

# RELEASE AND SETTLEMENT AGREEMENT

## I. INTRODUCTION

1. This Agreement is made and entered into by and between the American Council of the Blind of Indiana, Indiana Protection and Advocacy Services Commission, Kristin Fleschner, Wanda Tackett, and Rita Kersh (Plaintiffs), and the Indiana Election Commission, the individual members of the Indiana Election Commission in their official capacities, the Indiana Secretary of State in her official capacity, the Indiana Election Division, and the co-Directors of the Indiana Election Division in their official capacities (Defendants), to resolve any and all claims, including but not limited to attorneys' fees and costs, brought by Plaintiffs in *American Council of the Blind, et al. v. Indiana Election Commission, et al.* in the United States District Court, Southern District of Indiana, Indianapolis Division as case number 1:20-cv-03118-JMS-MJD (the "Lawsuit").

2. Plaintiffs allege in the Lawsuit that Defendants have violated Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act (Section 504) by denying equal access to absentee voting programs, services, and activities for voters with print disabilities.

3. Defendants deny the allegations in the Lawsuit. The parties agree this Agreement and the furnishing of the consideration for this Agreement is not, and shall be not construed as, an admission by Defendants or any of their agents, employees, or representatives, current or former, of any wrongdoing or corruption, or evidence of any liability or unlawful conduct of any kind.

4. The parties wish to resolve this matter on mutually agreeable terms without the cost and uncertainty of continued litigation.

## II. AGREEMENT

1. **Accessible Voting Tool.** Defendants agree to provide Indiana counties with an absentee voting tool to allow qualifying voters with print disabilities to vote independently and without the assistance of another person in all future elections in compliance with the ADA and Section 504. Defendants agree that the Indiana Election Division will contract with a vendor to provide a remote accessible ballot marking tool to a WCAG 2.1 AA standard with an email return option (but not an internet-based return option) (hereinafter RAVBM) for all elections through June 30, 2025. The RAVBM will be offered to all Indiana counties for qualifying voters with print disabilities in the May 2023, November 2023, May 2024, November 2024, and May 2025 elections. The co-Directors of the Indiana Election Division agree to instruct the contracted RAVBM vendor to design the RAVBM tool in a manner that will allow voters with print disabilities to sign all electronic ballots and forms that contemplate a voter's signature independently and without the assistance of another person.

2. **Testing.** Defendants agree to permit Plaintiffs' experts, Plaintiffs, and other voters with print disabilities to test the RAVBM tool within a reasonable time in advance of the May 2023 primary.

3. **Guidance and Training.** The co-Directors of the Election Division agree to provide guidance to counties regarding the RAVBM tool. This guidance will

be offered for the May 2023, November 2023, May 2024, November 2024, and May 2025 elections. In addition, under the terms of the Division's 2023 contract with Democracy Live, Democracy Live will be obligated to provide training for state and county users.

4. **Voter Information.** Defendants will post information on the website of the Secretary of State regarding the availability of the Democracy Live tool for voters with print disabilities by March 31, 2023.

5. **Reporting.** Within 60 days of the May 2023, November 2023, May 2024, November 2024, and May 2025 elections, the co-Directors of the Election Division will provide the following information in electronic format to Plaintiffs:

- a. The number of voters who submitted an ABS-VPD application to request an accessible ballot using the RAVBM tool;
- b. The number of applications that were approved for voters requesting an accessible ballot using the RAVBM tool and the number of applications that were rejected for voters requesting an accessible ballot using the RAVBM tool;
- c. The number of absentee ballots sent to voters by counties using the RAVBM tool;
- d. The number of completed absentee ballots returned to counties by voters using the RAVBM tool;
- e. The number of completed and returned absentee ballots that were counted by the counties.

6. **No objection.** If Plaintiffs move to extend the Court's preliminary injunction in ECF 162 to the May 2023 primary election, Defendants agree not to object to Plaintiffs' request. The co-Directors of the Indiana Election Division agree to communicate information about the preliminary injunction to the legislative council for its consideration concerning a proposed legislative change for the 2023 regular session of the General Assembly.

7. **Attorneys' Fees and Costs.** The parties agree that Defendants shall pay a total sum of Five Hundred Thousand Dollars and No Cents (\$500,000.00) for attorneys' fees and costs no later than 60 days from the date the statutory approvals are received as required by paragraph 15 of the Agreement. Fees and costs paid to Disability Rights Advocates in the amount of Four Hundred Thousand Dollars and No Cents (\$400,000.00) shall be distributed to Disability Rights Advocates, c/o Stuart Seaborn, 2001 Center Street, 4th Floor, Berkeley, CA 94704. Fees and costs paid to Indiana Disability Rights in the amount of One Hundred Thousand Dollars and No Cents (\$100,000.00) shall be distributed separately to Indiana Disability Rights, c/o Tom Crishon, 4755 Kingsway Drive, Suite 100, Indianapolis, Indiana 46205. The sum of \$500,000 represents the total amount of money being paid by Defendants to Plaintiffs in this Lawsuit.

