

1 Sean Betouliere (SBN 308645)  
Shawna L. Parks (SBN 208301)  
2 Michael Nunez (SBN 280535)  
**DISABILITY RIGHTS ADVOCATES**  
3 2001 Center Street, Third Floor  
Berkeley, California 94704-1204  
4 Tel: (510) 665-8644  
Fax: (510) 665-8511  
5 Emails: sbetouliere@dralegal.org  
sparks@dralegal.org  
6 mnunez@dralegal.org

7 Frederick P. Nisen (SBN 184089)  
**DISABILITY RIGHTS CALIFORNIA**  
8 Tel: (916) 504-5800  
Fax: (916) 504-5801  
9 Email: fred.nisen@disabilityrightsca.org

10 *Attorneys for Plaintiffs* (continued on next page)

11 **THE UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**  
13 **SAN FRANCISCO DIVISION**

14 CALIFORNIA COUNCIL OF THE BLIND,  
15 NATIONAL FEDERATION OF THE BLIND  
OF CALIFORNIA, CHRISTOPHER GRAY,  
16 RUSSELL DAWSON RAWLINGS, and VITA  
ZAVOLI,

17  
18 Plaintiffs,

19 v.

20  
21 SHIRLEY N. WEBER, PH.D., in her official  
capacity as California Secretary of State,

22  
23 Defendant.

**Case No. 3:24-cv-01447-SK**

**SECOND AMENDED COMPLAINT  
FOR DECLARATORY AND  
INJUNCTIVE RELIEF FOR  
VIOLATIONS OF:**

Title II of the Americans with Disabilities  
Act of 1990 (42 U.S.C. § 12131 *et seq.*)

Section 504 of the Rehabilitation Act of  
1973 (29 U.S.C. § 794 *et seq.*)

California Government Code § 11135 *et  
seq.*

**CLASS ACTION**

1 Eve Hill (SBN 202178)  
Neel Lalchandani (SBN 310480)  
2 Lauren J. Kelleher (*Pro Hac Vice*)  
**BROWN, GOLDSTEIN & LEVY LLP**  
3 120 East Baltimore Street, Suite 2500  
Baltimore, MD 21202-1633  
4 Tel: (410) 962-1030  
Fax: (410) 385-0869  
5 Emails: ehill@browngold.com  
nkl@browngold.com  
6 lkelleher@browngold.com

7 Lili V. Graham (SBN 284264)  
Andrea Rodriguez (SBN 290169)  
8 Paul R. Spencer (SBN 292767)  
**DISABILITY RIGHTS CALIFORNIA**  
9 530 B Street, Suite 400  
10 San Diego, CA 92101-4426  
Tel: (619) 239-7861  
11 Fax: (619) 239-7906  
12 Emails: lili.graham@disabilityrightsca.org  
andrea.rodriguez@disabilityrightsca.org  
13 paul.spencer@disabilityrightsca.org

14 Karie Lew (SBN 234666)  
**DISABILITY RIGHTS CALIFORNIA**  
15 1831 K Street  
Sacramento, CA 95811-4114  
16 Tel: (916) 504-5800  
Fax: (916) 504-5801  
17 Email: karie.lew@disabilityrightsca.org

18 *Attorneys for Plaintiffs* (continued from previous page)

19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**INTRODUCTION**

1  
2 1. Plaintiffs California Council of the Blind, National Federation of the Blind of  
3 California, Christopher Gray, Russell Dawson Rawlings, and Vita Zavoli bring this action on  
4 behalf of themselves and all others similarly situated to challenge discrimination against voters  
5 with print disabilities in California’s vote-by-mail program.

6 2. “Print disabilities” are disabilities that prevent a voter from reading, marking,  
7 holding, handling, and/or manipulating a paper ballot privately and independently. Blindness is  
8 one type of print disability. Print disabilities also include certain visual impairments and certain  
9 disabilities that cause dexterity impairments where the nature and degree of those impairments  
10 prevent the aforementioned actions.

11 3. Plaintiffs estimate that there are currently approximately 48,000 eligible blind  
12 voters and 10,040 eligible voters with a spinal cord injury causing a print disability in California.  
13 The data for adults with cerebral palsy are limited; based on the childhood prevalence rates of  
14 cerebral palsy, Plaintiffs estimate that there are approximately 15,000 eligible voters with  
15 cerebral palsy resulting in manual dexterity impairments in California that qualify them as voters  
16 with print disabilities.

17 4. California voters with print disabilities, like other U.S. citizens across the country,  
18 are proud to exercise the right to vote for their elected representatives and for or against policies  
19 that impact their lives.

20 5. In recent elections, record numbers of California voters have cast their ballots by  
21 mail. As part of an effort to increase voting access, the option to vote by mail is now enshrined  
22 as a permanent feature of the State of California’s electoral system.

23 6. While many voters have benefitted from California’s vote-by-mail program  
24 (“Vote-by-Mail Program” or “Program”), that Program excludes and discriminates against  
25 individuals with print disabilities.

26 7. Although California voters with print disabilities may receive and mark their  
27 vote-by-mail ballots electronically on their own devices (like a personal computer) using a  
28

1 remote accessible vote-by-mail (“RAVBM”) system certified or conditionally approved by the  
2 California Secretary of State, there is no option to return their ballots electronically. Instead,  
3 voters who use an RAVBM system must print their ballot selections, place that printout in an  
4 envelope (such as a government-issued paper ballot return envelope), sign and seal the envelope,  
5 and then arrange for the return of the paper ballot through one of three non-electronic means.

6 8. These paper-based requirements impose significant—and unlawful—barriers for  
7 voters with print disabilities. By definition, print disabilities impede an individual’s ability to  
8 read, mark, hold, handle, and/or manipulate printed materials.

9 9. As a result, voters with print disabilities across the state (including Plaintiffs and  
10 their members) have been unable to complete the paper-based requirements privately and  
11 independently. Instead, they have been forced to rely on individuals who can provide assistance  
12 to perform the paper-based requirements or to forgo voting by mail altogether.

13 10. Forcing individuals with print disabilities to rely on the assistance of another  
14 person to vote deprives them of the right to express their political choices without others’  
15 presence or knowledge (that is, on a secret ballot)—a hallmark of our electoral process. The  
16 Vote-by-Mail Program’s paper-based requirements have thus denied California voters with print  
17 disabilities their fundamental right to vote privately and independently.

18 11. Defendant Shirley N. Weber, the California Secretary of State, has the obligation  
19 to make the Vote-by-Mail Program accessible to voters with print disabilities despite  
20 discriminatory sections of the California Elections Code. The addition of a readily available  
21 electronic ballot return (or “e-return”) option would remedy the problem, as it would allow  
22 voters with print disabilities to use their own devices not only to read and mark their ballots but  
23 also to submit them.

24 12. Multiple other states across the country already offer some form of e-return for  
25 certain voters with disabilities. California itself already allows over 116,000 military and  
26 overseas voters to return their ballot selections by facsimile (“fax”). In practice, these voters not  
27 only can submit their ballot selections by electronic fax (instead of through a fax machine) but  
28

1 already have been doing so.

2 **JURISDICTION**

3 13. Plaintiffs bring their claims pursuant to title II of the Americans with Disabilities  
4 Act, 42 U.S.C. § 12131 *et seq.* (hereinafter “Title II”), Section 504 of the Rehabilitation Act of  
5 1973, 29 U.S.C. § 794 *et seq.* (hereinafter “Section 504”), and California Government Code  
6 section 11135(a).

7 14. The Court has subject matter jurisdiction over Plaintiffs’ federal claims pursuant  
8 to 28 U.S.C. §§ 1331 and 1343.

9 15. The same events and omissions forming the basis of Plaintiffs’ federal claims  
10 form the basis of their state-law claim. Thus, this Court has supplemental jurisdiction over  
11 Plaintiffs’ state-law claim pursuant to 28 U.S.C. § 1367(a).

12 16. The Court has authority to issue a declaratory judgment under 28 U.S.C. §§ 2201,  
13 2202, and authority to issue injunctive relief under 42 U.S.C. § 12133.

