

Frederick P. Nisen (SBN 184089)
 Charlotte Lanvers (SBN 257814)
 Desiree Robedeaux (SBN 360254)
DISABILITY RIGHTS CALIFORNIA
 3075 Adeline St. #205
 Berkeley, CA 94703-2578
 Tel: (916) 504-5800
 Fax: (916) 504-5801
 Emails: fred.nisen@disabilityrightsca.org
 charlotte.lanvers@disabilityrightsca.org
 desiree.robedeaux@disabilityrightsca.org

Sean Betouliere (SBN 308645)
 Shawna L. Parks (SBN 208301)
DISABILITY RIGHTS ADVOCATES
 2001 Center Street, Third Floor
 Berkeley, California 94704-1204
 Tel: (510) 665-8644
 Fax: (510) 665-8511
 Emails: sbetouliere@dralegal.org
 sparks@dralegal.org

Attorneys for Plaintiffs (continued on next page)

**THE UNITED STATES DISTRICT COURT FOR THE
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION**

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

Plaintiffs,

v.

SHIRLEY N. WEBER, in her official capacity
 as California Secretary of State,

Defendant.

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

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION AND
 MOTION FOR SUMMARY JUDGMENT
 ON LIABILITY AND REMEDY**

Judge: Hon. Sallie Kim
 Hearing Date: August 31, 2026
 Hearing Time: 9:30 a.m.

Action Filed: 03/08/2024
 Second Amended Complaint: 08/07/2025

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

12 Raika Kim (*Pro Hac Vice*)
13 **DISABILITY RIGHTS ADVOCATES**
14 300 S Wacker Dr., FL. 32
15 Chicago, IL 60606-6680
16 Tel: (312) 292-9868
17 Fax: (212) 644-8636
18 Email: rkim@dralegal.org

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

TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES	3
NOTICE OF MOTION AND MOTION	1
I. INTRODUCTION.....	2
II. PLAINTIFFS’ STATEMENT OF UNDISPUTED MATERIAL FACTS (“PLS.’ SOF”)	4
A. Title II and Section 504 Apply to the California Vote-by-Mail Program and Plaintiffs Are Eligible to Participate in the Program	4
B. Paper-Based Return Requirements Prevent Voters with Print Disabilities from Returning Their Vote-by-Mail Ballot Selections Privately and Independently	5
C. Returning Vote-by-Mail Ballot Selections Requires Voters With Print Disabilities to Rely On Assistance and Disclose Their Ballot Selections to Others	6
D. Accessible Electronic Ballot Return Is Feasible and Already Exists.....	8
E. California Accepts Electronic Signatures for Voter Registration and Verification but Requires Wet Ink Signatures for Ballot Return	9
F. Counties Already Duplicate RAVBM and Faxed Ballots to Official Ballots	10
G. The Secretary Can Ensure County Adoption of RAVBM Systems with Accessible Electronic Ballot Return Upon Court Order	10
H. The Secretary Acknowledges That State Law Currently Bars Accessible Electronic Ballot Return, Necessitating Preemption to Comply with Federal Disability Rights Laws.....	11
III. LEGAL STANDARD	11
IV. ARGUMENT	12
A. Statutory and Regulatory Framework for Plaintiffs’ Claims.....	13
B. Federal Law Preempts the California Elections Code Provisions that Prohibit Accessible Electronic Ballot Return.....	14
1. Impossibility Preemption	15
2. Obstacle Preemption.....	16
C. The Secretary Denies Plaintiffs Effective Communication in the Vote-by-Mail Program.....	18
1. The Secretary Has Failed to Provide Equally Effective Communication	18
2. The Secretary Has Failed to Furnish an Appropriate Auxiliary	

1 Aid19

2 3. The Secretary Failed to Give Primary Consideration to the

3 Requested Aid and Has Identified No Equally Effective

4 Alternative21

5 4. The Secretary Waived Her Only Defenses22

6 D. The Secretary Denies Plaintiffs Reasonable Modifications Necessary

7 to Ensure Meaningful Access to the Vote-by-Mail Program22

8 1. The Secretary Denies Voters with Print Disabilities Meaningful

9 Access by Foreclosing Private, Independent Ballot Return23

10 2. Providing Accessible Electronic Ballot Return is Required and

11 Undisputedly Reasonable23

12 E. The Secretary Can Certify RAVBM Systems with Accessible

13 Electronic Ballot Return and Ensure that Counties Adopt Them,

14 Once This Court Finds That State Law Barriers Are Preempted24

15 V. CONCLUSION24

16

17

18

19

20

21

22

23

24

25

26

27

28

Page**TABLE OF AUTHORITIES****Page(s)****Cases**

<i>Alexander v. Choate</i> , 469 U.S. 287 (1985).....	13
<i>Am. Council of the Blind v. Astrue</i> , 2009 WL 3400686 (N.D. Cal. 2009)	20
<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242 (1986).....	11
<i>Barber ex rel. Barber v. Colo. Dep't of Revenue</i> , 562 F.3d 1222 (10th Cir. 2009)	14
<i>Bax v. Doctors Med. Ctr. of Modesto</i> , 52 F.4th 858 (9th Cir. 2022)	20
<i>Cal. Council of the Blind v. Alameda</i> , 985 F. Supp. 2d 1229 (N.D. Cal. 2013)	19, 23
<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317 (1986).....	11
<i>Christian Legal Soc'y Chapter of the Univ. of Cal., Hastings Coll. of the Law v. Martinez</i> , 561 U.S. 661 (2010).....	4
<i>Crosby v. Nat'l Foreign Trade Council</i> , 530 U.S. 363 (2000).....	15
<i>Crowder v. Kitagawa</i> , 81 F.3d 1480 (9th Cir. 1996)	12
<i>Disabled in Action v. Bd. of Elections in City of New York</i> , 752 F.3d 189 (2d Cir. 2014).....	23
<i>Duvall v. County of Kitsap</i> , 260 F.3d 1124 (9th Cir. 2001)	12
<i>English v. Gen. Elec. Co.</i> , 496 U.S. 72 (1990)	15
<i>Hindel v. Husted</i> , 875 F.3d 344 (6th Cir. 2017)	16, 17

1	<i>Johnson v. Callanen</i> ,	
2	No. SA-22-CV-00409-XR, 2023 WL 4374998 (W.D. Tex. July 6, 2023).....	17
3	<i>K.M. v. Tustin Unified Sch. Dist.</i> ,	
4	725 F.3d 1088 (9th Cir. 2013)	13
5	<i>Martinez v. County of Alameda</i> ,	
6	512 F. Supp. 3d 978 (N.D. Cal. 2021)	20
7	<i>Mary Jo C. v. N.Y. State & Loc. Ret. Sys.</i> ,	
8	707 F.3d 144 (2d Cir 2013)	17
9	<i>Matsushita Elec. Indus. Co. v. Zenith Radio Corp.</i> ,	
10	475 U.S. 574 (1986).....	12
11	<i>Mayfield v. City of Mesa</i> ,	
12	131 F.4th 1100 (9th Cir. 2025)	14
13	<i>McGary v. City of Portland</i> ,	
14	386 F.3d 1259 (9th Cir. 2004)	12
15	<i>Nat'l Fed'n of the Blind v. Lamone</i> ,	
16	813 F.3d 494 (4th Cir. 2016)	17, 22, 23
17	<i>Payan v. L.A. Cmty. Coll. Dist.</i> ,	
18	11 F.4th 729 (9th Cir. 2021)	12
19	<i>Taliaferro v. N.C. State Bd. of Elections</i> ,	
20	489 F. Supp. 3d 433 (E.D.N.C. 2020).....	23
21	Federal Statutes	
22	29 U.S.C. § 794(a)	1, 2, 4, 13, 14, 17, 20, 22, 25
23	42 U.S.C. § 12132 <i>et seq.</i>	1, 2, 4, 12, 13, 14, 15, 16, 18, 22, 25
24	52 U.S.C. § 20901 <i>et seq.</i>	10, 11
25	California Statutes	
26	Cal. Elec. Code	
27	§ 3000.5.....	4
28	§ 3011.....	2, 5, 16, 25
	§ 3016.7.....	5
	§ 3017.....	5
	§ 3019.....	5, 9
	§ 3106(a)	5
	Cal. Gov. Code	
	§ 11135.....	1, 4, 25

