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CLERK'S DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE, FLORIDA

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

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.

Jim Smith, as Secretary of State for the State of  
Florida; Edward Kast, as Director, Division of  
Elections; and John Stafford, as Supervisor of  
Elections in Duval County, Florida.

Defendants.

CIVIL ACTION NO. 3:01-CV-1275-  
J-21 TJC

**AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY  
RELIEF**

**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, visually and manually impaired voters in Duval County, Florida seek to ensure their basic right to cast independently a secret ballot in a manner the same or similar to that of non-disabled voters. Through the action and inaction of the bodies that govern the Duval County voting process, voters with visual disabilities and voters with manual

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disabilities have been denied their right to vote for the candidates of their choice in the free, unimpaired and independent manner enjoyed by non-disabled citizens. They have been denied that right because the voting equipment certified, used and recently obtained by Defendants is not accessible to voters with visual impairments and voters with 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 disabilities and voters with manual disabilities can exercise their right to cast independently a secret ballot in a manner the same as or similar to that used by non-disabled voters. 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 and Section 504 of the Rehabilitation Act of 1973 ("Rehabilitation Act"), 29 U.S.C. Section 794. 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. All individual Plaintiffs have physical impairments that substantially limit one or more of their major life activities.

5. Plaintiff, Daniel W. O'Connor ("O'Connor") is legally blind. He is a citizen of and is registered to vote in Duval County, Florida. Because of his visual impairment, Mr. O'Connor has been unable in past elections to use without third-party assistance the voting systems utilized by Duval County. As a result, Mr. O'Connor has been unable in those elections to cast independently a secret ballot in a manner the same as or similar to that used by non-disabled Duval County voters. Mr. O'Connor has voted in past elections in Duval County and intends to vote in future elections in Duval County. He wishes to be able to cast independently a secret ballot in a manner the same as or similar to that used by Duval County voters who are not disabled, but he has been and will be unable to do so on the voting systems utilized by Duval County.

6. Plaintiff, Kent Bell ("Bell") has congenital quadrarhyteamelia, a condition that results in blood cells not going to one's arms and legs during fetal development. As a result, Mr. Bell cannot manipulate a writing instrument with his hands and can only write with his mouth. He is a citizen of and is registered to vote in Duval County, Florida. Because Mr. Bell cannot use his hands, he has been unable in past elections to vote without third-party assistance in Duval County. As a result, Mr. Bell has been unable in those elections to cast independently a secret ballot in a manner the same as or similar to that used by non-disabled Duval County voters. Mr. Bell has voted in past elections in Duval County and intends to vote in future elections in Duval County. Mr. Bell wishes to be able to cast independently a secret ballot in a manner the same as or similar to that used by Duval County voters who are not disabled, but has been and will be unable to do so on the voting system utilized by Duval County.

7. Plaintiff, Beth Bowen ("Bowen") is legally blind. She is a citizen of and is registered to vote in Duval County, Florida. Because of her visual impairment, Ms. Bowen has

been unable in past elections to use the voting systems utilized by Duval County. As a result, Ms. Bowen has been unable in those elections to cast independently a secret ballot in the same or similar manner by which non-disabled Duval County voters cast their votes. Ms. Bowen has voted in past elections in Duval County and intends to vote in future elections in Duval County. Ms. Bowen wishes to be able to cast independently a secret ballot in a manner the same as or similar to that used by Duval County voters who are not disabled, but has been and will be unable to do so on the voting system utilized by Duval County.

**B. Organizational Plaintiff**

8. 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 businesses 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**

9. Defendant, Jim Smith (“Smith”), is the Florida Secretary of State. Defendant Smith is sued in his official capacity only.

10. Defendant, Edward C. Kast (“Kast”), is the Director for the Division of Elections within the Florida Department of State. Defendant Kast is sued in his official capacity only.