14 **VENUE**

15 17. Venue is proper in the Northern District of California pursuant to 28 U.S.C. §  
16 1391(b)(2) because Plaintiffs Christopher Gray and Vita Zavoli reside and vote within this  
17 district; Plaintiffs California Council of the Blind and National Federation of the Blind of  
18 California have members who reside and vote within this district; Defendant performs official  
19 duties that impact and constrain how the Vote-by-Mail Program operates in this district; and a  
20 substantial part of the events and omissions giving rise to the claims have occurred and continue  
21 to occur in this district.

22 **DIVISIONAL ASSIGNMENT**

23 18. Because Plaintiff Christopher Gray resides in San Francisco and a substantial part  
24 of the events and omissions giving rise to the claims have occurred in the City and County of San  
25 Francisco, and because Plaintiff Vita Zavoli resides in the County of Alameda and a substantial  
26 part of the events and omissions giving rise to the claims have occurred in the County of  
27 Alameda, this case should be assigned to the San Francisco Division or the Oakland Division of  
28

1 this Court pursuant to Civil Local Rule 3-2(c)-(d).

2 **PARTIES**

3 **I. Plaintiffs**

4 19. Named Plaintiff Christopher Gray is a registered California voter who resides in  
5 San Francisco County, California. Mr. Gray is blind. Due to his disability, print documents are  
6 not accessible to him, which means he cannot vote privately and independently through  
7 California's Vote-by-Mail Program.

8 20. Named Plaintiff Russell Dawson Rawlings is a registered California voter who  
9 resides in Sacramento County, California. Mr. Dawson Rawlings has cerebral palsy, which  
10 limits his manual dexterity. Due to his disability, he cannot mark or handle a paper ballot, which  
11 means he cannot vote privately and independently through California's Vote-by-Mail Program.

12 21. Named Plaintiff Vita Zavoli is a registered California voter who resides in  
13 Alameda County, California. Ms. Zavoli is blind. Due to her disability, print documents are not  
14 accessible to her, which means she cannot vote privately and independently through California's  
15 Vote-by-Mail Program.

16 22. Named Plaintiff California Council of the Blind ("CCB") is a grassroots  
17 membership organization, with chapters and affiliates throughout California. It is an affiliate of  
18 the American Council of the Blind, a national membership organization. CCB's membership  
19 consists of blind and visually impaired individuals, as well as fully sighted allies, residing in  
20 California. It has approximately 378 members. Plaintiffs Christopher Gray and Vita Zavoli are  
21 CCB members and are registered voters with print disabilities. CCB's purpose, as stated in  
22 article 2 of its bylaws, is "to increase the independence and equality for all Californians who are  
23 blind or low vision." Its mission is "to increase the independence, security, equality of  
24 opportunity, and quality of life for all Californians who are blind and visually impaired." Its  
25 services include providing information and referrals, technical assistance, and advocacy.

26 23. Named Plaintiff National Federation of the Blind of California ("NFBCA") is a  
27 nonprofit volunteer membership organization operating under the laws of California, with  
28

1 chapters and divisions throughout California. It is an affiliate of the National Federation of the  
2 Blind, a national membership organization that “promote[s] equal opportunity for the blind” by  
3 removing “legal, economic, and societal barriers to full participation by blind people in  
4 employment, education, recreation, and all other aspects of community life.” NFBCA’s  
5 membership consists of blind individuals, as well as sighted individuals who are interested in the  
6 organization’s purpose and activities. Some of NFBCA’s members include voters with print  
7 disabilities who are registered to vote in California. NFBCA has approximately 123 formal  
8 voting members. It advocates to protect and promote the civil rights of blind persons through  
9 public education and advocacy.

## 10 **II. Defendant**

11 24. Defendant Shirley N. Weber is the current California Secretary of State. She is  
12 sued only in her official capacity.

13 25. As Secretary of State, Defendant is the “chief elections officer of the state.” Cal.  
14 Elec. Code § 10(a); Cal. Gov’t Code § 12172.5(a). Her powers and duties as the State’s chief  
15 elections officer are set forth throughout the California Elections Code and at section 12172.5 of  
16 the California Government Code.

17 26. One of Defendant’s duties is to “administer the provisions of the Elections Code.”  
18 Cal. Gov’t Code § 12172.5(a).

19 27. Another one of Defendant’s duties is to “see that elections are efficiently  
20 conducted.” *Id.*

21 28. Defendant also has the duty to ensure “that state election laws are enforced.” *Id.*  
22 If, “at any time,” Defendant concludes that state election laws are not being enforced, she “shall  
23 call the violation to the attention of the district attorney of the county or to the Attorney  
24 General.” *Id.* at § 12172.5(b). In these instances, she also “may assist the county elections  
25 officer in discharging the officer’s duties.” *Id.*

26 29. Defendant has the authority to “adopt regulations to ensure the uniform  
27 application and administration of state election laws.” *Id.* at § 12172.5(d).

1           30. As the State's chief elections officer and in furtherance of her duties listed above,  
2 Defendant regularly issues guidance to county elections officials through formal and informal  
3 means. Methods she uses include statewide memoranda to county clerks and registrars of voters,  
4 regulations, materials on the Secretary of State website,<sup>1</sup> and periodic telephonic and/or video  
5 meetings with county elections officials.

6           31. Defendant's statewide memoranda to county clerks and registrars of voters,  
7 known by the short form "CC/ROV memoranda," are described on the Secretary of State's  
8 website as "written guidance and information to the state's county elections officials to help  
9 ensure a smooth electoral process." Cal. Sec'y of State, *2025 Advisories to County Elections*  
10 *Officials*, <https://www.sos.ca.gov/elections/advisories-county-elections-officials/2025->  
11 [advisories-county-elections-officials](https://www.sos.ca.gov/elections/advisories-county-elections-officials/2025-) (last visited July 8, 2025). They cover a wide variety of  
12 subjects, including voter registration, vote-by-mail procedures, in-person voting, and voting  
13 technology, such as RAVBM systems. For example, CC/ROV Memorandum #24166,<sup>2</sup> issued on  
14 August 15, 2024, advises county elections officials about some of the laws, processes, and  
15 procedures governing RAVBM systems, with a focus on their use for the November 2024  
16 presidential primary election. The Secretary of State has a history of using CC/ROV memoranda  
17 to county elections officials to communicate their obligations under court orders. For example,  
18 CC/ROV Memorandum #14120 notified county elections officials about a court order regarding  
19  
20  
21  
22

23 <sup>1</sup> One example of guidance to county elections officials that is posted on the Secretary of State's  
24 website is a list of frequently asked questions advising county elections officials how to comply  
25 with the California Voter's Choice Act. Cal. Sec'y of State, *Voter's Choice Act Frequently*  
*Asked Questions* (May 5, 2022), <https://elections.cdn.sos.ca.gov/vca/vca-faqs.pdf> (last visited  
July 8, 2025).

26 <sup>2</sup> Memo from the NaKeshia Robinson, Deputy Sec'y of State (HAVA), to All County  
27 Clerks/Registrars of Voters, *re: General Election: Remote Accessible Vote-by-Mail* (Aug. 15,  
28 2024), <https://elections.cdn.sos.ca.gov/ccrov/2024/august/24166nr.pdf> (last visited July 8,  
2025).

1 voting rights of people who have prior felonies.<sup>3</sup> More recently, CC/ROV memoranda #20120<sup>4</sup>  
2 and #20217<sup>5</sup> notified county elections officials of court orders regarding signature verification  
3 for petitions.

4 32. If a court were to find that federal and state antidiscrimination laws require  
5 California voters with print disabilities to be offered an option to return their vote-by-mail ballots  
6 electronically, Defendant, as the State's chief elections officer and in furtherance of her duties  
7 listed above, would play an essential role in, among other things, certifying a fully accessible  
8 RAVBM system and making any other necessary changes to the Vote-by-Mail Program,  
9 communicating the court's ruling to county elections officials, providing guidance to county  
10 elections officials regarding compliance with the law, and enforcing the law as interpreted by the  
11 court. Defendant also would have the authority to issue regulations consistent with the court's  
12 ruling to ensure the uniform application and administration of state election law (including the  
13 extent to which any such laws have been held to be preempted by federal antidiscrimination  
14 mandates).