Federal Regulations

28 C.F.R. pt. 35, Appendix A	21
28 C.F.R. § 35.104	20
28 C.F.R. § 35.130(b)	12, 13
28 C.F.R. § 35.160	13, 16, 18, 19, 21
28 C.F.R. § 35.164	18

Other Authorities

Cal. Const. Article II, § 7	17, 18
Fed. R. Civ. P. 56(a)	11

NOTICE OF MOTION AND MOTION

TO DEFENDANT, SECRETARY OF STATE, SHIRLEY WEBER AND TO HER ATTORNEYS OF RECORD: PLEASE TAKE NOTICE that on August 31, 2026 at 9:30 a.m. in Courtroom C of the San Francisco Courthouse located at 450 Golden Gate Avenue, San Francisco, California before the Honorable Sallie Kim, Plaintiffs will and hereby do move this Court for an order granting summary judgment on both liability and remedy, for their claims under Title II of the Americans with Disabilities Act (“Title II” or “ADA”), Section 504 of the Rehabilitation Act (“Section 504”), and California Government Code § 11135 (“Section 11135”).¹ Plaintiffs seek an Order finding that the Secretary has violated Title II, Section 504, and Section 11135, and that:

- 1) The Secretary has failed to provide voters with print disabilities a means of participating in the Vote-by-Mail Program that is as effective as that provided to voters without disabilities;
- 2) The Secretary has failed to provide appropriate auxiliary aids and services necessary to ensure equally effective communication, including communication that preserves the privacy and independence of voters with print disabilities;
- 3) The Secretary has denied voters with print disabilities meaningful access to the Vote-by-Mail Program;
- 4) The Secretary has failed to provide reasonable modifications necessary to ensure meaningful access to the Vote-by-Mail Program;
- 5) Because the Secretary has stipulated that she will not challenge the effectiveness or feasibility of accessible electronic ballot return, and has waived all applicable defenses, providing accessible electronic ballot return is required by Title II and Section 504;

¹ Section 11135(b) of California’s Government Code requires programs and activities that receive state funding to comply with Title II of the Americans with Disabilities Act and its implementing regulations. Cal. Gov. Code § 11135(b). Because a violation of Title II of the ADA is also a violation of § 11135(b), all references to the ADA in this Notice of Motion and associated briefing should be read to encompass Plaintiffs’ claims under both laws.

6) To the extent California Elections Code §§ 3011(a), 3017(a)(1)(A)–(C), (d) and 3019(a)(1), or any other provisions enforcing paper-based return and wet ink signature requirements, bar accessible electronic ballot return, they are preempted by the ADA and Section 504 as applied here; and

7) The Secretary must certify or conditionally approve RAVBM systems that include accessible electronic ballot return and take all steps within her authority to ensure their implementation by county officials.

This motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, all declarations and exhibits filed with it, the record in this action, and any oral argument the Court permits.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This case concerns California’s failure to provide voters with print disabilities² an equal opportunity to participate in the Vote-by-Mail Program because such voters cannot complete the final step of voting—returning their ballots—privately and independently.

Although California permits voters with print disabilities to receive and mark their ballots electronically through Remote Accessible Vote by Mail (“RAVBM”) systems, that accessibility ends at the critical last step of returning their ballot selections. Plaintiffs’ Statement of Undisputed Material Facts (“Pls.’ SOF”) ¶¶ 10–13. Every certified or conditionally approved RAVBM system in California requires voters to print a paper cast vote record, handle and package the paper, sign a return envelope with a wet ink signature, and physically submit it to the county—steps the Secretary admits some voters cannot complete independently. Pls.’ SOF ¶¶ 11, 13. As a result, voters with print disabilities must rely on assistance to return their ballot

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

1 selections, disclosing their ballot selections and thus being denied the privacy and independence
2 afforded to other voters. Pls.’ SOF ¶¶ 17, 19–25, 27–33, 35–37, 40, 42.

3 The denial of privacy and independence is systemic and recurs in every election. Pls.’
4 SOF ¶¶ 6, 10–13, 17–42. Voters without print disabilities return their ballots privately and
5 independently, while voters with print disabilities must enlist another person who can see or
6 handle their ballot selections. That disparity violates federal disability rights laws’ effective
7 communication requirement, which mandates the provision of auxiliary aids and services
8 necessary to ensure equally effective communication, including communication that protects
9 privacy and independence. In addition, it independently denies voters with print disabilities those
10 same laws’ meaningful access requirement, including by failing to provide a reasonable
11 modification necessary to ensure they have an equal opportunity to participate in the
12 Vote-by-Mail Program. Each obligation independently requires the Secretary to provide an equal
13 opportunity to participate, and either violation provides an independent basis of liability.

14 There is no genuine dispute as to these facts. The Secretary admits that some voters with
15 print disabilities require another person’s assistance to complete the paper return process,
16 establishing that the process cannot be completed independently. Pls.’ SOF ¶ 13. Her Rule
17 30(b)(6) designee could not identify a way for blind voters or voters with dexterity impairments
18 to satisfy the paper return and signature requirements without assistance. Pls.’ SOF ¶ 14.

19 There is also no dispute as to the required remedy. The Secretary has removed feasibility
20 and effectiveness from dispute by stipulating that she will not challenge accessible electronic
21 ballot return or accessible electronic completion of related return requirements, including
22 signatures and attestations. Pls.’ SOF ¶¶ 47–48. She has also waived the fundamental alteration
23 and undue burden defenses. Pls.’ SOF ¶ 46. No record evidence identifies an equally effective
24 alternative that would allow voters with print disabilities to return their vote-by-mail ballot
25 selections privately and independently. Pls.’ SOF ¶¶ 21, 28, 37–38. Accessible electronic ballot
26 return is therefore required both to ensure equally effective communication and as a reasonable
27 modification to provide meaningful access.

28 These undisputed facts establish Plaintiffs’ entitlement to prospective relief. *See*

1 *Christian Legal Soc’y Chapter of the Univ. of Cal., Hastings Coll. of the Law v. Martinez*, 561
 2 U.S. 661, 676–77 (2010) (recognizing that litigants are bound by the facts they stipulate into the
 3 record and are entitled to have the case decided on that basis). The Court should order the
 4 Secretary to certify or conditionally approve RAVBM systems with accessible electronic ballot
 5 return and to take all steps within her authority to ensure their implementation by county
 6 officials. Pls.’ SOF ¶¶ 59–64.

7 **II. PLAINTIFFS’ STATEMENT OF UNDISPUTED MATERIAL FACTS (“PLS.’**
 8 **SOF”)**

9 **A. Title II and Section 504 Apply to the California Vote-by-Mail Program and**
 10 **Plaintiffs Are Eligible to Participate in the Program**

11 1. The Secretary of State’s office is a public entity under the ADA, Section 504, and
 12 California Government Code § 11135. (Ex. 1, Joint Stipulation and Order Regarding
 13 Defendant’s Affirmative Defenses and Related Disc. (“Joint Stip. & Order”) ¶ 7(a).)

14 2. Secretary Weber is California’s chief elections officer. (Ex. 1 ¶ 7(b).)

15 3. The Secretary and the Vote-by-Mail Program receive federal and state funding.
 16 (Ex. 1 ¶ 7(c).)

17 4. Plaintiffs allege in the Second Amended Complaint (“SAC”) that California’s
 18 Vote-by-Mail Program is a program or activity subject to Title II and Section 504, and the
 19 Secretary admits this allegation in the Answer. (Ex. 2 ¶¶ 90, 102; Ex. 3 ¶¶ 90, 102 [admitted].)

