

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is made this 26th day of July, 2021, by and between National Federation of the Blind, Inc., National Federation of the Blind of Maryland, Joel Zimba, Ruth Sager, and Marie Cobb (“Plaintiffs”), on the one hand, and Linda H. Lamone, in her capacity as State Administrator of Elections, William G. Voelp, in his capacity as Chairman of the State Board of Elections, Malcolm L. Funn, in his capacity as Vice Chairman of the State Board of Elections, Severn E.S. Miller, in his capacity as Member of the State Board of Elections, Sky Woodward, in her capacity as Member of the State Board of Elections, and Justin A. Williams, in his capacity as Member of the State Board of Elections (hereinafter “Defendants”), on the other hand (collectively the “Parties”).

RECITALS

WHEREAS, on August 1, 2019, Plaintiffs filed suit against Defendants in the United States District Court for the District of Maryland, *National Federation of the Blind, et al. v. State Board of Elections, et al.*, Civil Action No. 1:19-cv-02228-SAG (the “Lawsuit”); and

WHEREAS, Defendants deny any and all liability for the claims asserted by Plaintiffs; and

WHEREAS, to avoid the uncertainty and expense of further litigation, Plaintiffs and Defendants desire to resolve fully and finally all issues and disputes between them involving the matters alleged in the Lawsuit, without any admission of liability;

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration as is more fully described below, Plaintiffs and Defendants agree as follows:

AGREEMENT

A. The parties to this Settlement Agreement and Release (“Settlement Agreement”) are the Plaintiffs and Defendants. Except for the parties released by this Settlement Agreement, no other person or entity shall be deemed a third-party beneficiary of this Settlement Agreement.

B. This Settlement Agreement applies to, is binding upon, and inures to the benefit of the Plaintiffs (and Plaintiffs’ successors and assigns) and the Defendants (and their successors, assigns, and designees).

C. This Settlement Agreement shall not constitute an admission or evidence of any fact, wrongdoing, misconduct, or liability on the part of any the Defendants, the State of Maryland, or any other person affiliated with the State of Maryland or any of the Defendants.

D. Each undersigned representative of the Parties to this Settlement Agreement certifies that he or she is fully authorized by the Party to enter into and execute the terms and conditions of this Settlement Agreement and to legally bind such Party to this Settlement Agreement.

E. This Settlement Agreement, including Exhibit A attached hereto, is the entire agreement between the Plaintiffs and the Defendants in this case. This Settlement Agreement constitutes the complete, final, and entire understanding of the Parties hereto, and they shall not be bound by any terms, conditions, covenants, or representations not expressly herein contained. To the extent this Settlement Agreement references other documents, those documents, with the exception of Exhibit A attached hereto, are referenced for informational purposes only and are not thereby incorporated by reference into, and do not constitute a part of, this Settlement Agreement. All prior conversations, meetings, discussions, drafts, and writings of any kind are specifically superseded by this Settlement Agreement.

F. This Settlement Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing the agreement to be drafted.

G. This Settlement Agreement may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one agreement. The execution of one counterpart by any Party shall have the same force and effect as if that Party had signed all other counterparts.

H. Subject to the approval of the Maryland Board of Public Works, and identification of available appropriated funds, as provided in sub-paragraphs (1) – (2) below, the State of Maryland (the “State”), within 30 days of approval by the Maryland Board of Public Works, shall pay to the Plaintiffs the sum of Two Hundred Thirty Thousand Dollars (\$230,000) (the “Settlement Amount”) to settle and compromise all claims for damages, attorneys’ fees and costs released herein in the form of a check payable to the National Federation of the Blind and delivered to Plaintiffs’ counsel.

1. The Defendants shall promptly submit this Settlement Agreement to the Maryland Board of Public Works under the policies of the Board of Public Works.

2. The obligation of the Defendants, under this Settlement Agreement to make payment of the Settlement Amount set forth in this Paragraph H is subject to: (1) approval by the Board of Public Works; and (2) the identification by the State of funds to satisfy the Settlement Amount. If the Board of Public Works rejects the payment of the Settlement Amount by the State under this Settlement Agreement, or if the State provides notice to the Plaintiffs that it has been unable to identify funds to satisfy the Settlement Amount, the Plaintiffs shall have the right to prosecute their claims against the Defendants as though this Settlement Agreement had never been entered into.

I. Upon approval of this Settlement Agreement by the Board of Public Works, Defendants shall be obligated to comply with the non-monetary terms set forth in the attached Exhibit A (the “Non-Monetary Term Sheet”), which is incorporated by reference herein.

J. Within three business days of receipt of the payment of the Settlement Amount as described above, Plaintiffs shall take all steps necessary to effectuate a dismissal, with prejudice, of the Lawsuit.