15 33. One of Defendant's duties with respect to voting technology is to "adopt and  
16 publish standards and regulations governing the use of remote accessible vote by mail [RAVBM]  
17 systems." Cal. Elec. Code § 19283(a).

18 34. When selecting which RAVBM system they will use in their county, county  
19 elections officials must choose a system that the California Secretary of State has certified or  
20 conditionally approved. Cal. Elec. Code § 19281(a) (no RAVBM system may be used in an  
21

22 <sup>3</sup> Memo from Lowell Finley, Chief Counsel, to All County Clerks/Registrars of Voters, *re: Voter*  
23 *Registration: Felon Voting Court Ruling* (May 8, 2014),  
<https://elections.cdn.sos.ca.gov/ccrov/pdf/2014/may/14120lf.pdf> (last visited July 8, 2025).

24 <sup>4</sup> Memo from Joanne Southard, Ass't Chief (Elec. Div.), to All County Clerks/Registrars of  
25 Voters and Proponent, *re: Initiative: Court Order Related to the Random Sample of Initiative*  
*#1879* (June 19, 2020), <https://elections.cdn.sos.ca.gov/ccrov/pdf/2020/june/20120js.pdf> (last  
visited July 8, 2025).

26 <sup>5</sup> Memo from Jordan Kaku, Initiate & Referendum Coordinator, to All County Clerks/Registrars  
27 of Voters and Proponents, *re: Initiative: Second Court Order Related to Deadlines for Initiative*  
*1886, Related to Gambling* (Sept. 21, 2020),  
28 <https://elections.cdn.sos.ca.gov/ccrov/pdf/2020/september/20217jk.pdf> (last visited July 8, 2025).

1 election in California until it has been “certified or conditionally approved” by the Secretary of  
2 State); *see also id.* § 19280 (conditioning certification and approval on fulfillment of statutory  
3 requirements and compliance with regulations promulgated by the Secretary of State).

4 35. As to why electronic ballot return is not offered through RAVBM, Defendant may  
5 argue that the California Secretary of State is and has been constrained by the following state  
6 statutory requirements and prohibitions:

7 A. California Elections Code section 303.3, which defines an RAVBM system as  
8 being “for the sole purpose of marking an electronic vote by mail ballot for a  
9 voter who shall print the paper cast vote record to be submitted to the elections  
10 official;” and

11 B. California Elections Code section 19295(a), which prohibits an RAVBM system  
12 from transmitting a voter’s ballot selections over the internet.

13 36. By certifying or conditionally approving only RAVBM systems that require a  
14 paper-based ballot return process, the California Secretary of State has prevented county  
15 elections officials from choosing an RAVBM system with an online portal for electronic ballot  
16 return. Thus, Defendant has denied Plaintiffs and other voters with print disabilities one of the  
17 methods of ballot return—an online portal—that would give them full and equal access to  
18 California’s Vote-by-Mail Program.<sup>6</sup> This discriminatory denial is directly traceable to  
19 Defendant. *See Common Cause S. Christian Leadership Conf. of Greater Los Angeles v. Jones*,  
20 213 F. Supp. 2d 1106, 1108 (C.D. Cal. 2001) (finding the Secretary of State is the proper  
21 defendant to address changes regarding the choices counties have when selecting voting systems  
22 with varying degrees of quality).

23 37. In addition, Defendant denies voters with print disabilities full and equal access to  
24 the State’s Vote-by-Mail Program by administering and enforcing state election laws that prevent  
25 counties from allowing voters with print disabilities to return their RAVBM ballots by email or

26 \_\_\_\_\_  
27 <sup>6</sup> The two other vote-by-mail ballot return options besides an online portal that would be  
28 accessible to voters with print disabilities—and that do not implicate Defendant’s certification  
authority—are email and fax return, as discussed *infra* ¶¶ 61-62.

1 electronic fax.

2 38. Presently and at all times relevant to the instant complaint, Defendant is and has  
3 been a public entity under title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 *et*  
4 *seq.*

5 39. At all relevant times, Defendant has received and continues to receive federal  
6 financial assistance for election-related activities, including millions of dollars in federal funding  
7 to support state elections administration under the Help America Vote Act (“HAVA”) and other  
8 federal programs, within the meaning of Section 504 of the Rehabilitation Act. 29 U.S.C. §  
9 794(a).

10 40. At all relevant times, Defendant has conducted, operated, and/or administered key  
11 aspects of California’s Vote-by-Mail Program and has received and continues to receive state  
12 funding and/or state financial assistance for election-related activities within the meaning of  
13 California Government Code section 11135(a).

14 **FACTUAL ALLEGATIONS**

15 **III. California’s Vote-By-Mail Program is inaccessible to voters with print**  
16 **disabilities.**

17 41. All California voters are eligible to vote by mail. Cal. Elec. Code § 3000.5.

18 42. California law provides several ways for voters to receive, mark, and return their  
19 vote-by-mail ballots:

20 **A. Paper Vote-by-Mail Ballots:** These ballots are automatically mailed to voters  
21 who register to vote far enough in advance of an election. *See, e.g.*, Cal. Elec.  
22 Code § 3000.5(a) (setting forth the timelines for mailing election materials to  
23 active registered voters). The ballots are received by the voter, completed, and  
24 returned on paper. They may be returned by mail, in person to an elections  
25 official, or at a designated ballot drop-off location. Cal. Elec. Code §  
26 3017(a)(1). Under California law, these are the only permitted methods of vote-  
27 by-mail ballot return, *id.* § 3017(d), unless the voter qualifies as a military or  
28

1 overseas voter under California Elections Code section 3106. *See infra* ¶ 42(C).  
2 On its face, Elections Code section 3017(a) does not allow any form of  
3 electronic ballot return.

4 **B. Remote Accessible Vote-by-Mail Systems:** Any California voter may receive,  
5 read, and mark their ballot electronically on their own device, such as a personal  
6 computer, using their county's RAVBM system. Cal. Elec. Code § 3016.7.  
7 These systems are compatible with assistive technology, allowing voters with  
8 disabilities to use, for example, a screen reader or a sip-and-puff device to read  
9 and/or mark their ballot. While the initial steps of receiving, reading, and  
10 marking the ballot are paperless when using a RAVBM system, the final return  
11 steps are not. Unless they qualify as a military or overseas voter under  
12 California Elections Code section 3106, *see infra* ¶ 42(C), RAVBM voters must  
13 print their ballot selections on paper for submission to their elections official.  
14 That means submitting a paper printout from the RAVBM system in a signed  
15 envelope (such as a government-issued paper ballot return envelope), using one  
16 of the three methods a voter may use to return a paper vote-by-mail ballot: mail,  
17 in-person delivery, or deposit at a ballot drop-off location. The California  
18 Secretary of State must certify or conditionally approve an RAVBM system  
19 before it can be used in an election in California. Cal. Elec. Code § 19281(a);  
20 *see also id.* § 19280 (conditioning certification and approval on fulfillment of  
21 statutory requirements and compliance with regulations promulgated by the  
22 Secretary of State).

23 **C. Ballots for Military and Overseas Voters:** Finally, certain military and  
24 overseas voters are permitted to return their vote-by-mail ballots electronically  
25 by fax. Cal. Elec. Code § 3106. Every California county elections office  
26 provides a fax number for this purpose, and Defendant maintains an online list  
27 of these fax numbers for voters. The California Secretary of State has authority  
28

1 over aspects of the voting process for military and overseas voters. *See, e.g.*,  
2 Cal. Elec. Code § 3101(a) (providing enforcement authority); *id.* § 3101(e)  
3 (mandating that Secretary prescribe requirements for “the timely and proper  
4 completion of a military or overseas voter’s ballot”).

5 43. The California Elections Code does not restrict the method by which qualifying  
6 military and overseas voters may fax their ballots; it states only that they may return their ballot  
7 “by facsimile transmission.” *Id.* at § 3106(a).

8 44. In practice, military and overseas voters already can return their ballots by  
9 electronic fax (e-fax) (rather than by using a fax machine) and are doing so. This process  
10 involves transmitting an electronic version of the marked ballot to an e-fax service, which faxes  
11 the materials to the voter’s county elections official. Neither the California Elections Code nor  
12 Defendant prohibits this practice, which arguably has become more common as fewer people  
13 have access to fax machines and technology continues to shift toward e-faxing.