20 5. Defendant’s responses to Plaintiffs’ Requests for Admission (“RFA Responses”)
 21 confirm that in-person voting is a distinct and separate program from the Vote-by-Mail Program.
 22 (Ex. 4 at No. 7 [admitted].)

23 6. Under California Elections Code § 3000.5, every registered California voter is
 24 mailed a vote-by-mail ballot and may use it instead of voting in person.

25 7. Plaintiffs Gray, Dawson Rawlings, and Zavoli are qualified individuals with
 26 disabilities who are eligible to participate in the Vote-by-Mail Program, as are all members of the
 27 certified class of registered voters with print disabilities. (Ex. 1 ¶¶ 7(d)–(e); Dkt. No. 131.)

28 8. California Council of the Blind (“CCB”) and National Federation of the Blind of

California (“NFBCA”) have members with disabilities who are eligible to participate in the Vote-by-Mail Program. (Ex. 1 ¶¶ 7(f)–(g).)

B. Paper-Based Return Requirements Prevent Voters with Print Disabilities from Returning Their Vote-by-Mail Ballot Selections Privately and Independently

9. Under California Elections Code § 3016.7, any registered voter may cast a ballot using a certified remote accessible vote-by-mail system (“RAVBM system”).

10. Except for limited fax return available to certain military and overseas voters, every generally available method of returning a vote-by-mail ballot permitted in California requires printing and handling ballot selections and signing a paper return envelope. Cal. Elec. Code §§ 3011, 3017, 3019, 3106(a).

11. Voters using one of the currently certified RAVBM systems must print their ballot selections, enclose them in an envelope, sign the envelope, and physically submit the ballot selections (technically, a “paper cast vote record”) to their county elections office. (Ex. 2 ¶¶ 7, 52; Ex. 3 ¶¶ 7, 52 [admitted]; Ex. 4 at No. 1 [admitted].)

12. California’s counties may use only RAVBM systems certified or conditionally approved by the Secretary, and the Secretary certified or conditionally approved no RAVBM system that permits electronic ballot return. The Secretary’s Rule 30(b)(6) designee testified that no certified system has ever been tested for accessibility at the return stage; certification stops at the print step by design. (Ex. 4 at Nos. 1 [admitted], 8 [admitted]; Ex. 2 ¶¶ 7, 52; Ex. 3 ¶¶ 7 [admitted], 52 [admitted]; Ex. 5 at 83:20–84:4.)

13. The Secretary admits that some voters with print disabilities cannot return RAVBM paper cast vote records without assistance. (Ex. 4 at No. 29 [admitted].)

14. The Secretary’s Rule 30(b)(6) designee, Jana Lean, testified that she was “unsure” how a voter with a print disability could independently satisfy the requirement to sign a ballot-return envelope. (Ex. 6 at 105:19–106:13.)

15. User testing and early RAVBM implementation confirmed that many voters with print disabilities need assistance to complete the RAVBM ballot return process. Voters with print

1 disabilities require assistance at multiple stages of the ballot return process, including printing,
 2 handling, and mailing their paper cast vote records. As a result, these voters cannot return their
 3 RAVBM ballot selections privately and independently. (Ex. 7 at 71:18–72:1, 38:24–40:1.)

4 16. Additional evidence, including the Secretary’s user testing, a 2021 accessibility
 5 webinar convened at the Secretary’s request, and repeated feedback from her Voter Accessibility
 6 Advisory Committee (“VAAC”), have similarly confirmed that voters with print disabilities
 7 cannot return RAVBM paper cast vote records privately or independently through any currently
 8 certified RAVBM systems. (Ex. 7 at 69:24–71:10; Ex. A at 6–7; Ex. B at 5.)

9 **C. Returning Vote-by-Mail Ballot Selections Requires Voters With Print**
 10 **Disabilities to Rely On Assistance and Disclose Their Ballot Selections to**
 11 **Others**

12 17. Plaintiffs’ experiences demonstrate returning RAVBM ballot selections requires
 13 assistance. (Ex. 10 at 39:18–40:10, 40:21–41:13; Ex. 11 at 26:20–28:2, 63:5–19; Ex. 13 at
 14 31:24–32:5, 40:20–41:1.)

15 18. Vita Zavoli, who is blind, independently read and marked her RAVBM ballot
 16 selections using a screen reader for the November 2022 election and printed the paper cast vote
 17 record. (Ex. 10 at 37:17–39:17.)

18 19. Ms. Zavoli cannot independently review printed ballot selections and requires
 19 sighted assistance to confirm accuracy and formatting, including detecting printing defects. (Ex.
 20 10 at 39:18–40:10, 40:21–41:13, 58:20–59:3.)

21 20. Ms. Zavoli paid an assistant to transcribe and verify her Vote-by-Mail ballot
 22 selections. (Ex. 10 at 42:22–43:13.)

23 21. Ms. Zavoli requires assistance locating the signature line on the return envelope.
 24 (Ex. 10 at 37:17–43:6, 50:7–22.)

25 22. Ms. Zavoli has never signed a ballot return envelope without sighted assistance.
 26 (Ex. 10 at 50:23–51:1.)

27 23. Ms. Zavoli did not use RAVBM for the March 2024 presidential primary election
 28 because it “didn’t offer [her] any advantage” since she still could not review or return the ballot

1 independently. (Ex. 10 at 68:13–19.)

2 24. Ms. Zavoli cannot independently use a signature stamp. (Ex. 10 at 52:5–16.)

3 25. Ms. Zavoli cannot return her ballot selections using RAVBM without sighted
4 assistance and therefore cannot do so privately or independently. (Ex. 10 at 37:17–43:6, 50:7–
5 51:1, 58:20–59:3, 68:13–19.)

6 26. Christopher Gray, who is blind, can independently read and mark his RAVBM
7 ballot selections using assistive technology. (Ex. 11 at 85:21–86:16.)

8 27. Mr. Gray requires assistance to verify the accuracy of his printed ballot selections.
9 (Ex. 11 at 26:20–28:2, 84:14–20.)

10 28. Mr. Gray requires assistance locating the return envelope signature line and
11 testified that this “cannot be done without assistance.” (Ex. 11 at 59:15–23, 63:5–19.)

12 29. Even with assistance, Mr. Gray cannot reliably sign the envelope because he
13 cannot see or track the signature line. (Ex. 11 at 63:5–19.)

14 30. Mr. Gray cannot independently use a signature stamp. (Ex. 11 at 90:20–91:11.)

15 31. Currently, California’s RAVBM systems offer Mr. Gray no greater privacy or
16 independence than using an assistant to help him complete the paper Vote-by-Mail ballot. (Ex.
17 11 at 85:21–86:16.)

18 32. For the November 2024 election, Mr. Gray relied on a paid assistant to read,
19 mark, prepare, and submit his ballot. (Ex. 11 at 56:11–57:12, 59:2–23, 68:10–24; Ex. 12 ¶ 5.)

20 33. Mr. Gray cannot return his ballot selections using RAVBM without sighted
21 assistance and therefore cannot do so privately or independently. (Ex. 11 at 26:20–28:2, 59:15–
22 23, 63:5–19, 84:14–20, 85:21–86:16.)

23 34. Russell Dawson Rawlings, who has cerebral palsy with limited fine motor
24 dexterity, independently received, read, and marked his RAVBM ballot selections in 2020 using
25 assistive technology. (Ex. 13 at 28:25–30:20, 31:8–13.)

26 35. Mr. Dawson Rawlings can “initiate . . . printing,” but cannot handle or prepare his
27 selected ballot materials “without assistance of another person.” (Ex. 13 at 31:24–32:5, 33:14–
28 18, 38:15–39:1.)

36. To sign the envelope, Mr. Dawson Rawlings requires a personal care assistant to position the materials for him. (Ex. 13 at 39:15–40:3, 40:20–41:1.)

37. In the 2020 election, Mr. Dawson Rawlings used a signature stamp with assistance. (Ex. 13 at 39:24–40:7, 40:20–41:1.)

38. Mr. Dawson Rawlings no longer uses a signature stamp due to loss and concerns about potential misuse. (Ex. 13 at 71:25–72:13, 75:18–76:2.)