K. Plaintiffs acknowledge that no representation of fact or opinion has been made by Defendants to induce this compromise with respect to the extent or nature of any injuries or damages or as to the likelihood of future complications, or recovery therefrom, and that the consideration set forth herein is solely by way of compromise of the disputed claims, and to foreclose all possibility of any future claims based upon acts, errors or omissions which occurred prior to the date of this Settlement Agreement, whether known or unknown, and that in determining said consideration, there has been taken into consideration the fact that unexpected consequences may result, known or unknown, and it is therefore, specifically agreed that this Settlement Agreement shall be a complete bar to all claims or suits for injuries or damages of whatsoever nature relating to the matters that were alleged, or that could have been alleged, in the Lawsuit, or that relate to the incident or incidents giving rise to the Lawsuit.

L. Plaintiffs hereby covenant and agree not to sue Defendants and/or Releasees (as defined in Paragraph S) for any claims, demands, damages, actions, causes of action or suit at law or in equity, of whatever kind or nature, whether known or unknown, suspected or unsuspected, existing from the beginning of time through the date of this Settlement Agreement, and arising out of or relating, in any way, to the matters that were alleged, or that could have been alleged, in the Lawsuit, or that relate to the incident or incidents giving rise to the Lawsuit. Plaintiffs further covenant and agree not to sue Defendants and/or Releasees for any claims, demands, damages, actions, causes of action or suit at law or in equity, of whatever kind or nature, whether known or unknown, suspected or unsuspected, arising out of or relating to the inability of any voter with a visual impairment to vote privately and independently at an in-person polling place

because of allegedly malfunctioning or improperly set-up ballot marking devices, because of the alleged failure of an election judge to properly instruct or assist a voter in the use of a ballot marking device, or because of an allegedly insufficient number of ballot marking devices at the voter's polling place, in any election administered by the State Board of Elections before December 31, 2024, except to enforce the terms of this Settlement Agreement in an action for breach of contract and/or violation of the Americans with Disabilities Act.

M. Plaintiffs covenant and agree for themselves, their successors, administrators and assigns, to indemnify and save any of the Defendants and/or Releasees harmless if any or all of them are found to be liable to pay anyone or to otherwise incur any cost or expense as a result of any suit initiated by or through Plaintiffs, or on their behalf, demanding the same or similar damages or relief encompassed by the covenant not to sue or the Release articulated in paragraphs L and S, respectively, herein, and to pay on behalf of Defendants and/or Releasees, reasonable attorney's fees, court costs, or other reasonable costs of litigation which they may incur in any case, cross claim, or third party claim filed as a consequence of Plaintiffs filing suit against any person or entity not released herein demanding the same or similar damages or relief claimed in the Lawsuit.

N. Plaintiffs, for themselves, and for their successors, administrators and assigns, covenant and agree to execute such instruments, documents or further assurances as may be necessary to carry out Plaintiffs' obligations hereunder, including the waiver or release of any verdict or judgment entered in favor of Plaintiffs and against someone other than Defendants and/or Releasees by the amount of any verdict or judgment said person or entity obtains against any of the Defendants and/or Releasees for indemnification or contribution.

O. Plaintiffs acknowledge that it is their sole responsibility to satisfy any and all liens, known and unknown, arising out of the matters that were alleged, or that could have been alleged, in the Lawsuit, or that relate to the incident or incidents giving rise to the Lawsuit.

P. This Settlement Agreement is governed by, and interpreted according to, the laws of the State of Maryland without regard to conflict of laws principles.

Q. This Settlement Agreement may not be modified or changed orally, but only by an agreement in writing signed by all parties.

R. The Parties represent that prior to signing this Settlement Agreement, each has read it, understood its terms and conditions, consulted with counsel, and voluntarily signed it.

RELEASE

S. Upon payment of the Settlement Amount, in full and final settlement of the Plaintiffs' claims, the Parties agree that the following release of claims shall become effective:

Each of the Plaintiffs, being of lawful age, for himself or herself and any claiming through him or her, his or her heirs, executors, administrators and assigns, do hereby release, acquit and forever discharge the Defendants and the State of Maryland, as well as their respective successors and assigns, departments, divisions, units, current and former officials, current and former officers, current and former agents, current and former servants, current and former representatives, current and former employees and current and former independent contractors and any and all other persons, associations, corporations and government entities, whether or not named herein or referenced, who together with the Defendants may be jointly or severally liable to any of the Plaintiffs (the "Releasees"), from all claims, demands, actions, causes of action, suits, damages, losses, attorneys' fees and expenses of each and every kind, type or nature whatsoever, existing from the beginning of time through the date of this Settlement Agreement, whether known or unknown, raised in the Lawsuit, which could have been raised in the Lawsuit, or which relate in any way to the matters alleged in the Lawsuit.