14 45. An electronic fax can be sent to and received by any fax number, including one  
15 connected to a fax machine. The recipient of faxed materials that are transmitted by an e-fax  
16 service does not itself have to acquire e-fax technology or contract with an e-fax service; no  
17 special equipment is required on the receiver’s end.

18 46. There is generally no obvious distinction on the receiving end between a fax that  
19 has been sent electronically and one that has been sent using a fax machine.

20 47. Defendant allows qualified military and overseas voters to return their ballots by  
21 fax despite any security risks that may exist in connection with that method of ballot return.

22 48. All RAVBM ballots are submitted to county elections officials in paper format or  
23 by fax. Regardless of how they are submitted, these RAVBM ballot selections are then  
24 transferred onto official paper ballots by county elections officials, a process called  
25 “duplication.” It is the duplicated ballots that are tabulated by the voting system.

26 49. Non-RAVBM ballots returned by fax similarly are duplicated by county elections  
27 officials to ensure the ballot selections can be tabulated. Cal. Elec. Code § 3106(c).

1           50.     When RAVBM was first introduced in California, it was limited to only certain  
2 voters (including military and overseas voters and voters with disabilities), and the California  
3 Secretary of State required voters to attest under oath that they belonged to one of these two  
4 groups as a condition of using RAVBM.

5           51.     Defendant could, if she wished, impose a similar attestation requirement on voters  
6 with print disabilities before allowing them to use accessible ballot-return options.

7           52.     Since 2020, California law has required that RAVBM systems be offered in every  
8 county to at least certain voters, including voters with disabilities, as part of the Vote-By-Mail  
9 Program. The RAVBM systems currently certified or conditionally approved for use in  
10 California require voters to print their ballot selections on paper, put the printout in a paper ballot  
11 return envelope,<sup>7</sup> seal the envelope, sign the envelope, and return the envelope to the county  
12 elections office by mail, by depositing it in a ballot drop box, or by dropping it off in person at  
13 the elections office or a voting location.

14           53.     Voters with print disabilities are unable to vote privately and independently using  
15 an RAVBM system because they require sighted and/or other physical assistance to perform one  
16 or more of the required paper-based steps, such as printing their selections, verifying that the  
17 ballot selections printed correctly, putting the printout in the ballot return envelope, and/or  
18 sealing, signing, and returning the envelope. Each of these steps presents barriers that force  
19 voters with print disabilities to seek assistance from another person, thereby depriving them of  
20 their right to vote privately and independently, even though voters without print disabilities are  
21 not similarly required to relinquish this right.

22           54.     Thus, although the RAVBM systems certified or conditionally approved for use in  
23

24 \_\_\_\_\_  
25 <sup>7</sup> California Assembly Bill 626 (2023), which became effective on January 1, 2024, allows any  
26 voter to vote using their vote-by-mail ballot at an in-person voting location without having to use  
27 their ballot return envelope. Under California Elections Code section 3016.5, such voters are  
28 officially categorized as and effectively acting as *in-person voters*. While some voters with print  
disabilities may choose to submit their RAVBM printouts in person, without a ballot return  
envelope, pursuant to this new law, such an option does not obviate the accessibility barriers to  
*voting by mail* that are the subject of this complaint.

1 California have made receiving, reading, and marking ballots more accessible to some voters  
2 with disabilities, including those who can use their own assistive technology—such as a screen  
3 reader or a sip-and-puff device—to complete those steps, the return process remains inaccessible  
4 to voters with print disabilities who are unable to print, read, and/or handle the RAVBM printout  
5 and a paper ballot return envelope<sup>8</sup> without assistance from another person.

6 55. Defendant’s failure to provide California voters with print disabilities with an  
7 accessible vote-by-mail ballot return option “force[s]” many of them “to reveal [their] political  
8 opinion[s]” to others, thereby keeping them from ““enjoy[ing] the benefits of” the secret ballot  
9 afforded to most other voters.” *Cal. Council of the Blind v. County of Alameda*, 985 F. Supp. 2d  
10 1229, 1239 (N.D. Cal. 2013); *see* Cal. Const. art. II, § 7 (providing that “[v]oting shall be  
11 secret”). Thus, these voters are denied access to private and independent voting as compared to  
12 other California voters without such disabilities, in violation of federal and state anti-  
13 discrimination laws.

14 56. As set forth below, Plaintiffs, on behalf of themselves, their members, and the  
15 Class, bring claims for violations of title II of the Americans with Disabilities Act (“Title II” or  
16 “ADA,” as applicable), 42 U.S.C. § 12131 *et seq.*; Section 504 of the Rehabilitation Act of 1973  
17 (“Section 504”), 29 U.S.C. § 794 *et seq.*; and section 11135(a) of the California Government  
18 Code.

19 57. Defendant must comply with Title II, Section 504, and section 11135(a) of the  
20 California Government Code by making California’s Vote-By-Mail Program accessible to voters  
21 with print disabilities.

22 **IV. Defendant could remedy this discriminatory exclusion of voters with print**  
23 **disabilities from California’s Vote-by-Mail Program but has failed to do so.**

24 58. The discriminatory burdens placed on voters with print disabilities outlined above  
25 are unlawful, and they could be remedied by existing accessible alternative mechanisms for  
26 returning vote-by-mail ballots electronically. The addition of an electronic ballot return (or “e-  
27

28 <sup>8</sup> *See supra* note 7.

1 return”) option—which does not require the reading or handling of paper—would allow voters  
2 with print disabilities to use their own personal devices, including their own assistive technology,  
3 not only to receive, read, and mark their vote-by-mail ballots as they can do with existing  
4 RAVBM systems certified or conditionally approved for use in California, but also to review  
5 their ballot selections for completeness and accuracy and to transmit their ballots with the full  
6 independence and privacy that is afforded to Californians without print disabilities who  
7 participate in the Vote-by-Mail Program. Since RAVBM ballots returned in person, through the  
8 mail, or in a ballot drop box must already be transcribed by elections officials onto a tabulatable  
9 ballot, this would not place an additional burden on elections officials.

10 59. Defendant could remedy this discriminatory exclusion of voters with print  
11 disabilities by providing an electronic ballot return option in one or more of these forms: (1)  
12 email; (2) fax; and/or (3) an online portal that is integrated into an RAVBM system. Statistics  
13 from the National Conference of State Legislatures (NCSL) indicate that, as of May 2024,  
14 thirteen states had extended electronic ballot return options—email, fax, or an online portal—to  
15 at least certain voters with disabilities.

16 60. First, Defendant could institute an email return option. Defendant would provide  
17 guidance and could promulgate regulations for how county elections officials receive and  
18 process ballot selections via email. An email return option would not require certification or  
19 conditional approval of a new RAVBM system.

20 61. Second, Defendant could institute a fax return option. Defendant would provide  
21 guidance and could promulgate regulations for how county elections officials receive and  
22 process ballots via fax. As mentioned above, California already has an e-return option for  
23 certain military and overseas voters, who are permitted to return their ballots via fax, including e-  
24 fax. Ballots returned via e-fax by military and overseas voters can be received by any fax  
25 machine, and this existing e-return option could be extended to voters with print disabilities  
26 without requiring additional infrastructure or certification or conditional approval of a new  
27 RAVBM system. Every county in California has a fax number capable of receiving faxed  
28

1 ballots, like the existing process available to military and overseas voters.

2 62. Third, Defendant could institute an online portal for electronic ballot return that is  
3 integrated into an RAVBM system. For this option to be available, Defendant would have to  
4 certify or conditionally approve one or more RAVBM systems that include such an online portal.  
5 At least four states use Democracy Live's OmniBallot software, which is an RAVBM system  
6 that offers an online portal as an e-return option for voters with disabilities. Defendant also  
7 would issue guidance and could promulgate regulations regarding use of an RAVBM system  
8 with an online portal for electronic ballot return.