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

**D. Class Action Allegations**

12. 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 casting independently a secret ballot in a manner the same as or similar to that used by non-disabled Duval County citizens in the past, and will do so in the future, should the county fail to procure accessible voting equipment.

**1. Subclasses**

13. The class consists of two subclasses.

**a. Plaintiffs with visual impairments**

14. 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 casting independently a secret ballot in a manner the same as or similar to that used by non-disabled voters when voting on the voting system utilized by Duval County.

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

**2. Plaintiffs with manual impairments**

16. 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 manipulating a writing instrument, and, as a result, from casting independently a secret ballot in a manner the same as or similar to that used by non-disabled voters when voting on the voting system utilized by Duval County.

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

**E. Class Action Prerequisites**

18. The questions of law or fact common to the class include whether Defendants have violated the ADA and the Rehabilitation Act by discriminating against class members by, among other things, failing to provide voting machines that are accessible and independently useable by persons with visual impairments and persons with manual impairments so as to allow them to vote independently and secretly, as non-disabled voters do.

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

20. The named Plaintiffs will fairly and adequately protect the interests of the class. The named Plaintiffs wish to exercise their right to vote 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.

21. 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**

22. Individual Plaintiffs are all persons with either visual or manual disabilities who desire to participate fully and equally in the voting process in Duval County, Florida. They are

legally entitled to vote without discrimination as non-disabled voters do – in person using voting systems that permit them to cast independent and secret ballots.

23. Plaintiffs O'Connor and Bowen are voters with visual impairments. Because of their disabilities, they cannot independently cast a secret ballot with the voting equipment utilized by Duval County. In order to cast their respective ballots, they must be assisted by a third party of their choosing or by a poll worker. The third party reads the ballot to the voter. Next, the voter chooses a candidate and tells the third party his or her choice. Finally, the third party must mark the voter's ballot with the voter's choice. Plaintiffs O'Connor and Bowen have no way of assuring that their ballots are correctly cast. Their votes are neither independent nor secret, and cannot be cast in a manner the same as or similar to that used by non-disabled voters in Duval County.

24. Plaintiff Bell is a voter with manual impairments. Because he cannot manipulate a writing instrument or touchscreen with his hands, he cannot independently cast a secret ballot with the voting equipment utilized by Duval County. In order to cast his ballot, he must be assisted by a third party of his choosing or a poll worker. Plaintiff Bell chooses a candidate and tells the third party his choice. The third party must then mark the ballot with his choice. His vote, therefore, is neither independent nor secret, and cannot be cast in a manner the same as or similar to that used by non-disabled voters in Duval County.

25. Plaintiff AAPD has members with visual impairments and members with 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 23 and 24 above and, therefore, their votes are neither independent nor secret, and cannot be cast in the same or similar manner as non-disabled voters cast their votes.

26. Plaintiffs and others similarly situated who desire to vote in any election in Duval County must do so with third-party assistance under the conditions described in Paragraphs 23 and 24 above.

**B. Voting Systems**

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

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

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

**Optical Scan Machines**

30. 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 vote.

31. Optical scan voting systems are not accessible to voters with visual or manual impairments as they do not enable such voters to cast independently a secret ballot.

32. If a county implemented the inaccessible optical scan system, voters with visual or manual disabilities could not complete, verify, and cast independently secret ballots or otherwise vote under the same or similar conditions as non-disabled voters, and would therefore be subjected to discrimination.



**Touchscreen Machines**

33. 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 Automated Teller Machine.

34. 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 using distinctively shaped keys.

35. Touchscreen systems may be accessible to voters with manual impairments who use a mouth or head stick, but are not accessible to other voters with manual impairments without a sip and puff device or other accessible switch technology, by which they can select a candidate.

36. If Duval County implemented the potentially accessible touchscreen system with the audio and puff device modifications or other accessible switch technology, Duval County voters with manual impairments and voters with visual impairments could complete, verify, and cast independently secret ballots in a manner the same as or similar to that used by non-disabled voters.

