

UNITED STATES DISTRICT COURT

FOR THE

SOUTHERN DISTRICT OF FLORIDA
FORT PIERCE DIVISION

7-24-18
1:47 PM
CS# 0920
G. Moore

JUAN CARLOS GIL,

Plaintiff,

v.

INDIAN RIVER COUNTY

Defendant.

Civil Action No. 18 cv 14279

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Indian River County
c/o: Dylan Reingold, County Attorney
1801 27th Street
Vero Beach, Florida 32960


A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Scott R. Dinin, Esq.
Law Offices of Scott R. Dinin, P.A.
4200 NW 7th Avenue
Miami, FL 33127
Tel: (786) 431-1333
E-mail: inbox@dininlaw.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Steven M. Larimore
CLERK OF COURT



Signature of Clerk or Deputy Clerk

Date: JUL 17 2018

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT PIERCE DIVISION**

CASE NO.

JUAN CARLOS GIL,

Plaintiff,

v.

INDIAN RIVER COUNTY,

Defendant,

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

COMES NOW Plaintiff Juan Carlos Gil (“Plaintiff), by and through his undersigned counsel, and hereby sues Defendant the Indian River County (“Defendant”) for declaratory and injunctive relief, attorney’s fees and costs (including, but not limited to, court costs and expert fees) pursuant to Title II of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12131 et. seq. (“ADA”) and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (“Section 504”) and 42 U.S.C, §1983 and alleges as follows:

INTRODUCTION

1. “Il n’y a que deux puissances au monde, le sabre et l’esprit: à la longue, le sabre est toujours vaincu par l’esprit¹”, and one must be informed to understand their peril. Florida began its tradition of openness back in 1909 with the passage of Chapter

¹ There are only two powers in the world, the sword and the spirit: in the long run, the sword is always defeated by the spirit. Napoleon Ier (1789-1821)

119 of the Florida Statutes². This statute requires that any records made or received by any public agency in the course of its official business are available for inspection.

2. This is an action under Title II of the Americans with Disabilities Act of 1990 and under Section 505 of the Rehabilitation Act of 1973 through which Section 504 of the Rehabilitation Act of 1973 (“Rehabilitation Act”) and 42 U.S.C. §1983 is enforced, to redress unlawful disability-based practices and to make Plaintiff Juan Carlos Gil whole.

3. Indian River County (“Defendant”) is a public entity which has provided the website URL www.ircgov.com as an information portal (“Portal”) to the County of Indian River government for the general public (to anyone who accesses the Portal). The general public is able to access Indian River County government’s online content, which constitutes programs, services, and activities. Much of that content is provided in portable document format (“PDF”).

4. In order to meaningfully access PDF documents (also referenced as electronic documents), blind and visually impaired individuals require that electronic documents be saved in an accessible format. Much of the content provided in electronic (PDF) format within Defendant’s Website is not accessible by persons who are visually impaired and who utilize screen readers.

5. Because Defendant’s online electronic document content is not available for persons who are blind or low sighted, Defendant has denied Plaintiff Juan Carlos Gil access to that electronic (PDF) content. As such, Defendant has denied access to Plaintiff based on Plaintiff’s disability (being low sighted and/or blind). In so doing, Defendant has denied Plaintiff his fundamental right to observe and participate in the democratic process of self-government. A citizen’s right to meaningful participation in the political process

² Public Records Law

and to access publicly available information needed to participate in the process is a fundamental right requiring heightened scrutiny. *Johnny Reininger, Jr. v. State of Oklahoma*, Case No.: 5:16-cv-012141 (November 9, 2017) and *Natl Association of the Deaf (NAD) v State of Florida* 18-cv-21232-UU [DE #28] (June 18, 2018).

6. Plaintiff brings this action against the Defendant to enforce the requirement of Section 504 of the Rehabilitation Act that a public entity receiving federal financial assistance (which Defendant receives each year) must not deny persons with disabilities the benefits of its programs, services and activities.

7. By failing to provide electronic documents in accessible format, Defendant has deprived blind and visually impaired individuals of the benefits of its online content, which benefit is afforded to sighted (non-disabled) individuals. As such, Defendant has increased the sense of isolation and stigma that the ADA and Section 504 were meant to redress for individuals with disabilities.

8. Defendant's denial of much of its publicly available online content to blind and visually impaired individuals violates Section 504 of the Rehabilitation Act and Title II of the ADA.

9. Accordingly, Plaintiff seeks injunctive and declaratory relief to ensure that blind and visually impaired individuals have equal, effective and timely access to Defendant's publicly available online content (consisting of electronic documents).

JURISDICTION AND VENUE

10. Plaintiff is expressly authorized to bring this action pursuant to Title II of the Americans With Disabilities Act, 42 U.S.C. §§ 12131-12133 ("ADA"), incorporating by reference the remedies, procedures and rights under Sections 504 of the Rehabilitation Act of 1973, 29 U.S.C. §§ 794, 794(a) ("Section 504"), incorporating the remedies, rights

and procedures set forth in § 717 of the Civil Rights Act of 1964, including the application of §§ 706(f) through 706(k), 42 U.S.C. § 2000e-5(f)-(k) and 42 U.S.C. §1983.

11. This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 12188. This Court's jurisdiction is proper under 28 U.S.C. Section 451, 1331, 1337, and 1343.