9 63. More than half of California counties currently use a different version of  
10 Democracy Live's RAVBM system, one that does not include an e-return option. According to  
11 the vendor, it would be easy to add an e-return option to the version of its RAVBM system that  
12 already is used in California (i.e., an option to allow voters with print disabilities to return their  
13 ballot selections through an online portal). As mentioned above, this would require Defendant to  
14 certify or conditionally approve at least one RAVBM system with an e-return option, which she  
15 has the sole authority to do.

16 64. Additionally, for the three options discussed above, Defendant could provide  
17 guidance to county elections officials and regulations on the attestation and signature  
18 components.

19 65. To the extent some accessible form of attestation by voters with print disabilities  
20 is deemed necessary in order to limit the use of e-return to this subset of voters, Defendant has  
21 previously required voters with disabilities to attest under oath to the existence of their  
22 disabilities before using an RAVBM system, and Defendant could adopt a similar requirement as  
23 a condition of using any accessible ballot return options.

24 66. For signatures, Defendant would have numerous options for providing an  
25 accessible electronic signature-submission process. The California Elections Code already  
26 allows voters to submit their signature electronically in certain circumstances. Military and  
27 overseas voters who return their ballot by fax transmit their signature by fax. Some counties use  
28

1 an online application to allow voters to submit their signature electronically when the signature  
2 on their vote-by-mail ballot return envelope is missing or is deemed not to match the signature in  
3 the voter's file.

4 67. Defendant's failure to provide an accessible ballot return option as part of the  
5 Vote-by-Mail Program is glaring, given that she has been aware of the Program's inaccessibility  
6 to voters with print disabilities for years. In May 2021, at a public event about voters with  
7 disabilities, Disability Rights California ("DRC"), co-counsel in this case, notified Defendant  
8 and her staff about the barriers posed by the lack of an e-return option. At that time, DRC urged  
9 Defendant to certify an RAVBM system that includes an e-return option for voters with print  
10 disabilities, and it has continued to do so since, including throughout 2022 and 2023.

11 68. Plaintiffs sent a formal demand letter to Defendant on January 19, 2024,  
12 reiterating the issues described above and urging Defendant to pursue and implement an e-return  
13 option for voters with print disabilities in order to avoid litigation on this matter.

14 69. Despite being advised repeatedly of the inaccessibility to voters with print  
15 disabilities of the Vote-by-Mail Program, and despite numerous invitations to collaborate in  
16 developing a solution, these barriers persist.

17 **V. Plaintiffs, their members, and the Class are irreparably harmed by their**  
18 **discriminatory exclusion from California's Vote-By-Mail Program.**

19 70. Named Plaintiff Christopher Gray wanted to vote in the November 2022  
20 statewide general election using San Francisco's RAVBM system. He would have been able to  
21 receive, read, and mark his vote-by-mail ballot electronically using his own assistive technology,  
22 including a computer with a screen reader and a Braille display. However, because he is blind,  
23 Mr. Gray would not have been able to print and return an RAVBM ballot without assistance—  
24 i.e., without sacrificing his right to vote privately and independently. Because of these barriers,  
25 Mr. Gray decided to instead vote using the paper vote-by-mail ballot that had been mailed to him  
26 by his county elections office. He needed the assistance of another person to read, mark, and  
27 return his paper ballot. He could not independently confirm that his paid assistant accurately  
28

1 marked his ballot and submitted it on his behalf. Mr. Gray is a daily user of assistive technology  
2 that allows him to independently accomplish a wide variety of tasks, so he would have been able  
3 to submit an electronic ballot privately and independently had Defendant made an electronic  
4 ballot return option available. Mr. Gray plans to vote in future federal, state, and local elections  
5 and would like to do so privately and independently using an RAVBM system. The lack of an  
6 accessible electronic ballot return option is therefore an issue of immediate, urgent, and ongoing  
7 concern for him.

8 71. Named Plaintiff Russell Dawson Rawlings voted in 2020 using Sacramento  
9 County's RAVBM system. He was able to receive, read, and mark his vote-by-mail ballot  
10 electronically using his own assistive technology, including a computer with speech-recognition  
11 software. However, because he has cerebral palsy, which limits his manual dexterity, Mr.  
12 Dawson Rawlings was unable to print and return his RAVBM ballot without assistance—i.e.,  
13 without sacrificing his right to vote privately and independently. In order to vote using the  
14 RAVBM system, he had to ask his caregiver to get the printed ballot from a borrowed printer,<sup>9</sup>  
15 put the printout in an envelope, seal the envelope, position the envelope so he could sign it, and  
16 mail the completed ballot. Mr. Dawson Rawlings felt disempowered by needing to rely on this  
17 amount of assistance to submit his ballot. Thus, for the next election, Mr. Dawson Rawlings  
18 decided that he would rather forgo the option of voting from home, from which so many other  
19 voters benefit, and instead vote at an in-person voting location, using an accessible voting  
20 machine, which is the only way he is able to vote privately and independently. Voting at an in-  
21 person voting location was not without its costs; he had to take time off of work. Mr. Dawson  
22 Rawlings is a daily user of assistive technology that allows him to independently accomplish a  
23 wide variety of tasks, so he would have been able to submit an electronic ballot privately and  
24 independently had Defendant made an electronic ballot return option available. Mr. Dawson  
25 Rawlings has voted consistently since he moved to California in 2001, and he plans to vote in  
26 future federal, state, and local elections. He would like to do so privately and independently

27 \_\_\_\_\_  
28 <sup>9</sup> Mr. Dawson Rawlings does not own a printer because he cannot handle paper independently.

1 using an RAVBM system. The lack of an accessible electronic ballot return option is therefore  
2 an issue of immediate, urgent, and ongoing concern for him.

3 72. Named Plaintiff Vita Zavoli voted in the November 2022 statewide election using  
4 Alameda County's RAVBM system. She was able to receive, read, and mark her vote-by-mail  
5 ballot electronically using her own assistive technology, including a computer with a screen  
6 reader. However, because of her blindness, she was not able to print and return her RAVBM  
7 ballot without assistance—i.e., without sacrificing her right to vote privately and independently.  
8 She had to rely on a paid assistant to finalize and return her ballot in paper form for her. Ms.  
9 Zavoli is a daily user of assistive technology that allows her to independently accomplish a wide  
10 variety of tasks, so she would have been able to submit an electronic ballot privately and  
11 independently had Defendant made an electronic ballot return option available. Ms. Zavoli  
12 naturalized as a United States citizen several decades ago, and she felt privileged to be given the  
13 right to vote when she became a citizen. As a result, she is passionate about voting and is  
14 committed to ensuring that she and others have the same access to California's Vote-by-Mail  
15 Program as do voters without print disabilities. She plans to vote in future federal, state, and  
16 local elections and would like to do so privately and independently using an RAVBM system.  
17 The lack of an accessible electronic ballot return option is therefore an issue of immediate,  
18 urgent, and ongoing concern for her.

19 73. Organizational Named Plaintiff CCB has members who, by reason of their  
20 disability, have been excluded from participation in and/or have been denied the benefits of the  
21 Vote-by-Mail Program and/or have been subjected to discrimination by Defendant in connection  
22 with the Program and thus would have standing to sue in their own right. CCB sues on their  
23 behalf because the interests of its members that it seeks to protect through this lawsuit are  
24 germane to its purpose as an organization and neither the claims asserted nor the relief requested  
25 require the participation of individual members in this lawsuit. Thus, CCB has standing to bring  
26 this action on behalf of its members. Having an accessible electronic return option for RAVBM  
27 ballots would be the only way many of CCB's members could vote privately and independently  
28

1 through the Vote-by-Mail Program.

2 74. Organizational Named Plaintiff NFBCA has members who, by reason of their  
3 disability, have been excluded from participation in and/or have been denied the benefits of the  
4 Vote-by-Mail Program and/or have been subjected to discrimination by Defendant in connection  
5 with the Program and thus would have standing to sue in their own right. NFBCA sues on their  
6 behalf because the interests of its members that it seeks to protect through this lawsuit are  
7 germane to its purpose as an organization and neither the claims asserted nor the relief requested  
8 require the participation of individual members in this lawsuit. Thus, NFBCA has standing to  
9 bring this action on behalf of its members. Having an accessible electronic return option for  
10 RAVBM ballots would be the only way many of NFBCA's members could vote privately and  
11 independently through the Vote-by-Mail Program.