ENFORCEMENT

T. Upon an alleged breach of the Settlement Agreement, including Exhibit A, and subject to the requirements of paragraph L herein, the parties shall retain and may exercise all of the rights and remedies afforded to them by law. The parties agree that specific performance shall be an available remedy in the event of a breach. The parties further stipulate and agree that this Settlement Agreement is a private settlement agreement and not a consent decree.

U. Prior to taking any action under Paragraph T above, counsel for the party alleging a breach shall notify counsel for the other party of the alleged non-compliance in writing and give that party thirty (30) days to cure the alleged breach. If the alleged breach is cured by the party within the thirty (30) day period, the party alleging the breach may not seek relief under Paragraph T.

FOR THE PLAINTIFFS:

National Federation of the Blind, Inc.

Plaintiff

Date

National Federation of the Blind of Maryland

Plaintiff

Date

Joel Zimba

Plaintiff

Date

Ruth Sager

Plaintiff

Date

Marie Cobb

Plaintiff

Date

FOR THE DEFENDANTS:

Linda H. Lamone, in her capacity as State Administrator of Elections

Defendant

Date

William G. Voelp, in his capacity as Chair of the State Board of Elections

Defendant

Date

Malcolm L. Funn, in his capacity as Vice Chair of the State Board of Elections

Defendant

Date

Severn E.S. Miller, in his capacity as Member of the State Board of Elections

Defendant

Date

Sky Woodward, in her capacity as Member of the State Board of Elections

Defendant

Date

Justin A. Williams, in his capacity as Member of the State Board of Elections

Defendant

Date

Approved for legal sufficiency:

Andrea W. Trento
Assistant Attorney General

EXHIBIT A
Non-Monetary Term Sheet

1. BMDs at Polling Locations:

- a. The State Administrator of Elections (the “State Administrator”) will ensure that at least 50% of all election day polling places in the State of Maryland shall be required to have available for use on election day at least 2 ExpressVote ballot marking devices (“BMDs”). Included among these 50% of election day polling places will be:
 - i. the assigned election-day polling places (based on their current assignments) of the individual Plaintiffs (Joel Zimba, Ruth Sager, and Marie Cobb);
 - ii. any election day polling place where a documented technical issue required or requires a BMD to be taken out of service (i.e, made unavailable to voters for a period of at least 15 minutes on election day) during voting in any of the previous three primary or general statewide elections (not including the 2020 primary and general elections); and
 - iii. the 25% of polling places, in a given jurisdiction, that are the farthest by driving distance from the location in that jurisdiction where replacement BMDs are stored on election day, unless, for good cause, the Maryland State Board of Elections (the “Board”) approves a deviation from this requirement requested by a local board of elections. If the Board approves a deviation from this requirement for good cause, the Board shall notify Plaintiffs’ counsel of this deviation and the good cause that exists for it within 14 days of the Board’s approval.
 - iv. In addition, local boards will be free to authorize one additional BMD at any election day polling place without obtaining approval of the Board.
- b. All early voting centers (as provided in Md. Code Ann., Elec. Law § 10-301.1) or election day voting centers (as described, in substance, by Md. Code Ann., Elec. Law § 9-503), if election day voting centers are used in the future in any election administered by the Board in Maryland, shall be required to have at least 3 BMDs and local boards may authorize up to 6 BMDs per early voting center or election day voting center without obtaining approval of the Board.

- c. If any voter with a disability who requires the BMD to vote privately and independently in-person encounters an inoperable BMD at their polling location, where that polling location only has 1 BMD, the State-issued election judge training materials shall direct election judges to allow the voter to leave the polling location and, upon their return to the polling location, allow the voter to proceed directly to the front of any line to mark their ballot.
2. The State-issued election judge training materials will instruct election judges that, in general, they may continue to offer both BMDs and hand-marked paper ballots neutrally to all voters. However, the State-issued election judge training materials will also instruct election judges to ensure that at least 10 voters at each polling location must use BMDs. In the event that there are longer wait times associated with one of these two methods of marking a ballot at a given polling place, election judges shall be free to inform voters about that fact and to offer to the voter the other method of voting.
3. New voting system: In the Board's next request for proposals for a new voting system, the State Administrator will include the capability for the BMD to produce a ballot substantially similar in size, shape, and content to hand-marked paper ballots as a factor in the determination of which voting system to purchase or lease.
4. The State Administrator shall invite the National Federation of the Blind, Inc. and the National Federation of the Blind of Maryland (collectively "NFB") to collaborate on election judge training by providing input on curriculum and materials, which the State Administrator will consider in good faith. But in no case shall the State Administrator be required to accept and implement any input offered by the NFB.
5. The Board shall contribute a maximum of \$2,000 towards the NFB's development of a video of no more than 10 minutes in length about working with blind people at the polls and on how to set up the BMD for blind voters. The script and final content of the video shall be subject to approval by the State Administrator. The State Administrator shall also have the right to use the video in addition to or in lieu of other components of election judge training, and the right to not to use the video at all in election judge training. Use of the video in election judge training would not replace in-person training on the BMDs, but would instead supplement such training. The State Administrator agrees to post the approved video on its website.
6. The Board will not discourage the use of BMDs, or encourage the use of hand-marked paper ballots to the exclusion of BMDs, in formal messaging to the public (such as in pre-election mailings to voters or on notices required to be posted at polling places), or in training and other messaging to election judges, except where necessary to reduce