39. For November 2024, Mr. Dawson Rawlings voted in-person via curbside voting, but he had no means to independently mark the paper ballot and received no assistance from poll workers in doing so. (Ex. 13 at 73:9–75:7.)

40. Mr. Dawson Rawlings cannot return his vote-by-mail ballot selections using RAVBM without assistance and therefore does not do so privately or independently. (Ex. 13 at 31:24–32:5, 33:14–18, 38:15–39:1, 39:15–40:3, 40:20–41:1.)

41. Plaintiffs consistently testified that electronic submission would resolve every inaccessible step in the current RAVBM ballot return process. (Ex. 10 at 47:11–21, 48:24–49:2; Ex. 14 ¶¶ 7, 9, 14; Ex. 15 ¶¶ 14–15.)

42. Members of the certified class of registered voters with print disabilities are similarly unable to return their RAVBM ballot selections privately and independently, because the methods of ballot return currently available require paper-based return that they are unable to complete without assistance. (Ex. 16 ¶¶ 8–10, 13–14; Ex. 17 ¶¶ 8–10, 13; Ex. 18 ¶¶ 12–13; Ex. 19 ¶¶ 10, 13.)

D. Accessible Electronic Ballot Return Is Feasible and Already Exists

43. More than half of California counties use the Democracy Live RAVBM system. (Ex. 2 ¶ 63; Ex. 3 ¶ 63 [admitted].)

44. Democracy Live provides electronic ballot return in other states and has the capacity to do so in California, but that functionality is unavailable because the Secretary only certifies systems that require paper return. (Ex. 4 at Nos. 1 [admitted], 14 [admitted]; Ex. 20 at 8.)

45. Other vendors, including Enhanced Voting, similarly offer RAVBM systems with

1 electronic ballot return, which are capable of being implemented in California. (Ex. 20 at 8.)

2 46. The Secretary waived her fundamental alteration and undue burden defenses
3 against Plaintiffs' claims. (Ex. 1 ¶¶ 1–3.)

4 47. The Secretary stipulated that she will not challenge the effectiveness or feasibility
5 of providing an accessible method for California voters with print disabilities to electronically
6 submit their ballot selections to elections officials. (Ex. 1 ¶ 1.)

7 48. The Secretary stipulated that she will not challenge the effectiveness or feasibility
8 of providing an accessible electronic method to satisfy other vote-by-mail ballot return
9 requirements, including voter signatures and required attestations. (Ex. 1 ¶ 1.)

10 **E. California Accepts Electronic Signatures for Voter Registration and**
11 **Verification but Requires Wet Ink Signatures for Ballot Return**

12 49. The Secretary currently requires wet ink signatures for ballot return envelopes.
13 (Ex. 21 at No. 16.)

14 50. The Secretary routinely relies on electronic signatures for voter registration and
15 verification, including California Department of Motor Vehicles ("DMV") touchscreen
16 signatures for voter registration and signature comparisons under Elections Code § 3019(d)(8),
17 (e)(5). (Ex. 4 at Nos. 19 [admitted], 22 [admitted], 23 [admitted], 25 [admitted].) These
18 signatures are not produced using wet ink. (Ex. 4 at No. 20 [admitted].)

19 51. The Secretary permits counties to use electronic signature-curing systems, which
20 allow voters whose return envelopes are unsigned or do not match the signature on file to correct
21 them electronically so the ballot will be counted. (Ex. 22 at No. 5; Ex. 2 ¶ 66; Ex. 3 ¶ 66
22 [admitted].)

23 52. The Secretary admits that military and overseas voters transmit their signatures by
24 facsimile when returning their ballots by fax. (Ex. 2 ¶ 66; Ex. 3 ¶ 66 [admitted]; Ex. 4 at No. 12
25 [admitted].)

26 53. VoteCal, the Secretary's centralized database, contains electronic signature files
27 used for signature comparison. (Ex. 21 at Nos. 13–14.)

28 54. The Secretary admits that voters completing online voter registration are not

1 required to submit a wet ink signature if their identity can be verified by matching them to a
 2 DMV record containing their signature and the voter consents to its use. (Ex. 4 at No. 21
 3 [admitted].)

4 55. The Secretary's designees did not identify a reason why electronic signatures are
 5 sufficient to verify voter identity for registration, signature comparison, and ballot curing, but not
 6 for ballot return. (Ex. 6 at 182:9–17; Ex. 5 at 128:1–129:2.)

7 **F. Counties Already Duplicate RAVBM and Faxed Ballots to Official Ballots**

8 56. Before tabulation, county officials duplicate each RAVBM paper cast vote record
 9 onto an official ballot. (Ex. 2 ¶ 48; Ex. 3 ¶ 48 [admitted].)

10 57. Counties duplicate both RAVBM printouts and faxed ballots through the same
 11 process because neither is returned on an official ballot. (Ex. 2 ¶ 48; Ex. 3 ¶ 48 [admitted].)

12 58. This duplication occurs at scale. As of December 2024, at least 116,000 military
 13 and overseas voters returned their ballot selections by facsimile transmission, and every
 14 California county elections office provides a fax number for that purpose. All such ballot
 15 selections are duplicated onto official ballots before tabulation. (Ex. 2 ¶¶ 12, 42; Ex. 3 ¶¶ 12, 42
 16 [admitted].)

17 **G. The Secretary Can Ensure County Adoption of RAVBM Systems with** 18 **Accessible Electronic Ballot Return Upon Court Order**

19 59. The Secretary admits that she would play a central role in communicating the
 20 substance of a court order requiring accessible electronic return options and in providing
 21 guidance to county election officials regarding implementation. (Ex. 2 ¶ 32; Ex. 3 ¶ 32
 22 [admitted].)

23 60. The Secretary further admits that she can provide guidance to county election
 24 officials and issue regulations. (Ex. 2 ¶ 64; Ex. 3 ¶ 64 [admitted].)

25 61. The Secretary admits that she is responsible for distributing Help America Vote
 26 Act ("HAVA") funds to California counties for the implementation of accessible voting
 27 technology. (Ex. 4 at No. 11 [admitted].)

28 62. The Secretary's Rule 30(b)(6) designee admitted that the Secretary oversees

1 county compliance with state and federal laws related to elections. (Ex. 5 at 32:20–33:1.)

2 63. Former Deputy Secretary of State and HAVA Director Lapsley testified that in
3 2023, the Secretary directed Shasta County to implement accessible voting technology over the
4 county’s local objection, and that the Secretary’s staff traveled to present to the Shasta County
5 Board of Supervisors, and the county thereafter complied. (Ex. 7 at 52:10–56:10.) The
6 Secretary’s 30(b)(6) designee confirmed this was an exercise of the Secretary’s enforcement
7 authority under the ADA and HAVA. (Ex. 6 at 212:2–10.)

8 64. The Secretary is not aware of any county elections official refusing to comply
9 with state or federal anti-discrimination laws applicable to California’s vote-by-mail system
10 during the relevant period. (Ex. 22 at No. 13.)

11 **H. The Secretary Acknowledges That State Law Currently Bars Accessible**
12 **Electronic Ballot Return, Necessitating Preemption to Comply with Federal**
13 **Disability Rights Laws**

14 65. The Secretary’s Answer admits that California law defines RAVBM systems to
15 exclude accessible electronic ballot return, and that she lacks authority to certify or approve any
16 RAVBM system with electronic return under state law absent legislative change. (Ex. 2 ¶¶ 60–
17 63; Ex. 3 ¶¶ 60–63 [admitted].)

18 66. The Secretary’s supplemental discovery responses reiterate her position that she
19 lacks authority to modify the Elections Code’s “unambiguous requirements” governing ballot
20 return and signature verification. (Ex. 23 at No. 15.)