37. Technology exists, and is being used successfully by other locales, to make voting machines accessible and independently useable by other voters with visual or manual disabilities that are similar or identical to the disabilities of Plaintiffs and others similarly situated.

**C. Denial of Rights**

38. Defendants have discriminated and continue to discriminate against Plaintiffs and other similarly situated voters with visual or manual impairments on the basis of their

disabilities by failing to ensure that such voters can vote under the same or similar conditions as non-disabled persons in Duval County. Generally, the discrimination includes: (a) that the voting equipment in use in Duval County, Florida is not readily accessible to Plaintiffs and others similarly situated; (b) the Defendants' failure to furnish appropriate auxiliary aids necessary to afford Plaintiffs and others similarly situated an equal opportunity to participate in and enjoy the benefits of the activity of voting; (c) the Defendants' failure to give primary consideration to or otherwise honor the requests of the Plaintiffs and others similarly situated with respect to the type of auxiliary aids and services necessary; and (d) the Defendants otherwise subjecting the Plaintiffs and others similarly situated to discrimination by requiring them to vote in a manner materially different from, and substantially more burdensome than, the manner by which non-disabled voters cast their votes in Duval County.

**1. Defendants Smith and Kast**

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

40. Defendant Smith is responsible for the supervision and administration of election laws. His duties include the interpretation and enforcement of election laws.

41. Under the direction and control of the Secretary of State, Defendant Kast is the Secretary of State's designee with respect to interpretation and enforcement of the election laws, providing technical assistance to the supervisors of elections on voting systems, and prescribing rules and regulations to carry out the election laws, among other responsibilities.

42. Defendants Smith and Kast must approve all voting systems used in any state or federal election in Florida. This approval is known as certification of voting systems.

43. A county can only purchase a voting system that Defendants Smith and Kast have certified.

44. Defendants Smith and Kast can certify voting systems that are presented to them directly by third parties and do not have to wait for a county to request certification of a particular voting system.

45. Defendants Smith and Kast are required to review the voting systems certification standards and ensure that new technologies are available for selection by the counties, and are required to review the voting system certification standards to ensure that new technologies are appropriately certified for all elections in a timely manner.

46. Currently, approximately fifty optical scan systems and thirteen touchscreen systems are certified for purchase by the counties in Florida.

47. Of all of the voting systems currently certified in Florida, only two touchscreen systems are potentially accessible to voters with visual and manual impairments.

48. Plaintiffs have asked Defendants Smith and Kast to certify only voting systems that are accessible to persons with visual impairments and persons with manual impairments.

49. Defendants Smith and Kast 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.

50. By certifying inaccessible voting systems, and thereby allowing counties to continue purchasing inaccessible voting systems, Defendants Smith and Kast have denied Plaintiffs and others similarly situated their right to vote in a manner the same as or similar to that used by non-disabled voters and have therefore discriminated against Plaintiffs and others similarly situated based on their disabilities.

## **2. Defendant Stafford**

51. Defendant Stafford is responsible for supervising all elections in Duval County, Florida, and for choosing and purchasing voting systems used in those elections.

52. Recently, Defendant Stafford decided to purchase approximately 300 optical scan voting systems for Duval County. These optical scan systems were used by Duval County during the September 2002 primary election.

53. Despite having knowledge that the optical scan voting system is not accessible and independently useable by voters with visual or manual impairments, Defendant Stafford decided to purchase optical scan systems and failed to ensure that Duval County voters with disabilities vote in a manner the same as or similar to that used by non-disabled voters in Duval County.

54. By deciding to purchase optical scan systems, Defendant Stafford has perpetuated a voting system that is inaccessible to Duval County voters with visual impairments and Duval County voters with manual impairments and has discriminated against such voters (including Plaintiffs and others similarly situated) based on their disabilities.

55. Recently, Defendant Stafford also placed three demonstration touchscreen systems with accessible components in the Office of Elections headquarters for Duval County for the September 2002 primary election. The machines were for demonstration purposes only and could not be used during the September 2002 primary election because they have not been certified by the Secretary of State.