12. Plaintiff has met all conditions precedent to bring this action.

PARTIES

Juan Carlos Gil

13. Plaintiff Juan Carlos Gil is a resident of the State of Florida, resides within this judicial district, is *sui juris*, is disabled and a qualified individual as defined by the ADA.

14. Plaintiff is legally blind and a member of a protected class under the ADA, 42 U.S.C. § 12102(1)-(2), the regulations implementing the ADA and as set forth at 29 USC §705(20). Plaintiff suffers optic nerve damage and is legally blind. Plaintiff also suffers from cerebral palsy, is unable to walk, and is confined to a wheelchair. Plaintiff is substantially limited in the major life activity of seeing.

15. Plaintiff is an athlete who travels for his athletic triathlon endeavors, and also is an advocate for the rights of blind and wheelchair bound disabled individuals.³

16. In the past year, Plaintiff has traveled to Arizona, Orlando, and Boston to attend various conventions and meetings to advance the rights of the disabled. Such events

³ Juan Carlos Gil has traveled to speak on disabled rights, written letters, and mentored other disabled individuals as well as being the Plaintiff in the Landmark Historic federal trial over Web Accessibility (*Juan Carlos Gil v Winn Dixie Stores, Inc.* No. 16-cv-23020); See press release on case: www.prweb.com/releases/2017scottrdinin/06civilrights/prweb14437034.htm

include, but are not limited to, the National Federation for the Blind convention in Orlando⁴, the American Counsel for the Blind conferences⁵ and various focus groups and meetings throughout the east coast (including New York and Boston).

17. Plaintiff is an otherwise qualified individual with a disability in that Plaintiff is qualified to access Defendant's electronic documents.

18. Due to his disability, the Plaintiff requires that document information be saved in an accessible format such as HTML or an accessible electronic (PDF) format so that he can comprehend (read) that document with screen reader software.

Indian River County

19. Defendant Indian River County is a local government entity, a body corporate and political subdivision of the State of Florida. In 1925 Indian River County was formed from the northern section of St. Lucie County. According to the 2016 census, there are approximately 151,563 residents that reside within Indian River County.

20. Chapter 125.01 of the Florida Statutes give the five-member Indian River County Board of County Commissioners the ability to create (through a local public hearing ordinance procedure) local laws⁶. This process is done without having to go to the Florida Legislature to request special legislation to create these laws. The Board of County Commissioners appoint a County Attorney and a County Administrator who implements Indian River County policy and laws and manages the governmental agency of Indian River County.

21. Since Defendant is a public entity, it is subject to Title II of the ADA. 42 U.S.C. § 12131(1).

⁴ July 2017, 2018

⁵ In 2017 (Nevada) and in 2018 (Wisconsin)

⁶ that are not in conflict with or specifically prohibited by state general law or the Florida Constitution

22. On information and belief, Defendant is also a recipient of federal funds and as such, is also subject to the requirements of Sections 504 of the Rehabilitation Act of 1973.

GENERAL ALLEGATIONS

23. Defendant offers a service through its online portal at www.ircgov.com (“portal”) where interested persons can obtain pertinent information regarding living and visiting Indian River County. Plaintiff is such an interested person.

24. Defendant’s portal provides pertinent information on living and visiting Indian River County including (but not limited to):

- Comprehensive Emergency Management Plan (CEMP)⁷, an electronic document establishing a framework through which Defendant may prepare for, respond to, recover from, and mitigate the impacts of a wide variety of disasters that could adversely affect the health, safety and/or general welfare of the residents and visitors of Indian River County.
- Evacuation Guide⁸, an electronic document mapping out evacuation routes, zones and shelters within Indian River County in the event of a catastrophe.
- Seniors Basketball Schedule⁹, an electronic document supplied by the Recreation Department that illustrates dates, times, teams and courts for the 2018 Summer Senior Basketball Schedule.

These types of documents are made available by Defendant to generally inform the public of the services provided by Defendant; therefore, this type of electronic documents also referenced herein as “electronic service documents.”

25. Defendant’s portal also has publications which are embedded in PDF (electronic) format. Those publications contain information on a variety of Indian River County issues. A few of the publications provided to the public by Defendant in electronic format include (but are not limited to): Indian River County Connection

⁷ <http://www.irces.com/EM/documents/CEMP.pdf>

⁸ <http://www.irces.com/EM/documents/Evacuation-Routes.pdf>

⁹ http://www.ircrec.com/schedules/S_Basketball_Schedule.pdf

Newsletter for the month of February, 2018¹⁰ and How to Report a Malfunctioning Pedestrian Signal¹¹. These publications are made available by Defendant to generally inform the public of pertinent information when living and visiting Indian River County and of the services provided by Defendant. Therefore, this type of electronic document, being a “publication”, is referenced as “electronic service documents.”

26. Defendant’s Website also contains electronic documents which provide information on Indian River County policies and positions which affect the public directly. A sampling of those links to electronic documents (which are also referenced as “electronic policy documents”) is provided herein below:

- Annual Budget for Fiscal Year 2017/2018¹², which links to electronic documents discussing County goals, policy, and budget process.
- Indian River County Revenue Manual¹³, an electronic document overviewing the “rules” on how Defendant devotes its sources of income based on Florida Statutes, County Ordinances or Codes, and Laws.
- Fiscal Year 2017/18 Overall Revenue Summary¹⁴, document in electronic format which breaks down by category, the revenue streams brought into the County through its various departments.
- Indian River County Beach Preservation Plan¹⁵, describing the economic impact Indian River’s beaches have on the community and the strategies to protect and preserve them.

