

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

MARY T. THOMAS, NEA RICHARD,
JEREMY RUTLEDGE, TRENA WALKER,
DR. BRENDA WILLIAMS and THE
FAMILY UNIT, INC.,

Plaintiffs,

v.

MARCI ANDINO, in her official capacity as
Executive Director of the South Carolina
State Election Commission; JOHN WELLS,
in his official capacity as Chair of the South
Carolina Election Commission; CLIFFORD
J. EDLER and SCOTT MOSELEY, in their
official capacities as members of the South
Carolina Election Commission; and HENRY
D. McMASTER, in his official capacity as
Governor of South Carolina,

Defendants.

Case No.: 3:20-cv-01552-JMC

BRIEF OF *AMICUS CURIAE*
PROTECTION AND ADVOCACY FOR
PEOPLE WITH DISABILITIES, INC. IN
SUPPORT OF PLAINTIFFS’
COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF

TABLE OF CONTENTS

Table of Authorities.....	2
Interest of Amicus Curiae.....	2
Summary of Argument.....	3
Argument.....	3
1. People With Disabilities Are Put At Particular Risk by COVID-19 and Have Maximum Incentive to Adhere to Social Distancing.....	4
2. The Challenged Requirements and the State’s Existing Absentee Voting Procedures Violate the Americans with Disabilities Act, the Voting Rights Act, and the Help America Vote Act.....	6
Conclusion.....	7

TABLE OF AUTHORITIES

FEDERAL STATUTES

Americans with Disabilities Act, Title II.....	6
Help America Vote Act	
§271(b)(1).....	6
§301(a)(3)(A).....	7
Voting Rights Act §4(e)(2).....	7

OTHER AUTHORITIES

U.S. Department of Justice, Civil Rights Division, <i>Disability Rights Section</i> , “The Americans with Disabilities Act and Other Federal Laws Protecting the Rights of Voters with Disabilities.....	5
--	---

I. INTEREST OF AMICUS CURIAE

Protection and Advocacy for People With Disabilities, Inc. (P&A) is an independent, statewide, nonprofit corporation that protects and advances the legal rights of people with disabilities.¹ Since 1977, P&A has been the recipient of federal protection and advocacy funds under the Developmental Disabilities Assistance and Bill of Rights Act of 1975. Currently, every state receives federal protection and advocacy funding under this Act and other expanded legislation, which authorizes assistance for all other disabilities including mental illness, traumatic brain injury, and physical/medical disabilities.

¹ No counsel for a party authored this brief in whole or in part, and no counsel or entity other than amicus curiae or its counsel have made any monetary contributions intended to fund the preparation or submission of this brief.

P&A is part of the National Disability Rights Network, the nonprofit membership organization for the federally mandated protection and advocacy systems. Collectively, the P&A network is the largest provider of legally based advocacy services to people with disabilities in the United States.

The Protection and Advocacy for Voting Access program was introduced in 2003 as part of the Help America Vote Act of 2002. P&A uses these funds to ensure people with disabilities have full and equal opportunities to vote. The goals of this program include increasing voter registration, nonpartisan voter education, and ensuring the accessibility of ballots and polling places.

P&A employs eight full time attorneys and ten disability advocates. Staff have long been considered experts in disability rights and law and have wide experience in the field.

This case concerns the ability of people with disabilities to cast their vote in the state of South Carolina. P&A has been charged, through the Developmental Disabilities Act and the Help America Vote Act, to protect that right and ability. P&A is well suited to provide assistance to the Court on whether the actions of the South Carolina Election Commission and the Governor impermissibly limit the constitutionally and legislatively protected right to vote.

II. SUMMARY OF THE ARGUMENT

The Challenged Requirements set forth in the complaint, namely the witness requirement and the excuse requirement, are barriers to voting. Plaintiffs contend that these requirements place restrictions on the absentee voting process that will result in unsafe voting conditions during the COVID-19 emergency. Amicus agrees with plaintiffs' position and adds that these unsafe voting conditions place voters with disabilities in particular danger.

Because of the refusal of the State Election Commission and the Governor to ease restrictions on absentee voting, people with disabilities will be forced from their homes in order to exercise their constitutional right to vote.

Further, the challenged requirements, in particular the witness requirement, violate the Americans with Disabilities Act, the Help America Vote Act, and the Voting Rights Act of 1965. The Challenged Requirements fail to consider the vulnerable position of voters with disabilities and ignore accommodation requirements enumerated in these laws.

The Challenged Requirements and the current absentee voting system also fail to take into consideration voters with certain types of disabilities, namely those with visual disabilities. Voting machines currently in use by South Carolina can read the ballot and instruction aloud. Absentee paper ballots do not offer a similar opportunity. As a result; people with these types of disabilities are particularly disenfranchised in the voting process.

Amicus respectfully requests that this Court grant the declaratory and injunctive relief sought by Plaintiffs.

III. ARGUMENT

1. People With Disabilities Are Put At Particular Risk by COVID-19 and Have Maximum Incentive to Adhere to Social Distancing.

According to the Centers for Disease Control, adults with disabilities are three times more likely than adults without disabilities to have heart disease, stroke, diabetes, or cancer than adults without disabilities.² In turn, these underlying conditions indicate an elevated risk of

² <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-disabilities.html>

severe illness from COVID-19.³ For these individuals, reducing social contacts and limiting possible exposure are key to maintaining health during the length of the pandemic.

Seventeen percent (17%) of the voting age population in South Carolina identifies as having a disability.⁴ According to information from the US Census Bureau, this translates to approximately 625,000 voters. Voters with disabilities have three options for casting a vote in South Carolina, voting inside at their polling place, voting curbside at their polling place, and voting by absentee ballot. Each of these options presents its own obstacles, especially in the context of the pandemic.

