

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

AMERICAN COUNCIL OF THE BLIND)
OF INDIANA, INDIANA PROTECTION)
AND ADVOCACY SERVICES)
COMMISSION, KRISTIN FLESCHNER,)
RITA KERSH, and WANDA TACKETT,)

Plaintiffs,)

Case No. 1:20-cv-3118-JMS-MJD)

v.)

INDIANA ELECTION COMMISSION;)
THE INDIVIDUAL MEMBERS of the)
INDIANA ELECTION COMMISSION,)
in their official capacities; 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.)

PLAINTIFFS' UNOPPOSED MOTION TO EXTEND PRELIMINARY INJUNCTION

By this unopposed motion, Plaintiffs seek to extend this Court's Preliminary Injunction [Filing No. 162] that made the use of traveling panels of the absentee voter board (colloquially referred to as "traveling boards") permissive, rather than mandatory, for voters with print disabilities seeking to vote absentee by mail pursuant to Ind. Code § 3-11-10-24 in the November 2022 General Election to the May 2023 Primary Election. This request is unopposed by Defendants and a proposed order is lodged with this motion.

There is good cause to grant this request:

1. On May 18, 2022, Plaintiffs filed a Motion for Summary Judgment and Permanent Injunction, or in the Alternative a Preliminary Injunction [Filing No. 127].

2. On September 2, 2022, this Court issued an Order on that and related Motions.

[Filing No. 161.] Relative to the traveling board issue, this Court found:

As for the proposed preliminary injunctive relief relating to the Traveling Board, the Court finds that the requested relief is warranted for the reasons outlined in the Court's March 9, 2022 Order on Plaintiffs' first Motion for a Preliminary Injunction, [Filing No. 99]. Because the circumstances concerning voting by Traveling Board have not materially changed since the issuance of the Amended Preliminary Injunction, [Filing No. 106], the Court now GRANTS IN PART Plaintiffs' Motion for Summary Judgment and Permanent Injunction, or in the Alternative a Preliminary Injunction, [Filing No. 127], to the extent that it seeks a preliminary injunction making the use of the Traveling Board permissive, rather than mandatory, for voters with print disabilities seeking to vote absentee by mail pursuant to Ind. Code § 3-11-10-24 in the upcoming November 2022 General Election. Voters with print disabilities may complete their mail-in ballots with the assistance of an individual of their own choosing, as long as the individual is not the voter's employer, an officer of the voter's union, or an agent of the voter's employer or union. Defendants shall notify county election boards that they must accept and count such ballots if otherwise valid.

[Filing No. 161 at 47-48.]

3. Particularly at issue in this Order, Ind. Code § 3-11-10-24 states that a voter with disabilities who is unable to make a voting mark on the ballot or sign the absentee ballot secrecy envelope and requests that the absentee ballot be delivered to an address within Indiana must use the traveling boards for purposes of voting absentee.

4. On September 6, 2022, this Court issued the pertinent Preliminary Injunction with similar language as the above Order:

For the reasons set forth in the Court's Order entered on September 2, 2022, Defendants are ORDERED to make the use of traveling panels of the absentee voter board (colloquially referred to as "traveling boards") permissive, rather than mandatory, for voters with print disabilities seeking to vote absentee by mail pursuant to Ind. Code § 3-11-10-24 in the upcoming November 2022 General Election. Voters with print disabilities may complete their mail-in ballots with the assistance of an individual of their own choosing, as long as the individual is not the voter's employer, an officer of the voter's union, or an agent of the voter's employer or union. Defendants shall notify county election boards that they must accept and count such ballots if otherwise valid.

[Filing No. 162.]

5. Since the date of this Preliminary Injunction, circumstances concerning voting by traveling board have not materially changed. The same requirements for voters with disabilities that would have existed prior to this Court's Preliminary Injunction [Filing No. 162] in the November 2022 general election remain for the May 2023 primary election.

6. Since the date of this Preliminary Injunction, the parties have continued attempts to resolve this litigation, including a Settlement Conference on December 29, 2022, where the matter was ultimately resolved. [Filing No. 171, 176.]

7. As of this filing, the parties have a fully executed settlement agreement.

8. As part of that settlement agreement, Defendants co-Directors of the Indiana Election Division agree to communicate information about this Court's Preliminary Injunction [Filing No. 162] to the legislative council for its consideration concerning a proposed legislative change for the 2023 regular session of the General Assembly that would revise Ind. Code § 3-11-10-24 and resolve the traveling board issue discussed in the Preliminary Injunction. As this involves a state statute, it requires a legislative revision.

9. To permit necessary time for that communication to occur, Defendants have also agreed to not object if Plaintiffs move to extend this Court's Preliminary Injunction [Filing No. 162] to the May 2023 primary election.

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Plaintiffs therefore respectfully request that this Court extend its Preliminary Injunction [Filing No. 162] that made the use of traveling panels of the absentee voter board permissive, rather than mandatory, for voters with print disabilities seeking to vote absentee by mail pursuant to Ind. Code § 3-11-10-24 in the November 2022 General Election to the May 2023 Primary Election.

Date: January 26, 2023.

Respectfully submitted,

/s/ Samuel M. Adams

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