#### 12 CLASS ALLEGATIONS

13 75. Pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure,  
14 Plaintiffs bring this action on behalf of themselves and all other persons similarly situated.

15 76. The proposed class is defined as “all persons with print disabilities—disabilities  
16 that prevent them from reading, marking, holding, handling, and/or manipulating a paper ballot  
17 privately and independently—who are registered to vote in California” (the “Class”).

18 77. The proposed Class meets the Rule 23(a) requirements.

19 78. The Class is so numerous that joinder of its members is impracticable. Named  
20 Plaintiffs estimate that there are currently approximately 48,000 eligible blind voters and 10,040  
21 eligible voters with a spinal cord injury causing a print disability in California. Named Plaintiffs  
22 estimate that there are approximately 15,000 eligible voters with cerebral palsy resulting in  
23 manual dexterity impairments in California that qualify them as voters with print disabilities.

24 79. The relief sought is common to all members of the Class, and common questions  
25 of law and fact exist as to all members of the Class. Named Plaintiffs and putative Class  
26 members are all excluded from participation in, denied meaningful access to the benefit of,  
27 denied equally effective communication, or otherwise subjected to discrimination in connection  
28

1 with California's Vote-by-Mail Program because of Defendant's failure to offer an accessible  
2 electronic method of returning a marked vote-by-mail ballot. Named Plaintiffs seek prospective  
3 relief from access barriers to California's Vote-by-Mail Program. Named Plaintiffs have claims  
4 that are typical of, and not antagonistic to, the claims of other Class members. Named Plaintiffs  
5 and Class members are similarly harmed by the lack of an accessible electronic method to return  
6 their marked vote-by-mail ballots. Named Plaintiffs and all Class members seek modifications  
7 to the methods of administration of California's Vote-by-Mail Program to ensure that the process  
8 of returning a marked vote-by-mail ballot is fully accessible to members of the Class. The  
9 claims of Named Plaintiffs arise from the same practices and conduct that give rise to the claims  
10 of all Class members and are based on the same legal theories.

11 80. Named Plaintiffs' claims are appropriate for class treatment pursuant to Rule  
12 23(b)(2) because Defendant's policy and practice of failing to authorize an accessible electronic  
13 method to return a marked vote-by-mail ballot is generally applicable to the Class as a whole,  
14 thereby making final declaratory and injunctive relief appropriate with respect to the Class as a  
15 whole.

16 81. Named Plaintiffs are adequate representatives of the Class defined herein because  
17 they are directly adversely impacted by Defendant's failure to offer an accessible electronic  
18 method of returning a vote-by-mail ballot. Named Plaintiffs will fairly protect the interests of  
19 the members of the Class and are committed to pursuing this case diligently. The interests of  
20 Named Plaintiffs are not antagonistic to, or in conflict with, the interests of the Class as a whole,  
21 and there are no material conflicts between Named Plaintiffs' claims and those of absent Class  
22 members that would make class certification inappropriate.

23 82. Named Plaintiffs will vigorously pursue this suit via attorneys who are competent,  
24 skilled, and experienced in litigating matters of this type. The attorneys representing the Class  
25 are highly trained, duly qualified, and very experienced in representing plaintiffs in civil rights  
26 class actions.

27 83. Defendant has acted and failed to act on grounds generally applicable to the Class  
28

1 as a whole, thereby making appropriate final declaratory and injunctive relief with respect to the  
2 Class as a whole.

3 **CLAIMS FOR RELIEF**

4 **FIRST CLAIM FOR RELIEF**

5 (All Named Plaintiffs and the Class)

6 **VI. Violations of Title II of the Americans with Disabilities Act (42 U.S.C. § 12131 et**  
7 **seq.)**

8 84. Plaintiffs incorporate by reference each and every allegation contained in the  
9 foregoing paragraphs as if specifically alleged herein.

10 85. Title II of the ADA provides that “no qualified individual with a disability shall,  
11 by reason of such disability, be excluded from participation in or be denied the benefits of the  
12 services, programs, or activities of a public entity, or be subjected to discrimination by any such  
13 entity.” 42 U.S.C. § 12132.

14 86. Under Title II’s implementing regulations, “in providing any aid, benefit, or  
15 service,” a public entity may not “[a]fford a qualified individual with a disability an opportunity  
16 to participate in or benefit from the aid, benefit, or service that is not equal to that afforded  
17 others,” 28 C.F.R. § 35.130(b)(1)(i) (2016); “[p]rovide a qualified individual with a disability  
18 with an aid, benefit, or service that is not as effective in affording equal opportunity” to “gain the  
19 same benefit” as that provided to others, *id.* 35.130(b)(1)(iii); or use “methods of administration .  
20 . . [t]hat have the effect of subjecting qualified individuals with disabilities to discrimination on  
21 the basis of disability [or] [t]hat have the . . . effect of defeating or substantially impairing  
22 accomplishment of the objectives of the public entity’s program with respect to individuals with  
23 disabilities,” *id.* § 35.130(b)(3)(i)-(ii) (2016).

24 87. A public entity “shall make reasonable modifications in policies, practices, or  
25 procedures when the modifications are necessary to avoid discrimination on the basis of  
26 disability, unless the public entity can demonstrate that making the modifications would  
27 fundamentally alter the nature of the service, program, or activity.” 28 C.F.R. § 35.130(b)(7)(i)  
28

1 (2016).

2 88. Additionally, a public entity “shall take appropriate steps to ensure that  
3 communications with . . . participants . . . with disabilities are as effective as communications  
4 with others,” 28 C.F.R. § 35.160(a)(1) (2011), and “shall furnish appropriate auxiliary aids and  
5 services where necessary to afford individuals with disabilities . . . an equal opportunity to  
6 participate in, and enjoy the benefits of, a service, program, or activity of a public entity,” *id.* §  
7 35.160(b)(1) (2011). “In determining what types of auxiliary aids and services are necessary, a  
8 public entity shall give primary consideration to the requests of individuals with disabilities.” *Id.*  
9 § 35.160(b)(2) (2011). “In order to be effective, auxiliary aids and services must be provided in  
10 accessible formats . . . and in such a way as to protect the privacy and independence of the  
11 individual with a disability.” *Id.* Auxiliary aids and services include “accessible electronic and  
12 information technology,” “other effective methods of making visually delivered materials  
13 available to individuals who are blind or have low vision,” and “[a]cquisition or modification of  
14 equipment or devices.” *Id.* § 35.104 (2016).

15 89. State laws cannot be enforced in a way that would violate duly enacted acts of  
16 Congress, such as title II of the ADA. *See* U.S. Const., art. VI, cl. 2.

17 90. The Vote-By-Mail Program is a service, program, or activity within the meaning  
18 of Title II.

19 91. Named Plaintiffs Christopher Gray, Russell Dawson Rawlings, and Vita Zavoli  
20 are qualified individuals with disabilities within the meaning of Title II who, by reason of their  
21 disability, have been excluded from participation in and/or have been denied the benefits of the  
22 Vote-by-Mail Program and/or have been subjected to discrimination by Defendant in connection  
23 with the Program, through the Secretary of State’s enforcement of California Elections Code  
24 sections 3017(a), 303.3, and 19295(a).

25 92. Organizational Named Plaintiffs CCB and NFBCA have members who are  
26 qualified California voters with disabilities within the meaning of Title II and who, by reason of  
27 their disability, have been excluded from participation in and/or have been denied the benefits of  
28

1 the Vote-by-Mail Program and/or have been subjected to discrimination by Defendant in  
2 connection with the Program.

3 93. As the State of California's chief elections officer, Defendant is the main public  
4 entity responsible for violations of the rights of Named Plaintiffs and the members of  
5 Organizational Named Plaintiffs, as applicable, under Title II and its implementing regulations  
6 due to the inaccessibility of the Vote-By-Mail Program to voters with print disabilities.