27. Defendant offers a service through its online portal at <http://www.ircgov.com/Boards/BCC/Index.htm> (“Portal”) where interested persons are able to view Indian River County government’s legislative history and agenda from the year 2002 to the present date.

28. The Indian River Board of County Commissioner’s meetings make up the

¹⁰ http://www.ircgov.com/Departments/Human_Resources/County_Connection/2018/0218.pdf

¹¹ http://www.ircgov.com/Departments/Public_Works/Traffic_Division/Ped-Signal.pdf

¹² <http://www.ircgov.com/Departments/Budget/2017-18/1718BB.pdf>

¹³ <http://www.ircgov.com/Departments/Budget/Revenue-Manual.pdf>

¹⁴ <http://www.ircgov.com/Departments/Budget/2017-18/Overall-Revenue-Summary.pdf>

¹⁵ http://www.ircgov.com/Departments/Public_Works/Coastal_Engineering_Section/BPP2015.pdf

bulk of Defendant's legislative history. Interested persons are able to view a surplus of links to electronic documents related to significant issues of which the government of Indian River County votes upon (hereinafter referenced as "(electronic) agenda documents") through this Portal. Examples of a few of these electronic document links are provided herein below:

- April 18, 2018, Development Review and Permit Process Advisory Committee (DRPPAC) meeting agenda¹⁶, the electronic document focuses on identifying and making recommendations on items to improve and/or streamline the development review and permit process and on items identified by staff.
- March 22, 2018, Planning and Zoning Commission meeting agenda¹⁷, a document offered in electronic format that discusses all matters relating to municipal planning and development.

29. Defendant's electronic service, policy, and agenda documents (reverenced collectively as "electronic documents") contain a plethora of information including the Indian River County Commissioners decisions regarding matters which affect the public directly such as that regarding: financial decisions voted on by any one of the various boards, committees or councils, planning and zoning projects, public safety, and tourism development contracts.

30. Through pursuing the archived agenda documents, interested persons can ascertain what past legislation and projects the Indian River County Commissioners have voted upon on important social, growth, and environmental issues which while voted upon in the past have a direct effect on current and future events in Indian River County.

31. Defendant's electronic service, policy, and agenda documents (reverenced collectively as "electronic documents") contain a plethora of information regarding matters which affect the public directly such as related annual budgets, public works projects, environmental resources management, and parks and recreation.

¹⁶ <http://www.ircgov.com/Boards/DRPPAC/2018/Agendas/DRPPAC041818A.pdf>

¹⁷ <http://www.ircgov.com/Boards/PZC/2018/agendas/PZC032218A.pdf>

32. Through Defendant's portal, interested persons can read Defendant's electronic documents on demand.

33. However, blind and/or visually impaired persons require screen reader software to read/comprehend (Defendant's) electronic documents.

34. Online "on-demand" viewing of the Defendant's electronic documents is not an option available to persons with vision disabilities due to the fact that those documents are provided solely in a *PDF flat surface* format and do not interface with screen reader software as used by blind and visually impaired individuals. Plaintiff (who is legally blind) is such an interested person.

35. As an active and social Florida resident, Plaintiff is interested in the quality of life and level of environmental concern, with particular interest in economic development, goals and objectives. Plaintiff is also interested how Defendant utilizes its resources to manage and preserve beaches of Indian River County, which would make Indian River County a viable visiting and living option.

36. Therefore, in March, 2018 Plaintiff visited Defendant's Website with the intent of educating himself about the quality of life and governmental functioning in Indian River County. Plaintiff also wanted to find out more about programs, services and activities available to visitors and residents of Indian River County.

37. Since Plaintiff is unable to drive, Plaintiff is interested in if paratransit services are provided by Defendant. Such paratransit services are available by Defendant and are located at <http://www.ircgov.com/Boards/TDLCB/tdsp.PDF>; however, this information is provided in electronic document format as part of Defendant's service documents.

38. Because Defendant's electronic documents are not in an accessible format for

the blind and visually impaired and are not provided in accessible HTML format, Plaintiff was prevented from reading the electronic service documents in order to become informed of services offered to the public by Defendant (such as paratransit bus service, disaster relief services, and county-wide maps that provide information on local attractions) because of his vision disability. This exclusion resulted in Plaintiff suffering from feelings of segregation, rejection, and isolation as Plaintiff was left excluded from participating in the community services, programs and activities offered by Indian River County in a manner equal to that afforded to others who are not similarly disabled.

39. Importantly, because Defendant's electronic agenda and electronic policy documents are not in an accessible format, Plaintiff was prevented from becoming informed of the actions of the government of Indian River County, and learning about the direction of Indian River County government on important social and environmental issues, and from and participating in the governmental process of Indian River County. This exclusion resulted in Plaintiff suffering from feelings of segregation, rejection, and isolation as Plaintiff has been unable to participate in the government of Indian River County in a manner equal to that afforded to others who are not similarly disabled.