8. **Dispute Resolution.** If Plaintiffs believe that any portion of this Settlement Agreement has been violated, they shall give notice (including reasonable particulars) of such violation to Defendants. Defendants must respond to such notice as soon as practicable but no later than 45 days after receiving the notice. The Parties

shall negotiate in good faith in an attempt to resolve any dispute relating thereto. If the parties are unable to reach a mutually acceptable resolution, Plaintiffs may seek court enforcement of compliance with this Settlement Agreement. Nothing in this Settlement Agreement, however, shall prevent Plaintiffs from: (1) filing a separate lawsuit against Defendants for any violations or potential violations of the ADA or any other federal or state law, other than the violations alleged in Plaintiffs' Complaint; nor (2) filing a separate lawsuit against Defendants for actions or omissions that constitute a violation of this Settlement Agreement if such actions or omissions also constitute a violation of the ADA and Section 504 and cause an injury to Plaintiffs or any other party.

9. **Release.** Plaintiffs fully release, acquit, and forever discharge Defendants and their successors from any and all complaints, actions, causes of action, claims, grievances, damages, obligations, costs, expenses, attorneys' fees, or any other liabilities of any kind whatsoever, suspected or unsuspected, known or unknown, that relate to the allegations in the Lawsuit and that accrued before the effective date of this Settlement Agreement.

10. **Dismissal of Lawsuit.** Within 30 days of the later of either the date of the last statutory approval in paragraph 15 of this Agreement or the date of the Court issuing an order in response to Plaintiffs' motion in paragraph 6 of this Agreement, the parties shall file a stipulation of dismissal with prejudice in the Lawsuit.

11. **Indiana Law.** The parties agree that this Release and Settlement Agreement is deemed made and entered into in the State of Indiana and in all

respects shall be interpreted, enforced, and governed under the laws of the State of Indiana, unless otherwise preempted by federal law.

12. **Entire Agreement.** This Agreement constitutes the entire agreement between Plaintiffs and Defendants on this matter. No other statement, promise, or agreement, either written or oral, made by any party or agents of any party, that is not contained in this written Agreement is enforceable. The language of all parts of the Release and Settlement Agreement shall be in all cases construed as a whole, according to its fair meaning, and not strictly construed for or against the drafter.

13. **Counterparts.** This Agreement may be executed in counterparts.

14. **Enforceability.** If any provision of this Settlement Agreement is determined to be invalid, unenforceable, or otherwise contrary to applicable law, such provision shall be deemed restated to reflect as nearly as possible and to the fullest extent permitted by applicable law its original intent and shall not, in any event, affect any other provisions, all of which shall remain valid and enforceable to the fullest extent permitted by applicable law.

15. **Statutory Approvals.** This agreement is contingent upon the approval of the Attorney General and Governor as required by statute.

16. **Notice.** Any notice or communication provided under this Settlement Agreement shall be made in writing and shall be delivered or sent by way of the U.S. Postal Service, private commercial carrier, hand delivery, facsimile transmission, or electronic mail to the addresses below or to such other addresses as may be specified in writing by any Party:

a. To Plaintiffs: Stuart Seaborn, Disability Rights Advocates, 2001 Center Street, 4th Floor, Berkeley, CA 94704, jrobaidek@dralegal.org.

b. To Defendants: Jefferson Garn, Office of the Indiana Attorney General, 302 West Washington Street, IGCS-5th Floor, Indianapolis, Indiana 46204, Jefferson.Garn@atg.in.gov.

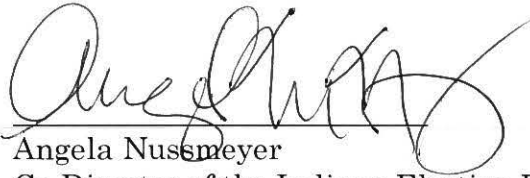
AGREED AND CONSENTED TO:

**FOR THE DEFENDANTS**



J. Bradley King  
Co-Director of the Indiana Election Division

1-5-2023  
Date



Angela Nussemeyer  
Co-Director of the Indiana Election Division

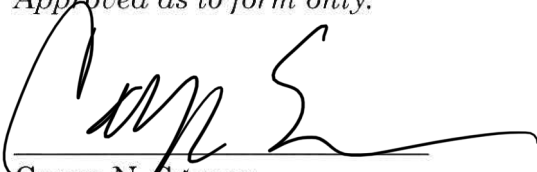
1-5-2023  
Date



Jerry Bonnet  
on behalf of the Indiana Secretary of State

1/5/2023  
Date

*Approved as to form only:*



Caryn N. Szyper  
Office of Attorney General Todd Rokita  
Counsel for Defendants

1/13/23  
Date



**FOR THE PLAINTIFFS**

Dee Ann Hart

Dee Ann Hart

Representative of the American Council of the Blind of  
Indiana

01/06/2023

Date

  
\_\_\_\_\_

01/11/2023  
\_\_\_\_\_

Melissa L. Keyes  
Executive Director of Indiana Disability Rights  
for Plaintiff Indiana Protection and Advocacy Services Commission

Date

Kristin Fleschner  
Kristin Fleschner

January 8, 2023  
Date

Rita Kersh

Rita Kersh

1-6-23

Date

*W*  
Wanda Tackett  
*Wanda Tackett*

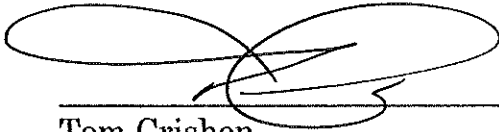
1-12-23  
Date

*Approved as to form only:*



Stuart Seaborn  
Disability Rights Advocates  
Counsel for Plaintiffs

Jan 13, 2023  
Date



Tom Crishon  
Indiana Disability Rights  
Counsel for Plaintiffs

1/17/2023  
Date