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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION
13

14 **CALIFORNIA COUNCIL OF THE**
15 **BLIND, ET AL.,**

16 Plaintiffs,

17 v.

18 **SHIRLEY N. WEBER, PH.D.,**

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

**DEFENDANT'S NOTICE OF MOTION
AND CROSS-MOTION FOR SUMMARY
JUDGMENT**

Hearing Date:	August 31, 2026
Time:	9:30 a.m.
Judge:	Hon. Sallie Kim
Trial Date:	December 8, 2026
Action Filed:	March 8, 2024

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE, on the same date and time that Plaintiffs' pending Motion for Summary Judgment on Liability and Remedy, ECF 148, will come for hearing, August 31, 2026, or as soon thereafter as this Motion may be heard before the Honorable Sallie Kim of the United States District Court, Northern District of California at the San Francisco Courthouse, Courtroom C – 15th Floor, 450 Golden Gate Avenue, San Francisco, California, 94102, Defendant California Secretary of State Shirley N. Weber, Ph.D. (the Secretary) will and does hereby move the Court to grant summary judgment in favor of Defendant California Secretary of State Shirley N. Weber, Ph.D. The Secretary's motion is made pursuant to Federal Rule of Civil Procedure 56 and Civil Local Rule 7. The Secretary's motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, all declarations and exhibits filed with it, and any oral argument the Court permits.

RELIEF REQUESTED

The Secretary requests that the Court issue an order granting the Secretary's Cross-Motion for Summary Judgment in its entirety, and denying Plaintiffs' Motion for Summary Judgment on Liability and Remedy, ECF 148, in its entirety.

Dated: July 7, 2026

Respectfully submitted,

/s/ Kiana S. Herold

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TABLE OF CONTENTS

	Page
Memorandum of Points & Authorities.....	1
Introduction.....	1
Statement of the Issues Presented	2
Factual Background	2
I. California’s Elections System.....	2
II. California’s Vote-by-Mail System.....	3
A. Remote Accessible Vote by Mail.....	4
1. Assistance with Remote Accessible Vote by Mail	6
B. Facsimile Ballot Return for Overseas and Military Voters.....	7
III. Plaintiffs’ Claims and Requested Relief	8
Legal Standards.....	9
Argument	9
I. Defendant Is Entitled to Summary Judgment Because Plaintiffs Cannot Prove Their Prima Facie Case.....	9
A. Plaintiffs Have Meaningful Access to California’s Vote-by-Mail Program.....	11
1. Meaningful Access Does Not Require Identical Access.....	11
2. No Federal Court Has Held that the ADA or Rehabilitation Act Requires Electronic Ballot Return.....	14
3. The ADA’s Effective-Communication Regulation Does Not Change the Meaningful Access Analysis.....	16
4. Plaintiffs Have Meaningful Access to California’s Vote-by- Mail System	18
II. If the Court Finds an ADA or Rehabilitation Act Violation, Any Relief Should Be Tailored to Address the Specific Deficiency While Leaving Opens the Precise Means by which the Deficiency is Addressed.....	22
III. Conclusion	24

TABLE OF AUTHORITIES

Page

CASES

<i>Alexander v. Choate</i> 469 U.S. 287 (1985)	11, 13, 16, 21
<i>Alexander v. Sandoval</i> 532 U.S. 275 (2001)	16
<i>Am. Ass’n of People with Disabilities v. Shelley</i> 324 F. Supp. 2d 1120 (C.D. Cal. 2004)	12, 13, 19
<i>Am. Ass’n of People with Disabilities v. Smith</i> 227 F. Supp. 2d 1276 (M.D. Fla. 2002)	14
<i>Anderson v. Liberty Lobby, Inc.</i> 477 U.S. 242 (1986)	9
<i>Bax v. Drs. Med. Ctr. of Modesto, Inc.</i> 52 F.4th 858 (9th Cir. 2022)	16, 17
<i>Berkeley Homeless Union v. City of Berkeley</i> Case No. 25-cv-01414-EMC, 2026 WL 916930 (N.D. Cal. Apr. 3, 2026), 2026	11
<i>Civic Ass’n of the Deaf of N.Y.C., Inc. v. City of New York</i> No. 95 Civ. 8591, 2011 WL 5995182 (S.D.N.Y. Nov. 29, 2011)	16
<i>Cohen v. City of Culver City</i> 754 F.3d 690 (9th Cir. 2014)	11
<i>Columbia Pictures Indus., Inc. v. Fung</i> 710 F.3d 1020 (9th Cir. 2013)	22
<i>Council of the Blind v. County of Alameda</i> 985 F. Supp. 2d 1229 (N.D. Cal. 2013)	14, 15, 17
<i>Duvall v. County of Kitsap</i> 260 F.3d 1124 (9th Cir. 2001), (Oct. 11, 2001)	10
<i>Hernandez v. N.Y. State Bd. of Elections</i> 479 F. Supp. 3d 1 (S.D.N.Y. 2020)	15, 18
<i>Hunsaker v. Contra Costa County</i> 149 F.3d 1041 (9th Cir. 1998)	16
<i>Johnson v. Callanen</i> No. SA-22-CV-00409-XR, 2023 WL 4374998 (W.D. Tex. July 6, 2023)	18