40. Therefore, on May 21, 2018, Plaintiff informed Defendant that he is legally blind and unable to fully the electronic documents which Defendant provides to the public with his screen reader software. Plaintiff requested Defendant's electronic documents be provided in an accessible format for blind and visually impaired individuals (such as himself). Plaintiff made this request via U.S. mail service. This request is attached hereto as Exhibit A.

41. On May 25, 2018, Defendant sent a letter in response to the Plaintiff which stated that Defendant was in receipt of the request for accommodation and indicated that

some of the electronic documents on Defendants Website were accessible, and some were not (See Exhibit B). Defendant's response did not state which electronic documents were accessible and which were not. Defendant's response letter left Plaintiff more confused and unable to use Defendant's Website as prior to his request for accommodation (see Exhibit A).

42. On June 25, 2018, Plaintiff again attempted to access Defendant's electronic documents, but those electronic documents remained inaccessible as he still could not comprehend them with his screen reader software.

43. By Defendant's failure to make its Website accessible, Plaintiff has suffered injuries and shame, humiliation, isolation, segregation, experienced emotional suffering, pain and anguish and has been segregated and prohibited from enjoying the programs, services and activities offered by Defendant to the public.

44. Plaintiff continues to desire to participate in the governmental functioning of Indian River County and partake in the programs, services, and activities of Indian River County as a resident of the State of Florida and a visitor to Indian River County, but Plaintiff continues to be harmed due to his inability to avail himself of the programs, services, and activities due to his failure to comprehend the electronic documents Defendant provides to the public.

45. Furthermore, Defendant has not provided any other auxiliary aid or service which would assist Plaintiff and/or similarly situated blind or visually impaired constituents to meaningfully access and fully comprehend Defendant's electronic documents in the same manner as Defendant has as made available to the non-disabled public.

46. Because Defendant has not provided its electronic documents in an accessible

format for the blind and visually impaired, Plaintiff has been prevented from becoming informed of Indian River County's governmental functioning, policies, programs, services and activities as offered to the public by Defendant because of his vision disability. As such, Plaintiff was left excluded from participating in Indian River County government and the community services, programs and activities offered by Indian River County in a manner equal to that afforded to others who are not similarly disabled.

47. Plaintiff's inability to access Defendant's electronic documents has resulted in a *virtual barrier* which has impaired, obstructed, hindered, and impeded Plaintiff's ability to become an involved citizen in Indian River County government (through Defendant's agenda documents) and learn about the programs, services and activities available to residents and visitors of Indian River County (through Defendant's electronic documents).

48. On information and belief, since March, 2018 when Plaintiff first began to attempt to access and learn about Indian River County programs, services, activities and government, Defendant has not made reasonable modifications to its rules, policies and procedures to ensure future compliance with the ADA and/or the Rehabilitation Act. As of this filing, the electronic documents made available by Defendant remain inaccessible to Plaintiff as well as to other blind and visually disabled individuals.

49. Plaintiff has concrete plans to read and comprehend (on a weekly basis) the electronic documents supplied by Defendant as a service to the public as Plaintiff continues to desire to become involved in the Indian River County governmental process by learning about the agenda items debated, discussed, and voted upon by the Board of Commissioners that affect him and the Indian River County community. However, Plaintiff is unable to do so, as he is unable to comprehend the electronic documents

provided by Defendant for the public. Therefore, Plaintiff is precluded from participation in the government of Indian River County by learning about the agenda items debated, discussed, and voted upon by the Board of Commissioners that affect him (as a visitor) and the effect of the governmental process on the Indian River County community due to the or the unlawful barrier created by Defendant's refusal to make its electronic agenda documents accessible.

50. Likewise Plaintiff continues to desire to read and comprehend the electronic service and policy documents supplied by Defendant as a service to the public on a weekly basis. However, Plaintiff is prevented from enjoying the programs, services and activities for residents and visitors of Indian River County due to the or the unlawful barrier created by Defendant's refusal to make its electronic service and policy documents accessible for screen reader software as used by the visually impaired.

51. Plaintiff (and others with vision impairments) will suffer continuous and ongoing harm from the Defendant's omissions, policies, and practices regarding its electronic documents unless enjoined by this Court.

52. Defendant has engaged (and continues to engage) in unlawful practices in violation of Title II of the ADA (see 42 U.S.C. §12132) and Section 504.

53. Defendant's unlawful practices include (but are not limited to) denying Plaintiff (an individual with a disability) the ability to participate in Indian River County government by failing to provide Plaintiff the ability to study and review Indian River County's electronic agenda documents in the same manner as provided to the sighted public.

54. Plaintiff has also been denied the ability to participate in the Indian River

County community by Defendant's precluding Plaintiff's access to Indian River County's electronic service and policy documents (which provide information on Defendant's programs and services) in the same manner as provided to the sighted public.

55. As such, Defendant's unlawful practices include (but are not limited to) denying Plaintiff access to Indian River County's programs, services and activities and denying Plaintiff the ability to participate in Indian River County government in the same manner as provided to the sighted public.

56. Defendant has acted with deliberate indifference for the provisions of the Rehabilitation Act and Title II of the ADA in regard to the unlawful practices described herein because Defendant is aware of the availability of computer programs which allow Defendant to save electronic documents in an accessible format. Despite the ease and accessibility of providing accessible electronic documents, Defendant has failed to reasonably modify its policies, processes and procedures for the same.

