama pursuant to 28 U.S.C. § 1391(b)(1) because a substantial part of the events and omissions that give rise to Plaintiffs' claims occurred in this district.

PARTIES

11. Plaintiff Eric Peebles, PhD, is registered to vote in Alabama. He resides in Mobile, Alabama and is eligible to vote absentee because he is a voter with a print disability.

12. Dr. Peebles has cerebral palsy and quadriplegia. These conditions make it difficult for him to read printed text and handle printed materials. He uses WYNN Wizard screen reader software on his computer to interact with electronic information.

13. Voting independently and privately is important to Dr. Peebles. Promoting the independence of people with disabilities is also important to him. Dr. Peebles is the Chief Executive Officer of the Independent Living Center of Mobile ("ILC Mobile"), which seeks to empower people with disabilities to live active, self-determined lives.

14. Dr. Peebles voted absentee in the 2020 general election but was unable to do so privately and independently because Mobile County does not provide an accessible electronic ballot for voters with print disabilities. To cast his absentee ballot, Dr. Peebles had to have his care aide read the ballot to him. He then had to divulge to his care aide his voting choices, and she filled out the paper ballot accordingly and mailed it.

15. Dr. Peebles was unable to vote in the 2022 general election, in person or absentee. Dr. Peebles attempted to vote in person, but because the Mobile County Board of Elections had changed several polling locations and his apartment complex did not update its information regarding the tenants' polling location, he went to the wrong polling location. He did not have time to find his correct polling location because ILC Mobile was a polling site for Mobile County, and as the CEO of ILC Mobile, he did not want to leave the site unattended as he

him while he wears headphones and then allows him to make his selections. When he votes in person, he requires assistance getting to the BMD and then bringing his ballot to the tabulator to feed it in after he has finished making his selections. While he is voting in person, he has to trust that the poll worker who assisted him in getting set up on the BMD moves far enough away so as not to observe his voting selections. Voting privately and independently is very important to him.

24. In June 2022, Mr. Rissling needed to vote absentee due to planned travel on the date of the election, but realized he would not be able to complete a paper absentee ballot at home without assistance from another person. Because he did not have someone available who he felt comfortable assisting him with voting absentee at home (i.e., someone he trusted to see his voting selections and to assist him properly to ensure his ballot was ultimately counted) he voted absentee in person at the office of the Tuscaloosa Circuit Clerk. He had to arrange for a friend to drive him, otherwise he would have paid for a rideshare service or utilized paratransit.

25. Mr. Rissling intends to vote in future elections, and his preference is to have the option of voting absentee privately and independently should another situation arise where he cannot make it to the polls because of travel or illness. Mr. Rissling is not comfortable with someone assisting him with voting absentee because he wants to keep his voting selections private.

26. Plaintiff Gilley Pressley resides in Tuscaloosa, Alabama. She has been legally blind since birth. She uses Job Access With Speech (“JAWS”) screen reader technology to read documents, websites, and other print materials provided in electronic format.

27. Ms. Pressley is registered to vote and has previously voted in person without assistance.

28. Ms. Pressley has voted absentee once before, but because the absentee ballot is in print, hardcopy format that must be completed in writing, she was forced to seek assistance to complete it. Ms. Pressley was deeply frustrated that she could not privately and independently vote absentee like sighted voters.

29. Ms. Pressley values the right to vote privately and independently. She plans to vote in every election in the future and wishes to do so privately and independently.

30. Plaintiff National Federal of the Blind of Alabama (“NFB-AL”) is the Alabama affiliate of the National Federation of the Blind. NFB-AL is a 501(c)(3) non-profit corporation with membership composed -

Pennsylvania Information Technology Policy ITP-ACC001;⁵ Kansas ITEC Policy 1210, Revision 3, Information and Communication Technology Accessibility.⁶

The Absentee Ballot Process

39. Alabama law guarantees “every voter in Alabama . . . the right to vote a secret ballot, and that ballot shall be kept secret and inviolate.” Ala. Code § 17-6-34.

nearly all Alabama voters could vote privately and independently by absentee ballot in 2020, blind and print disabled voters were still excluded from doing so because Alabama relied exclusively on paper absentee ballots for voters living in the U.S.

44. Alabama law specifically and explicitly permits voters with disabilities, such as Plaintiffs, to vote absentee. Ala. Code § 17-11-3.1.