21 **III. LEGAL STANDARD**

22 Summary judgment is appropriate where “the movant shows that there is no genuine
23 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R.
24 Civ. P. 56(a). A fact is material if it may affect the outcome, and a dispute is genuine only if a
25 reasonable jury could return a verdict for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*,
26 477 U.S. 242, 248 (1986). Where the nonmoving party bears the burden at trial, summary
27 judgment is required if it fails to make a sufficient showing on an essential element of its case.
28 *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The nonmoving party must do more than

show “some metaphysical doubt” about the material facts. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

IV. ARGUMENT

To prevail on their Title II claim, Plaintiffs must show that (1) they are people with disabilities; (2) they are “otherwise qualified to participate in or receive the benefit of” the Vote-by-Mail Program; (3) they were “either excluded from participation in or denied the benefits of” the Vote-by-Mail Program; and (4) “such exclusion, denial of benefits, or discrimination was by reason of [their] disability.” See *McGary v. City of Portland*, 386 F.3d 1259, 1265 (9th Cir. 2004) (citation modified). The Secretary has stipulated to the first two of these elements (Pls.’ SOF ¶¶ 4, 7), and because policies that burden people with disabilities in a manner different and greater than they burden others definitionally discriminate “by reason of disability,” the fourth element is also not at issue in this case. See *McGary*, 386 F.3d at 1265 (holding that neutral policies that unduly burden people with disabilities discriminate by reason of disability); *Crowder v. Kitagawa*, 81 F.3d 1480, 1484 (9th Cir. 1996) (same). 28 C.F.R. §§ 35.130(b)(1)(ii), (b)(7), 35.160. The only contested element is the third—whether the Secretary excluded Plaintiffs from participation in, or denied them the benefits of, the Vote-by-Mail Program—which the undisputed facts establish below through both her failure to provide equally effective communication and, independently, her denial of meaningful access.

A Title II violation is established where a qualified individual with a disability is denied an equal opportunity to participate in or benefit from a public entity’s services, including where a policy or practice fails to provide equally effective communication or otherwise denies meaningful access. *Duvall v. County of Kitsap*, 260 F.3d 1124, 1135 (9th Cir. 2001); *Payan v. L.A. Cmty. Coll. Dist.*, 11 F.4th 729, 738 (9th Cir. 2021).

Title II requires public entities to ensure that individuals with disabilities are not excluded from, or denied the benefits of, their services, programs, or activities. 42 U.S.C. § 12132. Its implementing regulations further require that public entities afford individuals with disabilities an opportunity to participate that is equal to that afforded others, make reasonable modifications where necessary, and ensure that communications with individuals with disabilities are “as

effective as” communications with others, including in a manner that preserves privacy and independence where those features are essential to the program at issue. 28 C.F.R. §§ 35.130(b)(1)(ii), (b)(7), 35.160.³

Section 504 similarly prohibits disability discrimination by recipients of federal financial assistance. 29 U.S.C. § 794(a).

As the undisputed facts demonstrate, the Secretary fails to provide voters with print disabilities an equally effective means of communicating their ballot selections, including the ability to do so privately and independently.

A. Statutory and Regulatory Framework for Plaintiffs’ Claims

Title II’s regulations impose affirmative obligations to ensure equal opportunity in practice, including by requiring that communications with individuals with disabilities be as effective as communications with others. 28 C.F.R. § 35.130(b)(1)(ii); § 35.160. A public entity therefore may not afford a qualified individual with a disability an opportunity to participate that is not equal to that afforded others, must make reasonable modifications where necessary, and must ensure that communications are “as effective as” those with nondisabled individuals. 28 C.F.R. §§ 35.130(b)(1)(ii), (b)(7), 35.160.

This obligation requires public entities to provide appropriate auxiliary aids and services where necessary, including in a manner that preserves privacy and independence where those features are integral to the program at issue. 28 C.F.R. § 35.160. Courts evaluating communications access are guided “by the specific standards of the Title II effective communications regulation.” *K.M. v. Tustin Unified Sch. Dist.*, 725 F.3d 1088, 1102 (9th Cir. 2013). In short, the benefit a public entity offers must be equally accessible to people with disabilities, and “reasonable adjustments in the nature of the benefit offered must at times be made” to achieve it. *Alexander v. Choate*, 469 U.S. 287, 301 n.21 (1985).

Section 504 imposes materially the same obligations on programs receiving federal

³ See *supra* note 1.

1 financial assistance. 29 U.S.C. § 794(a). Title II and Section 504 are “interpreted coextensively
 2 because there is no significant difference in the analysis of rights and obligations created by each
 3 provision.” *Mayfield v. City of Mesa*, 131 F.4th 1100, 1109 (9th Cir. 2025) (citation modified).
 4 References to the ADA or Title II throughout this brief should thus be read to encompass
 5 Plaintiffs’ claims under both laws.

6 **B. Federal Law Preempts the California Elections Code Provisions that**
 7 **Prohibit Accessible Electronic Ballot Return**

8 The Secretary takes the position that state law deprives her of authority to certify,
 9 conditionally approve, or otherwise provide any accessible electronic method of ballot return.
 10 Pls.’ SOF ¶¶ 65–66 (admitting that California law defines RAVBM systems to exclude
 11 accessible electronic ballot return and that she lacks authority to certify such systems). Plaintiffs
 12 address this contention first because it goes to the Secretary’s authority to afford any remedy: if
 13 the Elections Code provisions she invokes are preempted, they no longer bind her, and she may
 14 act under her existing authority. *Id.* ¶ 66. As Parts IV.C and IV.D establish, Title II and Section
 15 504 require accessible electronic ballot return—the question here is whether state law provisions
 16 barring it must yield.

17 That position creates a direct conflict between state and federal law. Accessible electronic
 18 ballot return is necessary to provide voters with print disabilities an equally effective, private,
 19 and independent means of participating in the Vote-by-Mail Program. If state law prohibits
 20 accessible electronic ballot return—the only means of ensuring effective communication and
 21 meaningful access—it must yield. It is well established that “[r]eliance on state statutes to excuse
 22 noncompliance with federal laws is simply unacceptable under the Supremacy Clause.” *Barber*
 23 *ex rel. Barber v. Colo. Dep’t of Revenue*, 562 F.3d 1222, 1233 (10th Cir. 2009).

24 In denying the motion to dismiss, the Court identified the question on which relief turns:
 25 whether the ADA preempts California’s prohibition on electronic ballot return. Order on Mot. to
 26 Dismiss (“Order”), Dkt. No. 85 at 4–8. Under the Supremacy Clause, state law is preempted
 27 where it is impossible to comply with both state and federal requirements, or where state law
 28 “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of

Congress.” *Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 372–73 (2000) (citation modified). Both forms of conflict preemption apply here.

1. Impossibility Preemption

California law affirmatively forecloses accessible electronic ballot return by defining RAVBM systems around printed paper submission and prohibiting the Secretary from certifying any system that includes electronic transmission of voted ballots.⁴ *See* Pls.’ SOF ¶¶ 65–66. It is therefore impossible for the Secretary to comply with both federal law and the applicable provisions of the Elections Code because the only method identified on this record that can satisfy Title II’s effective communication requirement—accessible electronic ballot return—is prohibited by state law. *See infra* Parts IV.C–D; Pls.’ SOF ¶¶ 13, 25, 33, 40, 42.

Title II requires that communications with voters with print disabilities be “as effective as” those provided to other voters. 28 C.F.R. § 35.160(a)(1). To meet this obligation, public entities must provide appropriate auxiliary aids and services where necessary, including in a manner that preserves privacy and independence where those features are integral to the program at issue. *Id.* § 35.160(b)(1)–(2).

The Secretary has stipulated that she will not challenge the feasibility or effectiveness of providing voters with print disabilities an accessible electronic method of ballot return, and has waived the fundamental alteration and undue burden defenses. Pls.’ SOF ¶¶ 46–48. With feasibility and effectiveness no longer in dispute, and state law foreclosing the only method that would satisfy federal requirements, compliance with both state and federal law is impossible.

English v. Gen. Elec. Co., 496 U.S. 72, 79 (1990).