57. As a result of Defendant's actions, Plaintiff has been damaged and has suffered injuries and shame, humiliation, isolation, segregation, experienced emotional suffering, pain and anguish.

58. For all of the foregoing, Plaintiff has no adequate remedy at law.

59. Plaintiff has retained Scott R. Dinin, P.A. and J. Courtney Cunningham PLLC as his legal counsel in this action, and has agreed to pay a reasonable attorney fee.

COUNT I – VIOLATIONS OF TITLE II OF THE ADA

60. Plaintiff re-alleges and incorporates by reference the foregoing allegations and would further state as follows:

61. The broad mandate of the ADA is to provide an equal opportunity for individuals with disabilities to participate in and benefit from all aspects of American

civic and economic life and that mandate extends to public entities including Defendant and the documents that Defendant provides to the public (including those documents provided in electronic document format).

62. Title II of the ADA mandates that no qualified individual with a disability shall, by reason of such disability, be excluded from full and equal participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity, 42 U.S.C. § 12132.

63. Defendant Indian River County is an instrumentality of the State of Florida. 42 U.S.C. §12131(1)(b) states that a public entity includes any instrumentality of a state or local government, Defendant is subject to Title II of the ADA.

64. As a public entity, Defendant must:

a) Provide full and equal enjoyment of its services, programs, and activities in the most integrated setting appropriate to people with disabilities. 42 U.S.C. §12131, *et. seq.*; 28 C.F.R. §35.130(a).

b) Ensure that no individual with a disability is excluded, denied services, segregated, or otherwise treated differently than other individuals unless the public entity can demonstrate that taking those steps to modify policies, practices, or procedures would fundamentally alter the nature of the service, program, or activity; 28 C.F.R. §35.130(b)(7).

c) Ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals unless the public entity can demonstrate that legitimate safety requirements are necessary for safe operation. Any safety requirements must be based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with

disabilities; 28 C.F.R. §35.130(h).

65. Defendant's document creation, storage and on its Website is a program, service, or activity within the definition of Title II of the ADA. Defendant makes information available in thousands of pages of documents available through its information portal therein through which the public can access electronic documents.

66. Defendant failed to provide its electronic documents in a format accessible to individuals who are visually impaired who require screen reader software to comprehend those electronic documents. Therefore, Plaintiff has been effectively denied access to those electronic documents by Defendant.

67. By denying Plaintiff the opportunity to comprehend and benefit from its electronic documents due to Plaintiff's disability (visual impairment), Defendant has denied Plaintiff the opportunity to participate in or benefit from the services, programs or activities afforded to non-disabled persons and persons who are not visually impaired.

68. Providing electronic documents in a format that can be recognized by screen reader software and therefore making those electronic documents accessible to the visually impaired would not result in any undue burden to Defendant.

69. Providing electronic documents in a format that can be recognized by screen reader software and therefore making those electronic documents accessible to the visually impaired would not fundamentally change the nature of Defendant's services, programs, or activities.

70. Defendant is required to provide full and equal enjoyment of its services, programs, and activities in the most integrated setting appropriate to people with disabilities. 42 U.S.C. §12131, *et. seq.*; 28 C.F.R. Part 35.

71. As a result of the virtual barriers within the electronic documents provided by

Defendant, visually impaired individuals are denied the full and equal access to the services, programs, and activities offered by Indian River County and have been denied participation in the government of Indian River County in a manner equal to that afforded to others; in derogation of Title II of the ADA and Section 504.

72. As a public entity, Defendant may not (directly or through contractual or other arrangements) utilize methods of administration that deny individuals with disabilities access to said public entity's services, programs, and activities or that perpetuate the discrimination of another public entity; 28 C.F.R. § 35.130(b)(3).

73. As a public entity and pursuant to Title II, Defendant is required to make reasonable modifications in its policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity; 28 C.F.R. § 35.130(b)(7).

74. Defendant is required to present the electronic documents it provides to the public in an accessible format in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.

75. Defendant's failure to make its electronic documents accessible impedes Plaintiff (and similarly situated visually impaired individuals) from fully accessing the programs, services, and activities of Indian River County as offered to residents and visitors so that they can participate in the business affairs of Indian River County government (as afforded to the public), and enjoy the activities, services and programs provided by Indian River County to the public. By such failure, Defendant has discriminated against the visually impaired.

76. Defendant is blatantly discriminating by its failure to provide accessible

electronic documents for blind and visually impaired citizens. Defendant has violated Title II of the ADA in numerous ways, including discriminatory action which occurred when the Defendant failed to maintain policies and procedures to ensure compliance with Title II of the ADA by creating barriers for individuals with disabilities who are visually impaired and who require the assistance of interface with screen reader software to comprehend and access Defendant's electronic documents provided within its Website. These violations are ongoing.

77. As a result of Defendant's inadequate creation, development, and administration of Defendant's electronic documents, Plaintiff is entitled to injunctive relief pursuant to 42 U.S.C. §12133 to remedy the discrimination.