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 touchscreen machines with accessible components, 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.

57. Despite having knowledge that the touchscreen voting system is accessible and independently useable by voters with visual or manual impairments only with the audio and puff device options or other switch modifications, Defendant Stafford provided only three touchscreen systems for demonstration purposes only at the Office of Elections headquarters for all disabled voters in Duval County. This decision by Defendant Stafford would require, among other things, manually and visually impaired voters in Duval County who wish to vote on an accessible voting machine to leave their designated precinct and travel to the Office of Elections' headquarters. This burden and impediment is not, and will not be, placed on non-disabled voters in Duval County.

58. By failing to provide an accessible touchscreen machine in every polling place, Defendant Stafford has perpetuated a voting system that is inaccessible to Duval County voters with visual impairments and Duval County voters with manual impairments, has denied such voters (including Plaintiffs and others similarly situated) their right to vote secretly and independently, and has therefore discriminated against such voters (including Plaintiffs and others similarly situated) based on their disabilities.

59. Failure to implement a voting system that is compliant with the ADA and the Rehabilitation Act by the next election will cause irreparable injury to Duval County voters with visual impairments and Duval County voters with manual impairments (including Plaintiffs and others similarly situated) by preventing them from fully exercising their right to cast independently a secret ballot in a manner the same as or similar to that used by non-disabled voters in Duval County.

**D. Recent Legislation**

**1. Florida Legislation**

60. In the Spring of 2002 the Florida legislature passed H.B. 1350, which amended certain aspects of the Florida Election laws. This legislation mandates that each precinct in Florida must provide one accessible voting machine and specifies the components and physical structure for such a machine.

61. H.B. 1350 does not become effective until one year after the Florida legislature has specifically appropriated funding for the legislation.

62. To date, the legislature has not appropriated the funding for H.B. 1350. Therefore, Duval County is not yet mandated by Florida law to provide one accessible voting machine in each precinct.

63. H.B. 1350 does not expressly declare or define the rights of Plaintiffs' (and others similarly situated) under the ADA or Rehabilitation Act. Defendants have already obtained new, inaccessible voting equipment that does not comport with the current requirements of the ADA and the Rehabilitation Act.

**2. Federal Legislation**

64. In October 2002, the U.S. Congress passed and President Bush signed into law H.R. 3295, which reforms many of the federal election laws.

65. This federal legislation mandates, among other things, that one accessible voting machine be installed in each voting precinct in the United States by the 2006 election.

66. The appropriations bill necessary to implement H.R. 3295 has not been passed by Congress.

67. H.R. 3295 does not expressly declare or define the rights of Plaintiffs (and others similarly situated) under the ADA or Rehabilitation Act. Defendants have already obtained new, inaccessible voting equipment that does not comport with the current requirements of the ADA and the Rehabilitation Act.

**COUNT ONE**  
**AMERICANS WITH DISABILITIES ACT**

68. Plaintiffs reallege and incorporate herein the allegations set forth in Paragraphs 1 through 67 above.

69. 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 C.F.R. § 35.104.

70. Defendant Jim Smith is Florida Secretary of State, Defendant Edward C. Kast is Director of the Division of Elections, and Defendant John Stafford is the Supervisor of Elections of Duval County, Florida. They are public entities in their official capacities and are instrumentalities of a state or local government as defined in 42 U.S.C. § 12131(1) and 28 C.F.R. § 35.104.

**1. Discrimination**

71. The ADA, 42 U.S.C. § 12132, and its implementing regulations 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 or be subjected to discrimination by any public entity.

72. The ADA and its implementing regulations at 28 C.F.R. § 35.150 require a public entity to make its services, programs, or activities “readily accessible” to and useable by individuals with disabilities.

73. Defendants have violated the ADA by discriminating against Plaintiffs and others similarly situated because of their disabilities by failing to provide voting machines that are readily accessible so that visually impaired voters and manually impaired voters can vote in the same or similar manner as non-disabled voters.