⁴ The Elections Code defines an RAVBM system as one used solely to mark a vote-by-mail ballot for printing and submission of a paper cast vote record, and prohibits such systems from being connected to a voting system. Cal. Elec. Code § 303.3. The Code further provides that the Secretary may not certify or conditionally approve an RAVBM system unless it satisfies all statutory requirements. *Id.* § 19280. Separately, the Elections Code enumerates the exclusive methods for returning a voted ballot—by mail, in person, or at an authorized drop-off location, *id.* § 3017—and presupposes a physical return envelope bearing a handwritten signature (wet ink) for verification, *id.* §§ 3011(a), 3019(a)(1). The Secretary relies on these provisions to assert that California law deprives her of authority to certify or approve any RAVBM system with accessible electronic ballot return.

1 This conflict is particularly clear with respect to the Elections Code’s signature
 2 requirement. California requires the voter to provide a handwritten signature on the physical
 3 ballot return envelope (“identification envelope”), Cal. Elec. Code § 3011(a), and conditions
 4 counting the ballot on a comparison of that signature against the voter’s registration record, *id.*
 5 § 3019(a)(1). The Secretary has stipulated that she will not challenge the feasibility or
 6 effectiveness of accessible electronic ballot return, including electronic signatures. Pls.’ SOF
 7 ¶¶ 47–48. For some voters with print disabilities, the record shows the envelope signature
 8 requirement cannot be satisfied independently at all. Pls.’ SOF ¶ 13; *id.* ¶ 14 (Secretary’s Rule
 9 30(b)(6) designee is “unsure” how individuals with print disabilities sign the ballot return
 10 envelope independently); Pls.’ SOF ¶¶ 21–22 (Plaintiff Zavoli requires assistance to sign a return
 11 envelope); Pls.’ SOF ¶¶ 28–29 (Plaintiff Gray testified that “signing a return envelope cannot be
 12 done without assistance”); Pls.’ SOF ¶ 36 (Plaintiff Dawson Rawlings requires a personal care
 13 assistant to position the envelope to sign).

14 A state statute cannot excuse a violation of Title II. *Hindel v. Husted*, 875 F.3d 344, 349
 15 (6th Cir. 2017). Because the Secretary has waived any challenge to the feasibility or
 16 effectiveness of electronic signatures, the State cannot justify the wet ink requirement. It is
 17 therefore preempted as applied.

18 **2. Obstacle Preemption**

19 Even if it were possible to comply with both the Elections Code and federal
 20 nondiscrimination mandates (it is not), the challenged Elections Code provisions independently
 21 stand as obstacles to the ADA’s core findings and purposes of equal participation, independence,
 22 and full access to public programs. 42 U.S.C. §§ 12101(a)(7), (b).

23 As the record establishes, California’s paper-based return and wet ink signature
 24 requirements force voters with print disabilities to disclose their ballot selections or rely on
 25 assistance to return their ballots, while other voters return their ballots privately and
 26 independently. Pls.’ SOF ¶¶ 13–14, 17–42. This disparity directly frustrates Title II’s
 27 requirement that public entities provide communications that are “as effective as” those afforded
 28 to others. 28 C.F.R. § 35.160. California law itself treats secrecy and independence as central

1 features of voting, yet the challenged provisions deny those same features to voters with print
2 disabilities. Cal. Const. art. II, § 7.

3 Title II's reasonable modification requirement is designed to compel modification of
4 rules, policies, and practices, including state laws, where necessary to eliminate disability
5 discrimination. As the Second Circuit explained, the "natural effect" of that obligation is to
6 require preemption of inconsistent state law when necessary to effectuate a required
7 modification. *Mary Jo C. v. N.Y. State & Loc. Ret. Sys.*, 707 F.3d 144, 161–63 (2d Cir. 2013).
8 Where state law rules operate to deny people with disabilities an equal opportunity to participate
9 in a public program, the reasonable modification requirement necessarily displaces that rule
10 when modification is required to eliminate the discrimination.

11 Courts consistently reject the argument that compliance with state statutes excuses
12 noncompliance with federal disability rights obligations. *Crowder*, 81 F.3d at 1485; *Hindel*,
13 875 F.3d at 348–49; *Nat'l Fed'n of the Blind v. Lamone*, 813 F.3d 494, 508 (4th Cir. 2016);
14 *Johnson v. Callanen*, No. SA-22-CV-00409-XR, 2023 WL 4374998, at *10–11 (W.D. Tex. July
15 6, 2023).

16 Because the challenged Elections Code provisions require paper-based return and wet ink
17 signatures, they prohibit the only method identified on this record that allows voters with print
18 disabilities to return their ballot selections privately and independently. The obstacle is not
19 hypothetical or isolated: the paper-based return and wet ink signature requirements apply in
20 every election and to every voter with a print disability who uses vote-by-mail. By requiring
21 voters with print disabilities to disclose their ballot selections or rely on assistance while other
22 voters vote privately and independently, these challenged provisions stand as an obstacle to the
23 core purposes of the ADA and Section 504 and are preempted as applied here.

24 Accordingly, the challenged Elections Code provisions are preempted under either
25 theory. With the state law bar removed, the Secretary's only objections to providing relief—that
26 she may not act contrary to state law or bind absent counties—fall away, and her undisputed
27 authority over California's elections suffices to implement accessible electronic ballot return.
28 Order, Dkt. No. 85 at 5–7. State law cannot be invoked to justify an ongoing violation of federal

civil rights law. The requested order would not require the Secretary to defy valid state law; it would declare the conflicting state law restrictions preempted as applied and supply the legal basis for accessible electronic ballot return.

C. The Secretary Denies Plaintiffs Effective Communication in the Vote-by-Mail Program

Plaintiffs' claim is straightforward. Title II requires that communications with voters with print disabilities be "as effective as" communications with others. 28 C.F.R. § 35.160(a)(1). The undisputed record shows the Secretary does not meet that standard, has not furnished the auxiliary aids the regulation requires, and has waived the only defense available to her. 28 C.F.R. § 35.164; Pls.' SOF ¶ 46. On this record, liability follows.

1. The Secretary Has Failed to Provide Equally Effective Communication

To be "as effective as" communications with others, a communication must convey "the same information," serve "an equivalent purpose," and achieve "similar results." 28 C.F.R. pt. 35, app. A (section-by-section analysis of § 35.160). The method must also preserve "the privacy and independence of the individual with a disability." *Id.* § 35.160(b)(2). In the voting context, the result that effective communication must achieve is clear: the ability to cast a ballot privately and independently, as nondisabled voters are able to do. The California Constitution confirms that "[v]oting shall be secret." Cal. Const. art. II, § 7.

The paper-based RAVBM return process does not meet that standard. Plaintiffs can independently receive, read, and mark their ballots using assistive technology but cannot complete the return without another person's help. Ms. Zavoli cannot independently confirm that her printed selections are accurate and properly formatted. Pls.' SOF ¶¶ 17, 19–25. Mr. Gray requires assistance to verify the accuracy of his printed ballot selections and cannot independently locate or verify the signature line on the return envelope. Pls.' SOF ¶¶ 17, 27–33. Mr. Dawson Rawlings cannot independently print, handle, insert, or sign the return materials. Pls.' SOF ¶¶ 17, 35–37, 40. The named Plaintiffs are not unique: members of the certified class likewise require assistance to return their ballot selections and therefore cannot participate in the

1 Vote-by-Mail Program privately and independently. Pls.’ SOF ¶ 42. Returning a ballot thus
 2 forces these voters to disclose their selections to another person or have them handled by a third
 3 party at the final, necessary step of participation in the voting process. A process that requires
 4 another person to see or handle a voter’s selections cannot convey the same information, serve an
 5 equivalent purpose, or achieve a similar result. Voters without print disabilities return their
 6 ballots privately and independently; class members cannot. Pls.’ SOF ¶ 13.

