



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: October 15, 2021

RE: Year-End 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 ongoing 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. Disability Rights Advocates and Brown Goldstein Levy are co-counsel in this lawsuit.

The lawsuit alleged the NYS Board of Elections discriminated 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 June 23, 2020 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 Injunction, 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 2020 Primary Election.

Case Progress

The Parties began meaningful settlement discussions in December 2020. After meeting regularly, the Parties have tentatively agreed to concrete settlement terms. The details of the settlement agreement are not yet finalized to publish. The Parties continue to work in good faith to resolve one remaining matter before executing the agreement. We anticipate a final settlement agreement publically available within the next few months.

Immediate Impacts

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Plaintiffs and voters with print disabilities have had access to an accessible absentee ballot request process and accessible absentee ballot during every election since filing this lawsuit. To date, over 200 ballots have been made accessible to New Yorker voters with disabilities.

Plaintiffs and voters with print disabilities across NYS can 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 upcoming General Election (November 3, 2021). Parties came to this resolution absent motion practice.

The HTML-based accessible absentee ballot request form is available for all voters outside of NYC here: <https://absenteeballot.elections.ny.gov/Home/Accessible>

For NYC voters with print disabilities, the accessible absentee ballot request form is located here: <https://nycabsentee.com/accessibility>

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 allowed DRNY to pursue its fight for New Yorkers with disabilities to have accessible voting options during the ongoing pandemic and all elections going forward. Ensuring the right to vote privately and independently requires time, funding, and strategic advocacy. DRNY has been able to zealously pursue this voting rights litigation because of the Foundation's generous funding and support.

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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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