Even with the best efforts of the precinct staff, in person voting increases the likelihood of coming into contact with the virus while in line to vote, when communicating with election officials, and using shared apparatus like pens, blank ballots, and the touchscreen voting machine itself. While curbside eliminates the risk from standing in line, a voter still has to come into close contact with two poll workers, use a shared touchscreen, and pass a paper ballot back and forth. Absentee is clearly the safest of these options, but the Challenged Requirements and indeed the nature of the ballot itself limit who is able to use this option.

Some voters can vote only using the technology available in person on Election Day. People who are blind, have physical disabilities, or have low literacy can request assistance in marking their ballot from someone working at the precinct.⁵ In order to protect these high-risk individuals who must physically come to their precinct to vote, the election commission and state administration must take steps to reduce overcrowding at the polls on Election Day. Reducing

³ Id.

⁴ Resource Manual – Voting Rights For People With Disabilities in SC (June, 2016) <http://www.pandasc.org/wp-content/uploads/2016/07/Voting-Rights-for-People-with-Disabilities-in-SC-Final.pdf>

⁵ <https://www.scvotes.org/voters-disabilities>

barriers to absentee voting so more people may vote from the safety of their home is an excellent first step.

2. The Challenged Requirements and the State's Existing Absentee Voting Procedures Violate the Americans with Disabilities Act, the Voting Rights Act, and the Help America Vote Act.

Title II of the Americans with Disabilities Act guarantees people with disabilities full and equal opportunities to vote. According to guidance from the Department of Justice, this guarantee applies to every part of the voting process including but not limited to registration, accessibility of polling places, and casting of ballots, whether in person or using an early or alternative process.

Voters whose disabilities preclude them from reading or fully understanding a paper absentee ballot have no option other than appearing at their polling place on Election Day and possibly exposing themselves to the virus. Full and equal access to the mechanics of voting cannot mean that in order to vote a person with a disability such as Ms. Thomas or Ms. Walker must risk infection because their disabilities are not contemplated by the current absentee scheme. Because of such deficiencies in our system, people like the Plaintiffs may well have to vote in person on Election Day and there is little the State can do to remedy that before Election Day. The State can, however, eliminate barriers to our current absentee process to ensure that those who are able to vote from their homes are eligible to do so.

The ADA mandates that if a voting system is available to the public, it must be accessible for voters with disabilities. The Help America Vote Act refines this idea and says that people with disabilities, like the general public, have the right to vote privately and independently. No extra burdens are authorized. The Witness Requirement is a prima facie violation of this

mandate. In order to vote by absentee ballot in South Carolina, the voter must locate a witness to certify that ballot after the voter herself signs an affidavit affirming the voter's identity. No such third party input is required when voting in person.

Further, in order to read an absentee ballot a person with a visual disability would be required to have assistance in reading the ballot. When voting in person, someone with a visual disability is able to use the accessibility features of the voting machine to increase readability (adjusting font size and backlighting) or to listen to an audio ballot. If people with a visual disability wish to vote absentee, they cannot do so privately or independently. Early absentee voting is offered, but only at one location per county, the county election office. In some counties, this is a distance of more than 30 miles one way, making this an unfeasible option for voters in rural areas or voters without access to reliable transportation.

The Voting Rights Act prohibits conditioning the right to vote on the basis of literacy level or level of education. People with disabilities, especially those with vision and hearing related disabilities, are more likely to experience low literacy levels.⁶ If a person with a disability needs assistance reading the ballot and lives alone, the voter must seek assistance from someone outside his or her home or go to the polling place, either of which risks exposure to COVID-19.

IV. CONCLUSION

Proponents of the current absentee system believe it to be a sufficient alternative to voting in person for people with disabilities. For the majority of this population, absentee voting is the best, safest, and most accessible option. For that reason, the Challenged Requirements of excuse

⁶ McKee, Michael M., et al., Assessing Health Literacy in Deaf American Sign Language Users, J Health Commun. 2015 Oct; 20(0 2): 92–100.

absentee ballots and use of a witness are unreasonable. However, many with particular disabilities and living situations are not able to vote absentee. These people will be left with one option, to vote in person at their polling place on Election Day. By refusing to ease restrictions, the state ensures more people voting in person on Election Day, which in turn makes voting more dangerous for those who must vote in person.

People with disabilities, by virtue of their disability, face a bigger threat from COVID-19 than the general public. There is no way to totally eliminate the need for every person with a disability or underlying medical issue to cast a vote in person. The State does, however, have the ability to remove barriers to at home voting for the vast majority of registered voters in South Carolina. Allowing no-excuse absentee voting without a witness requirement is an excellent way to ensure voters that must vote in person on Election Day do not encounter crowds and that polling places are not overwhelmed while available poll workers try to adhere to social distancing and sanitation standards.

The State has a responsibility to safeguard public health. Elimination of the Challenged Requirements is a modest change in policy, which many of our neighbors have had in place for years. As we have seen already in other States, voting presents a very serious threat to the social distancing guidelines recommended by the CDC and other experts. The potential danger faced by people with disabilities who must leave their homes to exercise their right to vote is deeply concerning to P&A, and we urge the court to grant the relief requested by the Plaintiffs in this case.

Respectfully submitted,

/s/ David H. Zoellner

David H. Zoellner (Fed. Bar# 5821)
PROTECTION AND ADVOCACY FOR PEOPLE
WITH DISABILITIES, INC.
3710 Landmark Drive, Suite 208
Columbia, SC 29204
(843) 763-8571
Fax (843) 571-0880
zoellner@pandasc.org

*Attorney for Amicus Curiae Protection and
Advocacy for People with Disabilities, Inc.*