TABLE OF AUTHORITIES
(continued)

	<u>Page</u>
<i>K.M. ex rel. Bright v. Tustin Unified Sch. Dist.</i> 725 F.3d 1088 (9th Cir. 2013).....	11
<i>Libertarian Party v. Eu</i> 28 Cal. 3d 535 (1980)	2
<i>Loye v. County. of Dakota</i> 625 F.3d 494 (8th Cir. 2010).....	16, 17
<i>Melendres v. Arpaio</i> 784 F.3d 1254 (9th Cir. 2015).....	22
<i>Miles v. Apex Marine Corp.</i> 498 U.S. 19 (1990)	12
<i>Moody ex rel. J.M. v. NYC Dep't of Educ.</i> 513 F. App'x 95 (2d Cir. 2013).....	11
<i>Nat'l Fed'n of the Blind, Inc. v. Lamone</i> Civil Action No. RDB-14-1631, 2014 WL 4388342 (D. Md. Sept. 4, 2014)	15, 18
<i>National Federation of the Blind v. Lamone</i> 813 F.3d 494 (4th Cir. 2016).....	15, 17, 18
<i>Nelson v. Miller</i> 170 F.3d 641 (6th Cir. 1999).....	14, 19
<i>Nelson v. Miller</i> 950 F. Supp. 201 (W.D. Mich. 1996).....	13
<i>Rissling v. Bobo</i> Case No. 7:23-cv-01326-RDP, 2026 WL 797138 (N.D. Ala. Mar. 20, 2026).....	11, 12, 13, 19
<i>Smith v. Bayer Corp.</i> 564 U.S. 299 (2011).....	24
<i>Taylor v. Onorato</i> 428 F. Supp. 2d 384 (W.D. Pa. 2006).....	13, 19
<i>Weinreich v. L.A. Cnty. Metro. Transp. Auth.</i> 114 F.3d 976 (9th Cir. 1997).....	10
<i>Wright v. N.Y. State Dep't of Corr.</i> 831 F.3d 64 (2d Cir. 2016).....	11

TABLE OF AUTHORITIES
(continued)

	<u>Page</u>
<i>Y.G. v. Riverside Unified Sch. Dist.</i> 774 F. Supp. 2d 1055 (C.D. Cal. 2011).....	10
 STATUTES	
United States Code, Title 52	
§ 10310(c)(1).....	12
§ 10508.....	6, 12, 13, 14
§ 20302(a)(7).....	7
Act of July 22, 2016, 2016 Cal. Legis. Serv. Ch. 75 (A.B. 2252) (West)	4
Act of June 18, 2020, 2020 Cal. Legis. Serv. Ch. 4 (A.B. 860) (West).....	4
Americans with Disabilities Act Title II, 42 U.S.C. § 12131 <i>et seq.</i>	<i>passim</i>

TABLE OF AUTHORITIES
(continued)

		<u>Page</u>
3	California Elections Code	
4	§ 10.5.....	3
5	§ 300(b).....	7
6	§ 303.3.....	5
7	§ 305.5.....	5
8	§ 320.....	2
9	§ 354.5.....	3, 6, 19
10	§ 362.....	2, 5
11	§ 2102(a).....	2
12	§ 2196.....	3
13	§ 3000.5.....	2, 3
14	§ 3003.....	3
15	§ 3011.....	3, 4, 5
16	§ 3016.7.....	4
17	§ 3017.....	2, 4, 5
18	§ 3019.....	2, 3, 4, 6, 19
19	§ 3105.....	7
20	§ 3106.....	7, 8, 9
21	§ 3116.5.....	4
22	§ 12280.....	2
23	§ 14282.....	4, 13, 14
24	§ 15150.....	2
25	§ 15375.....	2
26	§ 19006(d).....	23
27	§ 19100.....	23
28	§ 19202.....	2, 23
	§ 19205.....	5
	§ 19211.....	23
	§ 19213.....	23
	§ 19281.....	2, 23
	§ 19283.....	3
	§ 19295(a).....	5
22	California Government Code	
23	§ 12172.5(b).....	23
24	§ 6064.....	23
25	§ 11135.....	1, 8, 10
26	§ 12172.5.....	2, 9
27	Help America Vote Act § 301, 42 U.S.C. § 15301 <i>et seq.</i>	15
28	Pub. L. No. 97-205, 96 Stat. 131, § 5 (June 29, 1982).....	12
	Pub. L. No. 101-336, 104 Stat. 327, Title II, § 202 (July 26, 1990).....	12