7 As Judge Spero explained in *Cal. Council of the Blind v. County of Alameda*, requiring
 8 blind and visually impaired voters “to vote with the assistance of a third-party, if they are to vote
 9 at all, at best provides these individuals with an inferior voting experience not equal to that
 10 afforded others,” because they are “forced to reveal a political opinion that others are not
 11 required to disclose.” 985 F. Supp. 2d 1229, 1239 (N.D. Cal. 2013) (citation modified). Voters
 12 who must rely on third-party assistance to cast a ballot are denied the privacy and independence
 13 that § 35.160 requires for equally effective communication. That reasoning applies with equal
 14 force here.

15 The Secretary’s own experience confirms the barrier. User testing during RAVBM’s
 16 initial implementation showed that voters with print disabilities could not independently
 17 complete the paper-based return. Pls.’ SOF ¶ 15. Real-world use produced the same result, as
 18 reported at a May 2021 webinar convened at the Secretary’s request, and as her own Voter
 19 Accessibility Advisory Committee later discussed. Pls.’ SOF ¶ 16. Yet no certified system has
 20 ever been tested for accessibility at the return stage; certification stops at the print step by design.
 21 Pls.’ SOF ¶ 12. And asked how a blind voter or a voter with a manual dexterity impairment
 22 could independently satisfy the envelope-signature requirement, the Secretary’s Rule 30(b)(6)
 23 designee twice answered, “I’m unsure.” Pls.’ SOF ¶ 14. The Secretary has thus failed to provide
 24 return-stage communication “as effective as” that afforded other voters, in violation of
 25 § 35.160(a)(1) and (b)(2).

26 **2. The Secretary Has Failed to Furnish an Appropriate Auxiliary Aid**

27 Section 35.160 imposes an affirmative obligation on public entities to “furnish
 28 appropriate auxiliary aids and services where necessary to afford ... equal opportunity.” 28

1 C.F.R. § 35.160(b)(1). Once on notice of a barrier to effective communication, a public entity
 2 must undertake a fact-specific investigation to identify an appropriate auxiliary aid and may not
 3 rely on speculation or inaction. *Martinez v. County of Alameda*, 512 F. Supp. 3d 978, 986–87
 4 (N.D. Cal. 2021); *see Am. Council of the Blind v. Astrue*, 2009 WL 3400686, at *21–22 (N.D.
 5 Cal. Oct. 20, 2009) (Section 504 violated where agency maintained a blanket policy that
 6 effectively denies accessible alternatives). The Secretary has long been on notice, through user
 7 testing, the 2021 webinar, and her own VAAC, yet has furnished no aid. Pls.’ SOF ¶¶ 15–16.
 8 These findings establish a persistent, well-documented barrier to effective communication, not
 9 an isolated or speculative concern.

10 The aid class members request, an accessible RAVBM system with electronic return, is
 11 one the regulation expressly names as a required auxiliary aid: “[a]ccessible electronic and
 12 information technology.” 28 C.F.R. § 35.104 (under “Auxiliary aids and services” definition). Its
 13 absence is not a matter of technological limitation. Democracy Live, the vendor used by more
 14 than half of California’s counties, already provides accessible electronic ballot return in other
 15 states and can do so here; that functionality is unavailable solely because the Secretary certifies
 16 only systems requiring paper return. Pls.’ SOF ¶ 44. The same capability is already available
 17 within California’s own framework for military and overseas voters. Pls.’ SOF ¶¶ 44, 52. Nor
 18 would electronic return burden counties, which already duplicate every RAVBM paper cast vote
 19 record onto an official ballot regardless of the medium in which it arrives. Pls.’ SOF ¶¶ 57–58.

20 Whether a given aid is “appropriate” is ordinarily fact intensive. *Bax v. Doctors Med. Ctr.*
 21 *of Modesto*, 52 F.4th 858, 870 (9th Cir. 2022); *Mayfield*, 131 F.4th at 1113 n.5. Here that inquiry
 22 is resolved by the Secretary’s own stipulation and Plaintiffs’ un rebutted testimony. Class
 23 members routinely transmit complex, sensitive information independently, including executing
 24 binding contracts by using screen readers, Braille displays, and electronic signatures. Pls.’ SOF
 25 ¶¶ 18, 26, 34, 41–42. The Secretary does not contend the requested aid is ineffective, infeasible,
 26 or unrecognized. Pls.’ SOF ¶¶ 44, 47–48. The Secretary identifies no evidence to the contrary
 27 and does not dispute the feasibility or effectiveness of the requested aid. Electronic ballot return
 28 is an appropriate auxiliary aid under § 35.160(b)(1), and the Secretary has failed to furnish it.

1 There is no genuine dispute that Plaintiffs and others with print disabilities are denied access to a
 2 core benefit of the Vote-by-Mail Program, the ability to vote privately and independently—and
 3 that an effective auxiliary aid can be provided.

4 **3. The Secretary Failed to Give Primary Consideration to the Requested**
 5 **Aid and Has Identified No Equally Effective Alternative**

6 Section 35.160(b)(2) requires the Secretary to “give primary consideration to the requests
 7 of individuals with disabilities,” and honor the requested aid “unless [she] can demonstrate that
 8 another effective means of communication exists.” 28 C.F.R. § 35.160(b)(2); 28 C.F.R. pt. 35,
 9 app. A (section-by-section analysis of § 35.160). Class members identified their aid with
 10 specificity: each testified that accessible electronic return would resolve every inaccessible step
 11 they encounter. Pls.’ SOF ¶¶ 41–42. The Secretary neither honored that request nor identified any
 12 equally effective alternative permitting private, independent return.

13
 14 The alternatives the Secretary relies on are not equally effective. Requiring voters to align
 15 a signature using holes in an envelope or similar tactile guides does not enable them to locate or
 16 verify the signature line independently or confirm that their ballot selections have been
 17 accurately transmitted. As Plaintiffs’ testimony shows, even identifying and tracking the
 18 signature line cannot be done independently by blind voters. Pls.’ SOF ¶¶ 21, 28.

19
 20 Use of a signature stamp likewise requires assistance for placement, control, or security,
 21 and does not allow voters to complete the return process privately and independently. Mr.
 22 Dawson Rawlings testified that he required assistance to use a signature stamp even when he had
 23 one, and no longer uses one at all due to loss and concerns about misuse. Pls.’ SOF ¶¶ 37–38.

24 Nor is in-person voting an equivalent alternative: it is a distinct program (Pls.’ SOF ¶ 5),
 25 and does not provide the same opportunity to cast a vote-by-mail ballot independently at a time
 26 and place of the voter’s choosing. None of these options permits voters with print disabilities to
 27 return their ballot selections privately and independently, as other voters do, and none satisfies
 28

§ 35.160’s requirement of equally effective communication. These alternatives replicate the very barriers the ADA forbids rather than providing an equally effective means of communication.

Because counties may deploy only systems the Secretary certifies, the accessibility limits of those systems are attributable to her. Pls.’ SOF ¶ 12. The only alternative she provides is the very system her own user testing confirmed could not be completed independently, and her Rule 30(b)(6) designee could not explain how a voter with a print disability could independently meet the signature requirement. Pls.’ SOF ¶ 14. That is a breach of § 35.160(b)(2).

4. The Secretary Waived Her Only Defenses

The sole defense to these obligations is a showing under § 35.164 that the requested aid would fundamentally alter the program or impose an undue burden. The Secretary has expressly waived that defense and stipulated that she will not contest the effectiveness or feasibility of accessible electronic ballot return or electronic signatures. Pls.’ SOF ¶¶ 46–48.

With the only defense gone and feasibility and effectiveness no longer in dispute, no genuine dispute remains under § 35.160. Liability under Title II is established on this record.