74. FLA. STAT. CH. 101.294 requires Defendants Smith and Kast to certify all voting systems that are available for purchase by Florida counties.

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

76. By certifying voting systems that are inaccessible, Defendants Smith and Kast have denied Plaintiffs and others similarly situated the benefit of independently casting a secret ballot, and, therefore, have discriminated against Plaintiffs and others similarly situated by not affording them the opportunity to participate in the voting process in a manner the same as or similar to that used by non-disabled voters.

77. FLA. STAT. CH. 101.294 authorizes Defendant Stafford to purchase voting equipment that Defendants Smith and Kast have certified.

78. FLA. STAT. CH. 101.28(1)(a) requires Defendant Stafford to purchase voting equipment that allows voters to cast a secret ballot.

79. By deciding to purchase voting equipment that is not accessible to voters with visual or manual impairments, Defendant Stafford has denied Plaintiffs and others similarly situated the benefit of independently casting a secret ballot and, therefore, has discriminated against them by not affording Plaintiffs and others similarly situated the opportunity to participate in the voting process in a manner the same as or similar to that used by non-disabled voters.



80. The optical scan voting system currently in use in Duval County requires voters with visual impairments and voters with manual impairments to disclose their votes to a third party, and denies such voters (including Plaintiffs and others similarly situated) the ability to cast their ballots independently and secretly, and to verify that their votes have been cast correctly, as non-disabled voters in Duval County are able to do.

81. Duval County plans to provide no more than three accessible voting machines in the Office of Elections' headquarters. If ever purchased by Duval County, these three machines will be the only mechanism by which Plaintiffs and others similarly situated could independently and secretly cast their ballots. To vote on these machines, Plaintiffs and others similarly situated will need to leave their homes and designated voting precincts and travel to the Office of Elections' headquarters. Further, as alleged herein, these three machines would potentially have to accommodate 40,000 voters in Duval County who have visual or manual impairments. These burdens and impediments are not and will not be placed on non-disabled voters in Duval County. By not assuring that Plaintiffs and others similarly situated have the opportunity to vote under conditions the same as or similar to those enjoyed by non-disabled voters, Defendant Stafford has discriminated against Plaintiffs and others similarly situated on the basis of their disabilities and has denied them the right to vote in a manner the same as or similar to that used by non-disabled voters.

82. As alleged throughout this Amended Complaint, Defendants have discriminated against Plaintiffs and other similarly situated Duval County voters with visual or manual impairments. The particular discrimination against Plaintiffs and other similarly situated voters manifests itself as follows: (a) being forced to reveal their votes to a third-party; (b) risking having (and actually having) their votes revealed by the third-party to other people; (c) risking

having (and actually having) the third-party attempt to influence their candidate choice; (d) having to vote in a manner that singles them out in the polling place; (e) having to wait long periods of time until a third-party is available to assist the voter; (f) having to incur the burden and impediment of traveling to the Office of Elections' headquarters to use the three accessible voting machines in the event Duval County ever purchases such machinery; and (g) having to suffer embarrassment and distress during the voting process for each of the foregoing reasons and the fact that they are required to vote in a manner materially different from, and substantially more burdensome than, the manner in which non-disabled voters cast their votes in Duval County.

83. 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**

84. 28 C.F.R. § 35.151 (a) and (b) requires that new equipment like voting machines be readily accessible to and useable by people with disabilities.

85. By certifying voting systems that are not designed and constructed to be readily accessible to and useable by voters with visual impairments and voters with manual impairments, Defendants Smith and Kast have failed to ensure that Florida's new voting equipment will be readily accessible to Plaintiffs and others similarly situated in Duval County.

86. By deciding to purchase voting equipment that is not accessible to voters with visual impairments and voters with manual impairments, Defendant Stafford has failed to ensure that Florida's new voting equipment will be readily accessible to and useable by Plaintiffs and others similarly situated in Duval County.