TABLE OF AUTHORITIES**(continued)****Page**

Pub. L. No. 111-84 §§ 577-582, 583(a), 584-587, 123 Stat. 2190 (2009)..... 7

Rehabilitation Act of 1973 § 504, 29 U.S.C. § 794 *et seq.* *passim*

CONSTITUTIONAL PROVISIONS

California Constitution, Article II, § 7 13

COURT RULES

Federal Rules of Civil Procedure

Rule 12 9

Rule 56(a)..... 9

REGULATIONS

28 C.F.R.

§ 35.160..... 16, 17

California Code of Regulations, Title 2

§ 20700 23

§ 20991 3, 4, 6, 19

OTHER AUTHORITIES

National Conference of State Legislatures, “Table 18: States With Mostly Mail Elections,” available at <https://www.ncsl.org/elections-and-campaigns/table-18-states-with-all-mail-elections>..... 1

S. Rep. No. 97-417 (1982) 12

MEMORANDUM OF POINTS & AUTHORITIES

INTRODUCTION

California is a leader in ballot access. It is one of only eight States, in addition to Washington D.C., that authorize elections entirely by mail. *See* National Conference of State Legislatures, “Table 18: States With Mostly Mail Elections,” available at <https://www.ncsl.org/elections-and-campaigns/table-18-states-with-all-mail-elections>. California voters choosing to vote by mail can vote in two primary ways: by marking and returning a paper vote-by-mail ballot, which is automatically mailed to every registered voter; or by using a remote-ballot-marking system that allows voters to mark their ballot choices on their personal computer or device, and return a printed copy of their ballot selections to county elections officials. Here, Plaintiffs bring a novel claim. They argue that because the return of ballot selections must be via paper, as mandated by the California Elections Code, the vote-by-mail program discriminates against voters with print disabilities under Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.* (ADA) and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 *et seq.* (Rehabilitation Act), and California Government Code Section 11135 *et seq.* Plaintiffs do not cite to, nor is the undersigned aware of, any federal court that has ever required a State to upend its vote-by-mail program to require the electronic return of ballot selections. And for good reason: neither the ADA nor the Rehabilitation Act require such a sea change in election administration. The ADA and the Rehabilitation Act do not mandate identical access to public programs, but rather meaningful access to the program as a whole. Plaintiffs can vote by mail with assistance from any person of their choice, with assistance from county elections officials, or on their own, using the Remote Accessible Vote-by-Mail (RAVBM) ballot marking system that California offers and myriad corresponding accommodations related to ballot return. This constitutes meaningful access to California’s vote-by-mail program as a whole. Accordingly, the Court should deny Plaintiffs’ Motion for Partial Summary Judgment on Liability and Remedy (Plaintiffs’ Motion), ECF 148, and grant Defendant California Secretary of State Shirley N. Weber, Ph.D.’s (the Secretary) Cross-Motion for Summary Judgment.

STATEMENT OF THE ISSUES PRESENTED

1. Whether Plaintiffs have meaningful access to California’s Vote-by-Mail program under Title II of the ADA and Section 504 of the Rehabilitation Act?

FACTUAL BACKGROUND

I. CALIFORNIA’S ELECTIONS SYSTEM

The Legislature, the State’s 58 counties, and the Secretary of State each play a role in establishing and administering California’s election laws. Broadly speaking, the California Constitution vests the Legislature with plenary power to issue uniform rules for the conduct of elections. *Libertarian Party v. Eu*, 28 Cal. 3d 535, 540 (1980). When it comes to administering elections, however, California’s system is at its heart a local one. Local and county elections officials¹ process voter registrations (Cal. Elec. Code § 2102(a))²; designate polling places (§ 12280); mail ballots to every registered voter in advance of elections (§ 3000.5); receive mail ballots (§ 3017); verify signatures on mail ballots (§ 3019); count both in-person and mail ballots (§ 15150); and report final results to the Secretary (§ 15375), among other things.

As the State’s chief elections officer, the Secretary is charged with “administer[ing] the provisions of the Elections Code[,]” as well as seeing that “elections are efficiently conducted and that state election laws are enforced.” Cal. Gov’t Code § 12172.5(a). The Legislature has also charged the Secretary with certifying certain components of the State’s electoral machinery, including (among others) voting systems,³ and RAVBM systems. *See* §§ 19202(a) (voting systems); 19281(a) (RAVBM systems). The Secretary has statutory authority to “adopt and publish

¹ The California Elections Code defines an “[e]lections official” as a “clerk or any person who is charged with the duty of conducting an election,” including “[a] county clerk, city clerk, registrar of voters, or elections supervisor having jurisdiction over elections within any county, city, or district within the state.” Cal. Elec. Code § 320.