D. The Secretary Denies Plaintiffs Reasonable Modifications Necessary to Ensure Meaningful Access to the Vote-by-Mail Program

The Secretary’s failure to provide voters with print disabilities a way to return their ballots privately and independently denies them meaningful access to the Vote-by-Mail Program. Such a return mechanism is reasonable and feasible and the Secretary has waived any argument that it would constitute an undue burden or fundamental alteration. Vote-by-Mail is a distinct program, and the ability to vote by other means does not cure the denial of access to its benefits. Defendant admits that vote-by-mail is a “program, service, or activity,” and that in-person voting is separate. Pls.’ SOF ¶ 5. Courts similarly recognize absentee voting as a distinct program under the ADA and reject the argument that voting “in some way” suffices. *Lamone*, 813 F.3d at 504 (“[I]t is far more natural to view absentee voting—rather than the entire voting program—as the

appropriate object of scrutiny for compliance with the ADA.”); *Disabled in Action v. Bd. of Elections in City of New York*, 752 F.3d 189, 198–99 (2d Cir. 2014) (rejecting argument that the relevant benefit was “merely the opportunity to vote at some time and in some way”).

1. The Secretary Denies Voters with Print Disabilities Meaningful Access by Foreclosing Private, Independent Ballot Return

A public entity denies meaningful access when it fails to provide people with disabilities the same benefit it offers others. *Choate*, 469 U.S. at 301. Here, a central benefit of the Vote-by-Mail Program is the ability to complete the ballot return process privately and independently.

The record establishes that voters with print disabilities cannot do so. *See supra* Part IV.C.2. They must rely on others to review, sign, or return their ballots, disclosing their selections at the final and necessary step of participation in the voting process. In contrast, voters without print disabilities return their ballots privately and independently. Pls.’ SOF ¶¶ 10–13, 17–42. Where access is not equal, “reasonable adjustments in the nature of the benefit offered must at times be made.” *Choate*, 469 U.S. at 301 n.21. Courts consistently hold that requiring voters with disabilities to rely on third parties to vote denies meaningful access. *See Lamone*, 813 F.3d at 507; *Cal. Council of the Blind v. Alameda*, 985 F. Supp. 2d at 1245; *Taliaferro v. N.C. State Bd. of Elections*, 489 F. Supp. 3d 433, 437 (E.D.N.C. 2020).

It does not matter that Plaintiffs may be able to vote in some other way. The relevant program is the Vote-by-Mail Program, not voting in general. By refusing to provide an accessible method of remote voting—namely, accessible electronic ballot return—the Secretary denies voters with print disabilities the same benefits of voting privately and independently afforded to those without print disabilities.

The current paper-based RAVBM ballot return system therefore denies Plaintiffs and others with print disabilities meaningful and equal access to the Vote-by-Mail Program.

2. Providing Accessible Electronic Ballot Return is Required and

Undisputedly Reasonable

Where meaningful access is denied, reasonable modification is required. *Choate*, 469 U.S. at 301. Plaintiffs have identified a straightforward modification—accessible electronic ballot return—that would allow voters with print disabilities to return their ballots privately and independently. That modification is reasonable because the Secretary has stipulated that it is feasible and effective and has waived the only available defenses. Pls.’ SOF ¶¶ 46–48. With no dispute as to feasibility or burden, Section 504 and the ADA require its adoption.

E. The Secretary Can Certify RAVBM Systems with Accessible Electronic Ballot Return and Ensure that Counties Adopt Them, Once This Court Finds That State Law Barriers Are Preempted

Following a finding by this Court that state law barriers to accessible electronic ballot return must be preempted by the requirements of federal disability rights laws, the Court can also order the Secretary to certify or conditionally approve RAVBM systems with accessible electronic ballot return options. *See* Pls.’ SOF ¶ 12. Once such systems are certified, the Secretary has the power to ensure county adoption of them through her guidance, regulation, funding, and enforcement authority. Pls.’ SOF ¶¶ 2, 12, 59–60, 62–64. Thus, once the Court declares the conflicting paper-based return and wet ink signature requirements preempted as applied, an order requiring the Secretary to certify RAVBM systems with accessible electronic ballot return would operate through her existing statewide election-administration authority and lead to county implementation.

V. CONCLUSION

The undisputed record establishes that the Vote-by-Mail Program denies voters with print disabilities both effective communication and meaningful access. The Program requires them to print, handle, sign, and physically return paper ballot selections—steps the Secretary admits some cannot complete without assistance—such that they cannot communicate their ballot selections privately and independently. Pls.’ SOF ¶ 13. Absent relief, that barrier will persist in every future election.

The need for relief is equally clear. The Secretary has stipulated that she will not

1 challenge the feasibility or effectiveness of accessible electronic ballot return, waived any
2 fundamental alteration and undue burden defenses, and identified no equally effective alternative
3 that protects voters' privacy and independence. Prospective relief is therefore necessary to bring
4 the Program into compliance with disability rights laws. For these reasons, the Court should find
5 that the Secretary has violated Title II of the ADA, Section 504 of the Rehabilitation Act, and
6 California Government Code § 11135, and that:

- 7 1) The Secretary has failed to provide voters with print disabilities a means of participating
8 in the Vote-by-Mail Program that is as effective as that provided to voters without
9 disabilities;
 - 10 2) The Secretary has failed to provide appropriate auxiliary aids and services necessary to
11 ensure equally effective communication, including communication that preserves the
12 privacy and independence of voters with print disabilities;
 - 13 3) The Secretary has denied voters with print disabilities meaningful access to the Vote-by-
14 Mail Program;
 - 15 4) The Secretary has failed to provide reasonable modifications necessary to ensure
16 meaningful access to the Vote-by-Mail Program;
 - 17 5) Because the Secretary has stipulated that she will not challenge the effectiveness or
18 feasibility of accessible electronic ballot return, and has waived all applicable defenses,
19 providing accessible electronic ballot return is required by Title II and Section 504;
 - 20 6) To the extent California Elections Code §§ 3011(a), 3017(a)(1)(A)–(C), (d) and
21 3019(a)(1), or any other provisions enforcing paper-based return and wet ink signature
22 requirements, bar accessible electronic ballot return, they are preempted by the ADA and
23 Section 504 as applied here; and
 - 24 7) The Secretary must certify or conditionally approve RAVBM systems that include
25 accessible electronic ballot return and take all steps within her authority to ensure their
26 implementation by county officials.
- 27
28

1 DATED: June 15, 2026

Respectfully submitted,

2 DISABILITY RIGHTS CALIFORNIA

3
4 /s/ Charlotte Lanvers

Charlotte Lanvers (SBN 257814)

Frederick P. Nisen (SBN 184089)

Desiree Robedeaux (SBN 360254)

5 **DISABILITY RIGHTS CALIFORNIA**

3075 Adeline St. #205

6 Berkeley, CA 94703-2578

7 Tel: (916) 504-5800

8 Fax: (916) 504-5801

9 Emails: fred.nisen@disabilityrightsca.org

charlotte.lanvers@disabilityrightsca.org

10 desiree.robedeaux@disabilityrightsca.org

11 DISABILITY RIGHTS ADVOCATES

12 /s/ Sean Betouliere

Sean Betouliere (SBN 308645)

13 Shawna L. Parks (SBN 208301)

14 **DISABILITY RIGHTS ADVOCATES**

2001 Center Street, Third Floor

15 Berkeley, California 94704-1204

16 Tel: (510) 665-8644

17 Fax: (510) 665-8511

18 Emails: sbetouliere@dralegal.org

sparks@dralegal.org

19 Raika Kim (*Pro Hac Vice*)

20 **DISABILITY RIGHTS ADVOCATES**

300 S Wacker Dr., FL. 32

21 Chicago, IL 60606-6680

22 Tel: (312) 292-9868

23 Fax: (212) 644-8636

Email: rkim@dralegal.org

24 **BROWN, GOLDSTEIN & LEVY LLP**

25 /s/ Eve Hill

Eve Hill (SBN 202178)

26 Neel Lalchandani (SBN 310480)

Lauren J. Kelleher (*Pro Hac Vice*)

27 **BROWN, GOLDSTEIN & LEVY LLP**

120 East Baltimore Street, Suite 2500

28 Baltimore, MD 21202-1633

Tel: (410) 962-1030

Fax: (410) 385-0869
Emails: ehill@browngold.com
nkl@browngold.com
lkelleher@browngold.com

Attorneys for Plaintiffs

RETRIEVED FROM DEMOCRACYDOCKET.COM