wait times at polling places (or to provide training to election judges regarding such circumstances), or where other administrative exigencies require non-neutral treatment. Examples of such administrative exigencies include where: (a) there is a technical problem with one of the BMDs at a particular location; (b) there is a programming or software problem affecting BMDs more broadly in the midst of an election; or (c) the Board has received credible information regarding a security threat associated with one or more BMDs. Nothing in this paragraph shall be construed to prohibit any statement regarding the BMDs by any member of the Board or its administrative staff made in any other public or private setting.

7. Monitoring:

- a. The State Administrator agrees to send the Plaintiffs data on BMD usage at each polling location within 45 days following the certification of an election. This data shall include: (1) the number of people who used the BMDs to mark their ballots at each polling location; (2) the number of BMDs made available to voters at each polling location; and (3) the total number of voters who cast ballots at each polling location. The State Administrator further agrees to provide Plaintiffs, within 60 days after the certification of an election, the summaries of any complaints received by the State Administrator or local boards of elections by or on behalf of a voter with a disability (during early voting, on election day, or after the election) about the BMD not being set up properly, not working properly, or the election judge not instructing them properly on how to use the BMD (with identifying information about the voter removed) (a “Complaint”). Election judges shall be trained and instructed to furnish to the voter a designated telephone number and e-mail address for the local or State Board of Elections whenever a voter reports a Complaint or indicates a desire to report a Complaint. Election judges will not be required to record or collect Complaints from voters themselves. The State Administrator shall not be required to include in its summaries any Complaints that the State Administrator or a local board or election director has investigated and determined to be unfounded.
- b. If any county had at least two polling places or voting centers where fewer than 10 voters used BMDs and/or at least two polling places or voting centers where, in each location, at least one Complaint was made, that county shall be subject to the additional monitoring requirements set out in subparagraph 7(c) in the next election. Complaints deemed by the State Administrator or a local board or election director to be unfounded, or that arise from circumstances that the State Administrator determines are not attributable to election judge error or lack of knowledge, need not be considered “Complaints” for the purpose of establishing whether the additional monitoring requirements set out in subparagraph 7(c) shall apply.

- c. The additional monitoring requirements shall include remote (i.e. telephonic) or in-person participation by the State Administrator or her designee in at least one election judge training session within the first five days that such training takes place in the pertinent jurisdiction in advance of the next election. If the training session is deemed by the State Administrator or her designee to be deficient with regard to training related to the BMD, the State Administrator or her designee shall participate in an additional election judge training session in that jurisdiction to ensure that the deficiencies have been corrected. The additional monitoring requirements shall also include ensuring that the polling places where fewer than 10 voters used BMDs or where a Complaint is registered are evaluated pursuant to the polling place evaluation program established under COMAR 33.07.03.04 in the next election, with the election director required to submit a report to the State Administrator on the results of the evaluation as it pertained to any issues relating to the BMD within 45 days of Election Day.
 - d. If any county that was already subject to the additional monitoring requirements of subparagraph 7(c) above once again qualifies for additional monitoring based on the circumstances described in subparagraph 7(b) arising in at least two of the same polling places in the next election, the local board for that jurisdiction shall select and assign an additional election judge trained in the operation of the BMDs to be present during voting at any polling place or voting center where fewer than 10 voters used the BMDs or that was the subject of a qualifying Complaint under subparagraph 7(b) in the most recent election, to ensure that the minimum usage of the BMD is met and BMDs are available for use in that polling place or voting center. This election judge shall submit a report to the local board or election director within 45 days of the election detailing their monitoring experience and any observations of non-compliance with the terms of this Settlement Agreement, Board policy, or any relevant laws pertaining to the BMDs. The local board or election director shall promptly transmit the report to the State Administrator. The State Administrator shall provide the report to Plaintiffs' counsel within 10 days of receipt.
 - e. If any county that was already subject to the additional monitoring requirements of subparagraphs 7(c) and 7(d) above once again qualifies for additional monitoring based on the circumstances described in subparagraph 7(b) arising in at least two of the same polling places in the next election, the State Administrator shall re-impose the additional election judge requirements of subparagraph 7(d) as to those polling places in the next election.
8. Defendants' obligations under this Non-Monetary Term sheet shall expire on December 31, 2024.