COUNT II – VIOLATION OF SECTION 504 OF THE REHABILITATION ACT

78. Plaintiff re-alleges and incorporates by reference the factual allegations set forth above.

79. Plaintiff is legally blind, which substantially limits him in his major life activities. Therefore, Plaintiff is a qualified individual with a disability under Section 504 of the Rehabilitation Act.

80. As a qualified individual, Plaintiff is expressly authorized under Section 505 of the Rehabilitation Act which enforces Section 504 of the Rehabilitation Act, 29 U.S.C. §§ 794 & 794(a), incorporating the remedies, rights and procedures set forth in Section 717 of the Civil Rights Act of 1964, including the application of §§ 706(f) - (k), 42 U.S.C. §§ 2000e (5)(f) - (k).

81. On information and belief, Defendant is a recipient of federal financial assistance.

82. Congress enacted the Rehabilitation Act in 1973 to enforce the policy of the

United States that all programs, projects, and activities receiving federal assistance “. . . be carried out in a manner consistent with the principles of . . . inclusion, integration, and full participation of the individuals [with disabilities].” 29 U.S.C. § 701(c)(3).

83. Section 504 of the Rehabilitation Act prohibits recipients of federal funding from discriminating against disabled persons and requires that programs or activities operated by a federally-funded entity be readily accessible to persons with disabilities; see 28 C.F.R. § 42.520.

84. Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 requires that no qualified individual with a disability, on the basis of that disability, be excluded from participation in or be denied the benefit of the services, programs, activities, or to otherwise be discriminated against.

85. The Rehabilitation Act defines “program or activity” to mean all of the operations of a department, agency, special purpose district, or other instrumentality of a State or of a local government. As Defendant is a local government, Defendant’s creation, storage and providing electronic documents to the public through its Website is within the meaning of the Rehabilitation Act; 29 U.S.C. § 794(b)(1)(A).

86. This denial of access to Defendant’s services, programs and/or activities has subjected Plaintiff to discrimination, excluded Plaintiff from participation in those services, programs and/or activities and denied Plaintiff the benefits of Defendant’s electronic documents.

87. As of this filing, Defendant’s electronic documents remain inaccessible to persons with screen readers who are blind and/or low sighted but are accessible to persons without vision disabilities.

88. Specifically, as related to violations of Section 504, blind and visually impaired individuals need to comprehend and access the electronic documents which Defendant provides to the public. Yet, Defendant's electronic documents are not saved in an accessible format which interfaces with screen reader software so that blind and visually impaired individuals are able to comprehend those documents.

89. As a recipient of federal funds and pursuant to Section 504 the Defendant may not deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service; 45 CFR § 84.4 (b)(1)(i).

90. As a recipient of Federal funds and pursuant to Section 504 the Defendant may not afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; 45 CFR § 84.4 (b)(1)(ii).

91. As a recipient of federal funds and pursuant to Section 504 the Defendant may not provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others; 45 CFR § 84.4 (b)(1)(iii).

92. As a recipient of federal funds and pursuant to Section 504 the Defendant may not provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others; 45 CFR § 84.4 (b)(1)(iv).

93. Plaintiff has been denied the ability to comprehend electronic service documents provided by Defendant which would permit Plaintiff to the programs, services and activities of Indian River County as offered to residents and visitors. As a recipient of federal funds and pursuant to Section 504, Defendant may not otherwise limit a qualified

handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service; 45 CFR § 84.4 (b)(1)(vii).

94. As a recipient of federal funds and pursuant to Section 504, Defendant may not (directly or through contractual or other arrangements) utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program or activity with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State; 45 CFR § 84.4 (b)(4).

95. As a recipient of federal funds and pursuant to Section 504, Defendant is required to evaluate (with the assistance of interested persons including handicapped persons or organizations representing handicapped persons) its current policies and practices and the effects thereof that do not or may not meet the requirements of this part; 45 CFR § 84.6 (c)(1)(i).

96. As a recipient of federal funds and pursuant to Section 504, Defendant is required to modify, after consultation with interested persons (including handicapped persons or organizations representing handicapped persons), any policies and practices that do not meet the requirements of this part; 45 CFR § 84.6 (c)(1)(ii).

97. As a recipient of federal funds and pursuant to Section 504, Defendant is required to take, after consultation with interested persons (including handicapped persons or organizations representing handicapped persons), appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices; 45 CFR § 84.6 (c)(1)(iii).

98. As a recipient of federal funds and pursuant to Section 504, Defendant is required to designate at least one person to coordinate its efforts to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part; 45 CFR § 84.7 (a) & (b).

99. Defendant has discriminated against Plaintiff (and other individuals with visual impairments) in the unequal provision of a Website which Defendant provides to the public. As a result, Plaintiff has experienced exclusion, segregation, mental anguish, and humiliation in violation of his civil rights.

100. Defendant's policies, practices and procedures, particularly the actions and omissions described above have violated Plaintiff's rights under Section 504 by discriminating on the basis of a disability.

101. As a public entity, Defendant knows or should know of the guidelines provided by the Department of Justice related to providing information to the public in accessible format.

102. Defendant has failed to act on the likelihood of harm each time it has augmented or uploaded electronic documents on its Website without addressing the accessibility of its Website for blind and visually impaired individuals, it has demonstrated deliberate indifference to providing access to its services, programs and/or activities for blind and visually impaired individuals.