7 94. By failing to provide a vote-by-mail ballot return option that enables California  
8 voters with print disabilities to vote privately and independently, Defendant has violated and  
9 continues to violate Title II and its implementing regulations, including as follows:

- 10 A. Excluding voters with print disabilities from full participation in the Vote-by-  
11 Mail Program by reason of their disabilities.
- 12 B. Denying voters with print disabilities the full benefits of the Vote-by-Mail  
13 Program by reason of their disabilities.
- 14 C. Subjecting voters with print disabilities, who wish to vote privately and  
15 independently through the Vote-by-Mail Program, to discrimination by reason  
16 of their disabilities.
- 17 D. Failing to afford voters with print disabilities an opportunity to participate in or  
18 benefit from the Vote-by-Mail Program that is equal to that afforded to voters  
19 who do not have print disabilities.
- 20 E. Providing voters with print disabilities with a vote-by-mail experience that is  
21 not as effective in affording an equal opportunity to gain the same benefit from  
22 the Vote-by-Mail Program as that provided to voters who do not have print  
23 disabilities.
- 24 F. Using methods of administration of the Vote-by-Mail Program that have the  
25 effect of subjecting voters with print disabilities to discrimination on the basis  
26 of disability.
- 27 G. Using methods of administration of the Vote-by-Mail Program that have the  
28

1 effect of defeating or substantially impairing accomplishment of the objectives  
2 of the Vote-by-Mail Program with respect to voters with print disabilities.

3 H. Failing to make reasonable modifications to the Vote-by-Mail Program that are  
4 necessary to avoid discriminating against voters with print disabilities on the  
5 basis of their disabilities.

6 I. Failing to ensure that communications with voters with print disabilities who  
7 use or wish to use the Vote-by-Mail Program are as effective as  
8 communications with voters who do not have print disabilities.

9 J. Failing to furnish appropriate auxiliary aids and services that are necessary to  
10 afford voters with print disabilities an equal opportunity to participate in and  
11 enjoy the benefits of the Vote-by-Mail Program as that afforded to voters who  
12 do not have print disabilities.

13 95. A present and actual controversy exists between Plaintiffs and Defendant  
14 concerning their rights and respective duties. Plaintiffs contend that Defendant violated the  
15 rights of Named Plaintiffs, the members of Organizational Named Plaintiffs, and the Class under  
16 Title II. Defendant's conduct constitutes ongoing and continuous violations of the ADA.  
17 Plaintiffs are informed and believe, and thereon allege, that Defendant denies these allegations.  
18 Declaratory relief is, therefore, necessary and appropriate. Accordingly, Plaintiffs seek a judicial  
19 declaration of the rights and duties of the respective parties.

20 96. As a result of Defendant's actions and omissions, Named Plaintiffs, the members  
21 of Organizational Named Plaintiffs, and the Class have suffered and will continue to suffer  
22 irreparable harm. Namely, they have been and will continue to be subjected to discrimination in  
23 the Vote-By-Mail Program. No plain, adequate, or complete remedy at law is available to  
24 redress the wrongs alleged herein. Injunctive relief is, therefore, necessary to prevent Defendant  
25 from continuing to deny Named Plaintiffs, the members of Organizational Named Plaintiffs, and  
26 the Class their right to vote privately and independently through the Vote-by-Mail Program in  
27 upcoming elections.

1 97. Plaintiffs are entitled to declaratory and injunctive relief and to reasonable  
2 attorneys' fees and costs.

3 **SECOND CLAIM FOR RELIEF**

4 (All Named Plaintiffs and the Class)

5 **VII. Violations of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et**  
6 **seq.)**

7 98. Plaintiffs incorporate by reference all allegations contained in the preceding  
8 paragraphs as if specifically alleged herein.

9 99. Section 504 provides, in relevant part, that “[n]o otherwise qualified individual  
10 with a disability . . . shall, solely by reason of her or his disability, be excluded from the  
11 participation in, be denied the benefits of, or be subjected to discrimination under any program or  
12 activity receiving Federal financial assistance . . . .” 29 U.S.C. § 794(a).

13 100. Section 504 defines “program or activity” to include “all of the operations” of (1)  
14 a department or agency of a state or local government or (2) “the entity of such State or local  
15 government that distributes such assistance and each such department or agency (and each other  
16 State or local government entity) to which the assistance is extended, in the case of assistance to  
17 a State or local government.” 29 U.S.C. § 794(b)(1).

18 101. State laws cannot be enforced in a way that would violate duly enacted acts of  
19 Congress, such as Section 504 of the Rehabilitation Act of 1973. *See* U.S. Const., art. VI, cl. 2.

20 102. The Vote-By-Mail Program is a program or activity within the meaning of  
21 Section 504.

22 103. Named Plaintiffs Christopher Gray, Russell Dawson Rawlings, and Vita Zavoli  
23 are qualified individuals with disabilities within the meaning of Section 504, as are many  
24 members of Organizational Named Plaintiffs CCB and NFBCA.

25 104. Defendant receives federal funds through the United States Election Assistance  
26 Commission for use in elections programs and activities, including the Vote-by-Mail Program.

27 105. Defendant’s acts and omissions, including Defendant’s enforcement of California  
28

1 Elections Code sections 3017(a), 303.3, and 19295(a), that violate the rights of Named Plaintiffs,  
2 the members of Organizational Named Plaintiffs, and the Class under Title II (*see supra* § VI)  
3 also violate their rights under Section 504. 28 C.F.R. § 42.503 (2003).

4 106. Defendant's acts and omissions discriminate against Named Plaintiffs, the  
5 members of Organizational Named Plaintiffs, and the Class, based solely on their disabilities.

6 107. A present and actual controversy exists between Plaintiffs and Defendant  
7 concerning their rights and respective duties. Plaintiffs contend that Defendant violated the  
8 rights of Named Plaintiffs, the members of Organizational Named Plaintiffs, and the Class under  
9 Section 504. Plaintiffs are informed and believe, and thereon allege, that Defendant denies these  
10 allegations. Declaratory relief is therefore necessary and appropriate. Accordingly, Plaintiffs  
11 seek a judicial declaration of the rights and duties of the respective parties.

12 108. As a result of Defendants' acts and omissions, Named Plaintiffs, the members of  
13 Organizational Named Plaintiffs, and the Class have suffered and will continue to suffer from  
14 discrimination and unequal access to the Vote-By-Mail Program. No plain, adequate, or  
15 complete remedy at law is available to redress the wrongs alleged herein. Injunctive relief is  
16 thus necessary to prevent Defendant from denying Named Plaintiffs, the members of  
17 Organizational Named Plaintiffs, and the Class their right to vote privately and independently  
18 through the Vote-by-Mail Program in upcoming elections.

19 109. Plaintiffs are entitled to declaratory and injunctive relief and to reasonable  
20 attorneys' fees and costs.

### 21 **THIRD CLAIM FOR RELIEF**

22 (All Named Plaintiffs and the Class)

#### 23 **VIII. Violations of California Government Code section 11135 et seq.**

24 110. Plaintiffs incorporate by reference all allegations contained in the preceding  
25 paragraphs as if specifically alleged herein.

26 111. California Government Code section 11135 and the regulations promulgated  
27 thereunder prohibit discrimination against people with disabilities or denial of full and equal  
28

1 access to the benefits of state-funded programs and activities. Section 11135(a) provides, in  
2 pertinent part, as follows:

3 No person in the State of California shall, on the basis of . . . disability . . . be  
4 unlawfully denied full and equal access to the benefits of, or be unlawfully  
5 subjected to discrimination under, any program or activity that is conducted,  
6 operated, or administered by the state or by any state agency, is funded directly by  
7 the state, or receives any financial assistance from the state.

8 112. California Government Code section 11135 incorporates title II of the Americans  
9 with Disabilities Act (“ADA”) and its implementing regulations. Cal. Gov’t. Code § 11135(b).

10 113. At all relevant times, the Vote-by-Mail Program has been a program or activity of  
11 which key aspects have been conducted, operated, or administered by Defendant.

12 114. At all relevant times, the Vote-by-Mail Program has been a program or activity  
13 that has been funded directly by the State or received substantial state financial assistance.

14 115. By violating the ADA as alleged in Plaintiffs’ first claim for relief above,  
15 Defendant has unlawfully denied Named Plaintiffs, the members of Organizational Named  
16 Plaintiffs, and the Class full and equal access to the benefits of the Vote-by-Mail Program and/or  
17 unlawfully discriminated against Named Plaintiffs, the members of Organizational Named  
18 Plaintiffs, and the Class under the Vote-by-Mail Program on the basis of their disabilities, in  
19 violation of Government Code section 11135 and the regulations promulgated thereunder.