45. Individuals who wish to vote absentee in Alabama must first request an absentee ballot from their county’s AEM. The application for absentee ballot for each Alabama county is online on the Secretary of State’s website. However, the ballot itself is provided only in hardcopy, paper format to absentee voters living in the U.S.

46. Alabama voters receive three envelopes with their absentee ballot: a secrecy envelope, an affidavit envelope, and a pre-addressed outer envelope. Once a voter receives the absentee or mail-in ballot and three envelopes in the mail, the voter must complete the following steps:

1. ~~Envelope 1 (the outer envelope) must be addressed to the voter's address in Alabama. To (0) 5 5 (4) 4 3 5 p 4 5 (0 4 6 5 - 7 5 5 5) e 2 e e 1 w (n) 2 o w e e e 1 n e 5 (w) 2 (w) 2 (w) e 5 (w) 2 (w) 6. 8 1 6 1 8 y L o d d r o f - 0 t 2 i 0 r - 1 (d p h)~~

Alabama's Absentee Ballot Process Is Not Accessible

47. Defendants' absentee voting processes allow a sighted individual to vote secretly, independently, and privately without having to reveal their voting choices to anyone or travel to a polling place on election day.

48. Blind individuals and those with print disabilities, including Plaintiffs, cannot read the printed text that appears on the absentee ballot, mark the paper ballot, or complete the multi-step ballot return process described above without assistance.

49. Because Plaintiffs and other Tuscaloosa, Mobile, and Jefferson County voters who are blind or print disabled must rely on the assistance of another person, they cannot vote secretly, privately, and independently using absentee ballots.

Mechanisms are Available to Provide Accessible Absentee Ballots.

50. Accessible alternatives to paper absentee ballots exist and are used in other states.

51. Implementing accessible electronic alternatives to paper absentee ballots would afford Plaintiffs an equal opportunity to vote secretly, privately, and independently via absentee ballot.

52. Technology is readily available that would provide Plaintiffs, and other voters with vision and print disabilities, the opportunity to cast their votes through accessible electronic absentee ballots. Accessible electronic absentee ballots enable individuals with vision and print disabilities to vote privately and independently by absentee ballot—as sighted individuals may do.

53. Remote Accessible Vote-By-Mail (“RAVBM”) systems provide an electronic version of the ballot that is readable and fillable using a voter's screen reader software.

54.

62. Military and overseas voters may receive their absentee ballots electronically through this system.

63. Overseas voters, including military voters who are outside the U.S., may also return their ballots electronically.

64. The ADA and Section 504 require these electronic ballots to be accessible for overseas voters with vision and print disabilities. They can be made accessible and available to voters with vision and print disabilities.

65. Alabama has refused to make its existing electronic ballots available to voters with vision and print disabilities who are eligible to vote absentee.

66. In June 2022, NFB-AL and individual Alabama voters, including Dr. Peebles, filed a lawsuit against the Alabama Secretary of State, seeking RAVBM availability for blind and print-disabled Alabama voters as a remedy. *See Nat'l Fed'n of the Blind of Alabama et al. v. Allen*, No. 2:22-cv-721-CLM (N.D. Ala. dismissed Mar. 15, 2023).

67. The Secretary moved to dismiss that lawsuit, arguing, in part, that the plaintiffs' injuries were traceable to and redressable by county AEMs instead.

68. The District Court agreed, granting the motion and dismissing the case, writing that "the AEMs 'remain lawfully entitled' to limit electronic ballot access to the groups named by the Alabama Legislature 'unless and until they are made parties to a judicial proceeding that determines otherwise.'" Mem. Op. 11 (Mar. 15, 2023), *Nat'l Fed'n of the Blind of Alabama et al. v. Allen*, No. 2:22-cv-721-CLM (N.D. Ala. dismissed Mar. 15, 2023), ECF No. 30.

COUNT I
Violation of Title II of the Americans with Disabilities Act
(42 U.S.C. § 12131–12134)

69. Plaintiffs incorporate the allegations in the preceding paragraphs as if fully set forth herein.

70. Title II of the ADA guarantees qualified individuals an equal opportunity to access the benefits of the services, programs, or activities of a public entity. 42 U.S.C. § 12132.

71. Title II mandates that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”

Id.