103. Deliberate indifference plainly requires more than gross negligence *Loeffler v Staten Island Univ. Hosp.*, 582 F.3d 268, 275 (2nd Cir. 2009) . Deliberate indifference is a deliberate choice *Bozeman v Orum*, 422 F.3d 1265, 1271 (11th Cir. 2005).

104. Defendant clearly has made a choice on a daily basis in failing to provide effective communication (vis a vie its Website). Defendant's deliberate choice has demonstrated deliberate indifference (standard) thus showing deliberate indifference.

105. By Defendant's failure to make its electronic documents accessible or to otherwise respond to Plaintiff's request for accommodation in a meaningful manner (as request was sent via U.S. mail to Defendant on May 21, 2018,) Defendant's actions further reflect Defendant's deliberate indifference to the rights of the Plaintiff based on Plaintiff's disability.

106. The ongoing and continuous act of failing to provide effective communication (related to the operation and maintenance of Defendant's Website) goes beyond gross negligence. Thus, Defendant is in violation of Section 504 of the Rehabilitation Act. See: *Liese v. Indian River County Hosp. Dist.*, 701 F.3d 334, (11th Cir. 2012).

107. Standard for deliberate indifference as set in *Liese v Indian River County Hospital District*, No. 10-15968 (11th Cir. Nov 13, 2012); See: "deliberate indifference defined in the context as occurring when "the defendant knew that harm to a federally protected right was substantially likely and failed to act on that likelihood," the *Liese* court, quoting from *T.W. ex.rel. Wilson v. Sch. Bd of Seminole Cnty., Fla.*, 610 F.3d at 604 (11th Cir.2010); accord *Loeffler v. Staten Island Univ. Hosp.*, 582 F.3d 268, 275 (2d Cir.2009); *Barber ex rel. Barber v. Colo. Dep't of Revenue*, 562 F.3d 1222, 1228-29 (10th Cir.2009); *Duvall v. Cnty. Of Kitsap*, 260 F.3d 1124, 1139 (9th Cir.2001); see Fig. 1

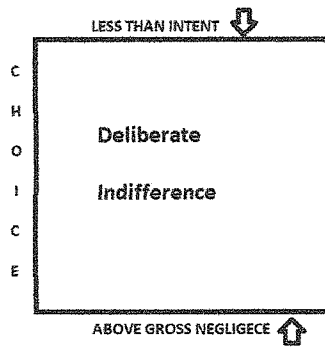


Fig. 1

108. As a result of Defendant's actions, Plaintiff has been damaged and has suffered injuries and shame, humiliation, isolation, segregation, experienced emotional suffering, pain and anguish and has been segregated and prohibited from enjoying the programs, services and activities offered by Indian River County to residents and visitors (through the knowledge obtained (through its electronic service documents) and in participating in the government of Indian River County (through its electronic agenda documents).

109. Due to the deliberate indifference of Defendant as to the inaccessibility of the electronic documents Defendant provides to the public as exhibited by Defendant despite Plaintiff's request for accommodation, Plaintiff is entitled to damages pursuant to Section 504.

110. Plaintiff has been obligated to retain the undersigned counsel for the filing and prosecution of this action. Plaintiff is entitled to have reasonable attorneys' fees, costs and expenses paid by Defendant Indian River County.

COUNT III - VIOLATION OF 42 U.S.C. § 1983

111. Plaintiff re-alleges and incorporates by reference the factual allegations set forth above.

112. At all times relevant, Defendant Indian River County has been and is a

“person” under 42 U.S.C. § 1983.

113. Plaintiff is an advocate for the elderly and disabled. In that capacity, he monitors the current and historic actions of public entities to review and assess government policies toward the elderly and disabled.

114. According to the National Federation for the Blind¹⁸, there are over seven million Americans with visual disabilities (which makes up 2.3% of the population), and there are 486,400 individuals with visual disabilities living within the state of Florida¹⁹.

115. Defendant Indian River County subjected or caused Plaintiff to be subjected to a deprivation of his fundamental rights under the First Amendment and Equal Protection Clause of the United States Constitution because Plaintiff has been denied access to the information needed participate in Indian River County legislative process and services Indian River County provides to the public because of its failure to provide its electronic documents in an accessible format for blind and visually impaired individuals who use screen reader software.

116. In 2003, the United States Department of Justice warned states and local entities that by failing to provide auxiliary aids and services for its website content, persons with disabilities might not be able to use and benefit from the content on the websites. Therefore, Defendant knew or should have known that it was depriving persons who are blind or visually impaired of their First Amendment rights.²⁰

117. But Defendant, acting in furtherance of its custom, usage and practice has denied Plaintiff's First Amendment rights to participate in the in the legislative processes

¹⁸ See <https://nfb.org/blindness-statistics>

¹⁹ 486,400 is the number of non-institutionalized (male and female, all ages and ethnicities) reported to have a visual disability in 2015; see <https://nfb.org/blindness-statistics>

²⁰ <https://www.ada.gov/websites2.htm>

by failing to make its publicly available electronic documents accessible to Plaintiff thereby enabling Plaintiff to meaningfully participate and conduct his advocacy to protect the rights of the elderly and persons with disabilities.

118. As a direct and proximate result of Defendant's denial of Plaintiff's First Amendment and Equal Protection rights, Plaintiff has sustained injuries and damages.