20 116. A present and actual controversy exists between Plaintiffs and Defendant  
21 concerning their rights and respective duties. Plaintiffs contend that Defendant violated the  
22 rights of Named Plaintiffs, the members of Organizational Named Plaintiffs, and the Class under  
23 California Government Code section 11135. Plaintiffs are informed and believe, and thereon  
24 allege, that Defendant denies these allegations. Declaratory relief is, therefore, necessary and  
25 appropriate. Accordingly, Plaintiffs seek a judicial declaration of the rights and duties of the  
26 respective parties.

27 117. As a direct and proximate result of Defendant’s violations of California  
28 Government Code section 11135, Named Plaintiffs, the members of Organizational Named  
Plaintiffs, and the Class have suffered and will continue to suffer irreparable harm for which they

1 have no adequate remedy at law. Injunctive relief is, therefore, necessary to prevent Defendant  
2 from continuing to deny Named Plaintiffs, the members of Organizational Named Plaintiffs, and  
3 the Class their right to vote privately and independently through the Vote-by-Mail Program in  
4 upcoming elections.

5 118. Because Defendant’s discriminatory conduct is ongoing, declaratory and  
6 injunctive relief are appropriate. Plaintiffs are further entitled to reasonable attorneys’ fees and  
7 costs.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs request that the Court provide the following relief:

10 119. A judicial declaration that Defendant has violated and continues to violate the  
11 rights of California voters with print disabilities under Title II of the ADA, Section 504 of the  
12 Rehabilitation Act, and section 11135 of the California Government Code, because California’s  
13 Vote-by-Mail Program does not include a ballot return option that is accessible to them, thereby  
14 denying them meaningful and equal access to the benefits of that Program.

15 120. A judicial declaration that, to remedy the above-described discrimination against  
16 voters with print disabilities, Defendant must reasonably modify the Vote-by-Mail Program by  
17 providing a ballot return option that is accessible to them, and Defendant must do this  
18 notwithstanding the following provisions of the California Elections Code, as well as any other  
19 state statutes or regulations Defendant may argue would otherwise prevent that relief:

- 20 A. California Elections Code section 3017(a), which prescribes the methods of  
21 vote-by-mail ballot return and does not include an express electronic ballot  
22 return option for voters with print disabilities;
- 23 B. California Elections Code section 303.3, which defines an RAVBM system as  
24 being “for the sole purpose of marking an electronic vote by mail ballot for a  
25 voter who shall print the paper cast vote record to be submitted to the elections  
26 official” and which thus, on its face, does not allow an RAVBM system to be  
27 used for electronic ballot return by voters with print disabilities; and  
28

1 C. California Elections Code section 19295(a), which prohibits an RAVBM system  
2 from transmitting ballot selections over the internet and thus, on its face,  
3 precludes the possibility of electronic ballot return through an RAVBM system  
4 for voters with print disabilities.

5 121. Injunctive relief requiring Defendant to ensure that voters with print disabilities  
6 have meaningful and equal access to the Vote-by-Mail Program, including relief requiring  
7 Defendant to take the following specific actions:

8 A. Receive and evaluate certification applications and certify or conditionally  
9 approve, subject to compliance with state and federal law, one or more RAVBM  
10 systems with an online portal that allows voters with print disabilities to return  
11 their ballot selections privately and independently.

12 B. Develop procedures that allow voters with print disabilities to return their vote-  
13 by-mail ballots via fax, substantially similar to the fax return option granted to  
14 certain military and overseas voters under California Elections Code section  
15 3106.

16 C. Instruct county elections officials that they must allow voters with print  
17 disabilities to return their vote-by-mail ballots via an accessible electronic  
18 method, which must include at least one of the following methods:

19 i. Email;

20 ii. Fax, substantially similar to the fax return option granted to certain  
21 military and overseas voters under California Elections Code section  
22 3106;

23 iii. Online portal, which would require Defendant to certify or conditionally  
24 approve one or more RAVBM systems that include an accessible option  
25 that allows voters with print disabilities to return their ballot selections  
26 privately and independently; or

27 iv. Any other method(s) by which voters with print disabilities who rely on  
28

1 assistive technology are able to electronically return their ballots privately  
2 and independently.

3 D. Make available processes and procedures that can be adopted and implemented  
4 by county elections officials to ensure that voters with print disabilities who  
5 return their ballot electronically can accessibly satisfy other requirements  
6 accompanying vote-by-mail ballot return, including but not limited to the  
7 following:

- 8 i. Accessible processes and procedures for any attestation required from  
9 voters with print disabilities as to their status as qualified voters with  
10 print disabilities that would be required as a condition of using electronic  
11 ballot return, and  
12  
13 ii. Accessible processes and procedures for submitting their signature  
14 independently.

15 E. Notify county elections officials of the injunctive relief order through an  
16 advisory memorandum to all county clerks and registrars of voters (“CC/ROV  
17 memorandum”).

18 F. Issue any other necessary guidance to county elections officials through one or  
19 more CC/ROV memoranda.

20 G. Monitor individual counties’ provision of accessible electronic vote-by-mail  
21 ballot return methods and procedures in accordance with this Court’s order, as  
22 part of Defendant’s monitoring and enforcement activities pursuant to  
23 Government Code section 12172.5.

24 122. An award of Plaintiffs’ reasonable attorneys’ fees and costs.

25 //  
26 //  
27 //  
28 //

1 123. Such other relief as the Court deems just and proper.

2 DATED: August 5, 2025

3 Respectfully submitted,

4 **DISABILITY RIGHTS ADVOCATES**

5 /s/ Michael Nunez

6 Sean Betouliere (SBN 308645)

7 Shawna L. Parks (SBN 208301)

8 Michael Nunez (SBN 280535)

9 **DISABILITY RIGHTS ADVOCATES**

10 2001 Center Street, Third Floor

11 Berkeley, California 94704-1204

12 Tel: (510) 665-8644

13 Fax: (510) 665-8511

14 Emails: sbetouliere@dralegal.org

15 sparks@dralegal.org

16 mnunez@dralegal.org

17 **DISABILITY RIGHTS CALIFORNIA**

18 /s/ Lili V. Graham

19 Lili V. Graham (SBN 284264)

20 Andrea Rodriguez (SBN 290169)

21 Paul R. Spencer (SBN 292767)

22 **DISABILITY RIGHTS CALIFORNIA**

23 530 B Street, Suite 400

24 San Diego, CA 92101-4426

25 Tel: (619) 239-7861

26 Fax: (619) 239-7906

27 Emails: lili.graham@disabilityrightsca.org

28 andrea.rodriguez@disabilityrightsca.org

paul.spencer@disabilityrightsca.org

Frederick P. Nisen (SBN 184089)

**DISABILITY RIGHTS CALIFORNIA**

3075 Adeline St. #205

Berkeley, CA 94703

Tel: (916) 504-5800

Fax: (916) 504-5801

Email: fred.nisen@disabilityrightsca.org

Karie Lew (SBN 234666)

**DISABILITY RIGHTS CALIFORNIA**

1831 K Street

Sacramento, CA 95811-4114

Tel: (916) 504-5800

1 Fax: (916) 504-5801  
2 Email: karie.lew@disabilityrightsca.org

3 BROWN, GOLDSTEIN & LEVY LLP

4 */s/ Eve Hill*

5 \_\_\_\_\_  
6 Eve Hill (SBN 202178)

7 Neel Lalchandani (SBN 310480)

8 Lauren J. Kelleher (*Pro Hac Vice*)

9 **BROWN, GOLDSTEIN & LEVY LLP**

10 120 East Baltimore Street, Suite 2500

11 Baltimore, MD 21202-1633

12 Tel: (410) 962-1030

13 Fax: (410) 385-0869

14 Emails: ehill@browngold.com

15 nkl@browngold.com

16 lkelleher@browngold.com

17 *Attorneys for Plaintiffs*

RETRIEVED FROM DEMOCRACYDOCKET.COM