87. 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**

88. 28 C.F.R. § 35.160(a) requires Defendants to take appropriate steps to ensure that voters with visual impairments and voters with manual impairments can communicate their vote as effectively as non-disabled voters.

89. By certifying voting systems that are not accessible to voters with visual impairments and voters with manual impairments, Defendants Smith and Kast have failed to take appropriate steps to ensure that Plaintiffs and others similarly situated in Duval County are able to communicate their votes as effectively as non-disabled voters in Duval County.

90. By deciding to purchase voting systems that deprive Plaintiffs and others similarly situated in Duval County of their right to vote directly and secretly, Defendant Stafford has failed to take appropriate steps to ensure that such voters are able to communicate their votes as effectively as non-disabled voters in Duval County.

91. 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 independently voting by secret ballot.

92. By certifying voting systems that do not have accessible components, Defendants Smith and Kast have failed to furnish appropriate auxiliary aids so that Plaintiffs and others similarly situated have an equal opportunity to participate in and enjoy the benefits of independently voting by secret ballot.

93. By deciding to purchase optical scan voting systems that do not have accessible components, Defendant Stafford has failed to furnish appropriate auxiliary aids so that Plaintiffs and others similarly situated in Duval County have an equal opportunity to participate in and enjoy the benefits of independently voting by secret ballot as do non-disabled voters.

94. 28 C.F.R. § 35.160(b)(2) requires Defendants to give primary consideration to requests of individuals with disabilities in determining the auxiliary aids and services to provide.

95. 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 independently cast a secret ballot under the same conditions as non-disabled persons.

96. By ignoring Plaintiffs' request to certify only accessible voting systems, Defendants Smith and Kast have failed to give primary consideration to the requests of Plaintiffs and others similarly situated in Duval County in determining the auxiliary aids and services to provide.

97. By disregarding Plaintiffs' requests to ban optical scan and by deciding to purchase optical scan systems, Defendant Stafford has failed to give primary consideration to the requests of Plaintiffs and others similarly situated in Duval County in determining the auxiliary aids and services to provide.

98. 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**  
**REHABILITATION ACT**

99. Plaintiffs reallege and incorporate herein the allegations set forth in Paragraphs 1 through 67 and 69 through 98 above.

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

101. Defendants Smith and Kast are instrumentalities of a department of the Florida state government and that department is a recipient of federal financial assistance.

102. Defendant Stafford is an instrumentality of a local government that is a recipient of federal financial assistance.

103. Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and its implementing regulation, 28 C.F.R. § 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.

104. 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.

105. By certifying machines that do not enable voters with visual impairments or voters with manual impairments to mark their own ballots without third party assistance, Defendants Smith and Kast have violated and continue to violate the Rehabilitation Act of 1973, Section 504, 29 U.S.C. § 794 and 28 C.F.R. § 42.503.

106. By deciding to purchase voting machines that prevent Duval County voters with visual impairments and Duval County voters with manual impairments from voting without third party assistance, Defendant Stafford has violated and continues to violate the Rehabilitation Act of 1973, Section 504, 29 U.S.C. § 794 and 28 C.F.R. § 42.503.

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

**COUNT THREE**  
**DECLARATORY RELIEF**

108. Plaintiffs reallege and incorporate herein the allegations set forth in Paragraphs 1 through 67, 69 through 98, and 99 through 107 above.

109. Plaintiffs on behalf of themselves and all others similarly situated seek a declaratory judgment pursuant to 28 U.S.C. § 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 and the Rehabilitation Act;
- D. 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 and Section 504 of the Rehabilitation Act;

E. That this Court issue preliminary and permanent injunctions requiring Defendants to provide, in each polling place in Duval County, at least one voting system that is accessible to voters with visual impairments and voters with manual impairments;

F. 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.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing Amended Complaint were served by facsimile this 5th day of November, 2002, upon each of the parties listed below:

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