72. In providing aids, benefits, or services, public entities may not “[a]fford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others,” nor may public entities provide qualified individuals with disabilities “an aid, benefit, or service that is not as effective in affording equal opportunity” to obtain the same result or benefit as provided to others. 28 C.F.R. § 35.130(b)(1)(ii)-(iii).

73. Public entities must make reasonable modifications to their policies, practices, and procedures when necessary to avoid discriminating against individuals with disabilities. *Id.* § 35.130(b)(7)(i).

74. Furthermore, public entities “shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with

83. Defendants have failed to provide Plaintiffs and other blind and print disabled voters with an opportunity to vote by absentee ballot that is equal to the opportunity provided to voters that do not have disabilities.

84. Defendants have failed to make reasonable modifications to Alabama's absentee voting process by offering accessible electronic voting to Plaintiffs and other voters who are blind or print disabled.

85. Defendants have failed to provide Plaintiffs and blind voters auxiliary aids and services necessary to afford them equally effective communication with equivalent privacy and independence by providing accessible electronic absentee ballots.

86. Defendants have excluded and continue to exclude Plaintiffs and other voters who are blind or print disabled from participating in, and denied them the benefits of, or otherwise discriminated against them in, the service, program, or activity of absentee voting.

87. Accessible absentee ballot systems are readily available, and such systems would allow independent, private18 BDC 18 BDC adi tif 1(e ss1 (ab)61 (l) (l)-1.3i)-r 4(f.(l)-1P)2Tdeeb3 (o)1 (u)es (l)-1

90. Ms. Clayton, Mr. Risli(on)5 (a).78 (s)-1 (P)rslrPrsaa554.978ea51-2ea7-2c55 (i)-2caarlir (5)3i(i)-

96. Such federally funded entities may not, in providing aids, benefits, or services, “[d]eny a qualified handicapped person the opportunity accorded others to participate in the program or activity receiving Federal financial assistance.” 28 C.F.R. § 42.503(b)(1)(i).

97. Such federally funded entities must also “insure that communications with their ... beneficiaries are effectively conveyed to those having impaired vision and hearing,” *id.* § 42.503(e), and, if the entity has 15 or more employees, must “provide appropriate auxiliary aids to qualified handicapped persons with impaired sensory, manual, or speaking skills where a refusal to make such provision would discriminatorily impair or exclude the participation of such persons in a program or activity receiving Federal financial assistance,” *id.* § 42.503(f).

98. Defendant Bobo in her capacity as Tuscaloosa County’s AEM is an agency or instrumentality of the state of Alabama and receives federal financial assistance, and therefore is subject to the requirements of Section 504.

99. Defendant Potts in her capacity as Mobile County’s AEM is an agency or instrumentality of the state of Alabama and receives federal financial assistance, and therefore is subject to the requirements of Section 504.

100. Defendant Anderson-Smith in her capacity as Jefferson County’s AEM for the Birmingham division is an agency or instrumentality of the state of Alabama and receives federal Alabam .45 O.

vote absentee and are thus qualified individuals with disabilities entitled to the protections of Section 504.

104. Defendants have failed and continue to fail to provide voters with vision and print disabilities an opportunity to vote that is equal to the opportunity provided to other voters.

105. In refusing to implement an accessible electronic absentee ballot system, Defendants are withholding an auxiliary aid or service that would allow Plaintiffs equal access to absentee voting.

106. Accordingly, Defendants have discriminated and continue to discriminate against Plaintiffs with respect to absentee voting.

107. As a result of Defendants' actions and inactions, Plaintiffs have suffered and continue to suffer from discrimination and unequal access to Defendants' program, service, or activity of voting by absentee ballot.

108. Mr. Rissling, Ms. Pressley, Ms. Clayton, Dr. Peebles, and NFB-AL members, are at imminent risk of irreparable harm absent injunctive relief providing an accessible, electronic absentee voting option in upcoming elections.

109. Defendants' failure to provide blind and print disabled voters with an equal opportunity to vote by absentee ballot is an ongoing violation of Section 504.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court enter judgment in their favor and award them the following relief:

A. A permanent injunction prohibiting Defendants from violating the ADA and Section 504 and requiring Defendants to remedy the inaccessibility of their absentee ballot

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*Motions for Admission or Motions to Participate *Pro Hac Vice* will be filed after case opening.