119. For all of the foregoing, Plaintiff has no adequate remedy at law

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Juan Carlos Gil hereby demands judgment against Defendant Indian River County including a declaratory judgment, pursuant to Rule 57 of the FRCP stating that the Defendant's practices, policies, and procedures have subjected Plaintiff to discrimination in violation of Title II of the ADA, Section 504 of the Rehabilitation Act, and 42 U.S.C. § 1983 and permanently enjoin Defendant Indian River County from any practice, policy and/or procedure which will deny Plaintiff equal access to the services, programs and activities offered by Defendant Indian River County to residents and visitors and in participating in the government of Indian River County, as well as:

- a) issue a declaratory judgment that Defendant has violated the Plaintiff's rights as guaranteed by Title II of the ADA and Section 504 of the Rehabilitation Act, and 42 U.S.C. § 1983;
- b) The Court enter an Order requiring Defendant to update all electronic documents made available to the public to remove barriers in order that individuals with visual disabilities can access the electronic documents to the full extent required by Title II of the ADA and Section 504 of the Rehabilitation Act, and 42 U.S.C. § 1983;

- c) pursuant to 42 U.S.C. § 12188(a)(2), the Court enter an Order for permanent injunction which directs Defendant to take all steps necessary to bring the electronic documents which it provides on its electronic media into full compliance with the requirements set forth in the ADA, and its implementing regulations, so that all electronic documents are fully accessible to, and independently usable by, blind and low sighted individuals, and which further directs that the Court shall retain jurisdiction for a period to be determined to ensure that Defendant has adopted and is following an institutional policy that will in fact cause Defendant to remain fully in compliance with the law;
- d) The Court enter an Order requiring Defendant retain a qualified consultant acceptable to Plaintiff (“Mutually Agreed Upon Consultant”) who shall assist it in improving the accessibility of its electronic documents, so they are accessible to individuals with visual disabilities who require those Electronic documents to be in accessible format or provided in HTML format;
- e) The Court require Defendant engage a (mutually agreed upon) Consultant to perform an automated accessibility audit on a periodic basis to evaluate whether Defendant’s electronic documents to be accessible to individuals with visual disabilities who require those documents to be in accessible format or provided in HTML format;
- f) award damages in an amount to be determined at trial;
- g) award Plaintiffs’ reasonable litigation expenses and attorneys’ fees; and
- h) award such other and further relief as it deems necessary, just and proper.

Dated this 16th day of July, 2018.

Respectfully submitted,

s/Scott Dinin

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Counsel for Plaintiff

EXHIBIT 'A'

JUAN CARLOS GIL

2656 SW 28th Avenue
Miami, FL 33133

May 21, 2018

Via US Mail

Indian River County, County Administrator
1801 27th Street
Vero Beach, Florida 32960

Attn: Jason E. Brown, County Administrator

REQUEST FOR ACCOMMODATION

Dear Mr. Jason E. Brown;

I was on the site <http://www.ircgov.com/index.html> today, trying to learn about the governmental functioning of Indian River County through the documents you provide within your site.

I am legally blind, so I depend on a screen reader to help me understand electronic documents. My screen reader would not work with your electronic documents. I was specifically interested in documents related to the budget of Indian River County (electronic documents) for the years 2015, 2016, 2017 and 2018, and all County Commission agendas and back up material for years 2015, 2016, 2017 and 2018. Would you please make these documents accessible in your site so that they will work with screen readers?

Your site has many other electronic documents other than the specific ones which I have asked for above. In addition to the specific documents listed here, can you also make the other electronic documents within your site accessible so that they will work with screen readers so I don't have to take the steps to ask for each document in a mail request?

Please send me a reply via mail as soon as possible.

Thank you,

Juan Carlos Gil

Juan Carlos Gil

EXHIBIT 'B'

BOARD OF COUNTY COMMISSIONERS



May 25, 2018

Via U.S. Mail

Juan Carlos Gill
2656 SW 28th Avenue
Miami, FL 33133

RE: Request for Accommodation Indian River County Budget Documents


Dear Mr. Gill:

I am writing in response to your letter to Jason E. Brown, County Administrator, dated May 21, 2018, which was received on May 24, 2018. In your letter you have stated that you are blind and that your screen reader would not work on Indian River County's electronic documents. You specifically referenced budget documents for 2015, 2016, 2017 and 2018 and all County Commission agendas and back-up material for years 2015, 2016, 2017 and 2018.

I have consulted with our Computer Support Services staff and I have been informed that the budget books for all of those years are in a readable text format. Also, the agendas for all of those years are in a readable text format. And all of the backup documents from agenda packets, including the budget hearings, from 2002 through November 2016 are also scanned into a readable text. Some of the back-up materials from December 2016 through March 2018 are in a readable text format. The company that operates our system, Granicus, is working on modifying the remaining documents into a readable format. We anticipate that the remaining documents will be in a readable format next week.

Public access to our County documents is very important. By the time you receive this letter all of the remaining documents should be in a readable format. However, if you have any problems, please give me a call at 772-226-1427, and we will work with you to resolve the issue. Thank you for your interest in Indian River County.

Sincerely,


Dylan Reingold
County Attorney

cc: Jason E. Brown, County Administrator