

1
2
3
4
5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
7

8 CALIFORNIA COUNCIL OF THE BLIND,

No. C 15-cv-05784 CRB

9 et al.,

**ORDER REQUESTING LETTER
BRIEFING IN LIGHT OF LEGISLATIVE
ACTION AND MEDIATION EFFORTS**

10 Plaintiff,

11 v.

12 COUNTY OF SAN MATEO, et al.,

13 Defendant.
14 _____/

15 The California Council for the Blind and two named Plaintiffs (“Plaintiffs”) move
16 under the ADA and Rehabilitation Act for a preliminary injunction ordering Defendants San
17 Mateo County (the “County”) and the State of California to make an electronic ballot
18 marking tool available to Plaintiffs for use in the November 2016 election. See Preliminary
19 Injunction Motion (dkt. 47). The Court held a hearing on this matter on July 1, 2016.

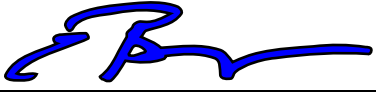
20 After considering the submissions, oral argument, and relevant authorities, including
21 Hindel v. Husted, No. 2:15-CV-3061, 2016 WL 2735935 (S.D. Ohio May 11, 2016) and
22 Nat’l Fed’n of the Blind v. Lamone, 813 F.3d 494 (4th Cir. 2016), the Court concludes that
23 Plaintiffs have shown a strong likelihood of success on the merits of their claim. See
24 Hearing Transcript (dkt. 64). As the Court noted at the hearing, Plaintiffs have made a
25 showing that California Elections Code § 19205 is preempted by the ADA to the extent it
26 bars blind and visually-impaired voters from using electronic ballot marking tools. See id.
27 The Court further concludes that Defendants have shown a strong likelihood that
28 implementation of the voting tool requested by Plaintiffs—on Plaintiff’s abbreviated
timeline—would be a fundamental alteration of the absentee voting program. See id.

1 At the July 1 hearing on this matter, the state noted that the California legislature has
2 passed a bill that would potentially allow Plaintiffs to use the voting software they have
3 requested here. See id. The parties also informed the Court that (a) they are scheduled to
4 attend mediation and (b) they are willing to submit additional letter briefs to the Court
5 following that mediation and following action from the governor on the bill. See id.

6 The Court thus ORDERS the parties to submit letter briefs to the Court addressing (1)
7 whether a further hearing on the feasibility of implementing a new electronic ballot marking
8 tool on Plaintiffs' timeline is necessary; (2) whether further action from the Court is required
9 given recent legislative action;¹ and (3) whether the parties have been able to successfully
10 resolve this matter through mediation. The parties are ORDERED to submit these letter
11 briefs as soon as possible, but not later than August 1, 2016.

12 **IT IS SO ORDERED.**

13 Dated: July 5, 2016

14 
15 _____
16 CHARLES R. BREYER
17 UNITED STATES DISTRICT JUDGE

18
19
20
21
22
23
24
25
26
27 _____
28 ¹ As the Court noted at the hearing, if the governor signs the recently passed bill allowing the
use of electronic ballot marking tools in California elections, Plaintiffs have shown a strong likelihood
that an injunction should issue prohibiting the state from delaying certification or testing of such a tool
based on the fact that the new law would not take effect until January 2017. See Hearing Transcript.