² Unless otherwise indicated, statutory citations throughout the brief are to the California Elections Code.

³ A “voting system” is defined in the Elections Code as “a mechanical, electromechanical, or electronic system and its software, or any combination of these used for casting a ballot, tabulating votes, or both.” § 362. In other words, voting systems are the systems used at polling places and mail-ballot counting centers to record voter choices and count votes. *See also* Robinson Decl. at ¶ 3.

standards and regulations governing the use of remote accessible vote by mail systems,” described below, and must ensure that RAVBM systems are, among other things, “safe from fraud or manipulation.” §§ 19283(a), (b)(3). The Secretary also oversees the Office of Elections Cybersecurity. § 10.5(a). Among other things, the Office of Elections Cybersecurity “[c]oordinate[s] efforts within the Secretary of State to protect the security of Internet-connected elections-related resources[.]” *Id.*, at (c)(7).

II. CALIFORNIA’S VOTE-BY-MAIL SYSTEM

All registered voters may use California’s vote-by-mail program, and voters need not submit an application to do so. *See* § 3003. California law requires county elections officials to automatically mail every active registered voter a ballot and a pre-paid identification envelope to use when returning their ballots in advance of each election. *See* §§ 3000.5, 3010; *see also* Robinson Decl. at ¶¶ 14-15. The identification envelope has a signature and date line for the voter to sign and date. The signature line is surrounded by two hole-punches that can guide voters with vision-related disabilities to the line. Robinson Decl. at ¶ 15; *id.*, Ex. B (King’s County sample identification envelope); Herold Decl., Ex. A (Robinson Depo.) at 73:19-25, 116:17-23. The Secretary imposed the two-hole-punch guide as one of the conditions of certification of all RAVBM systems in California. *See* Robinson Decl. at ¶ 27; *id.*, Ex. E (L.A. County RAVBM certification) at ¶ 1, Ex. F (Five Cedars Group Inc. RAVBM certification) at ¶ 2, Ex. G (Democracy Live, Inc. RAVBM certification) at ¶ 1, Ex. H (Dominion Voting Systems, Inc. RAVBM certification) at ¶ 1.

In order for a vote-by-mail ballot to be counted, a voter must sign the identification envelope with a handwritten signature. Cal. Code Regs. tit. 2, § 20991(c)(2); *see also* § 3011(a)(7) (stating a voter “must sign the [identification] envelope in the voter’s own handwriting in order for the ballot to be counted”); §§ 3019(c)(2); 3019(d)(2); 3019(d)(4)(B)(ii) (related to signature curing); § 3011(a)(6) (required warning on identification envelope about signature); Robinson Decl. at ¶ 16. A voter may hand sign a mark, such as an X, or mark or affix a signature stamp pursuant to California Elections Code section 354.5. A voter may register the signature stamp by submitting an affidavit in the presence of a county elections official or submitting an affidavit using a signature stamp approved by the Department of Motor Vehicles. § 354.5(e); *see also* § 2196 (describing

1 required affidavit).⁴ The ballot is valid if the signature appears anywhere on the identification
 2 envelope. *See* Cal. Code Regs. tit. 2, § 20991(b)(5); *see also* Robinson Decl. at ¶ 18. In the event a
 3 county elections official cannot verify the signature, mark, or signature stamp on the ballot
 4 envelope, or if a signature is missing, the official must contact the voter and provide an opportunity
 5 to cure the discrepancy. *See* § 3019(d); Robinson Decl. at ¶ 17.

6 After completing their ballots and signing their identification envelopes, vote-by-mail voters
 7 may return them in any of three ways: (1) by mail; (2) in person to a local county elections official;
 8 or (3) at a ballot drop-box anywhere within the State. *See* § 3017(a)(1). Voters may also authorize
 9 a third party to return their voted ballot or RAVBM paper cast vote record on their behalf. *See*
 10 §§ 3017(a)(2), 3011(a)(9). Further, voters have the option of voting at a polling place curbside,
 11 meaning a regular ballot or ballot marking device is brought outside the polling place to the voter,
 12 and after the voter makes their voting selections, the voted ballot is returned to the polling place.
 13 *See* § 14282(d).

14 **A. Remote Accessible Vote by Mail**

15 In 2016, the Legislature approved the use of certified RAVBM systems as an adjunct to the
 16 vote-by-mail program. *See* Act of July 22, 2016, 2016 Cal. Legis. Serv. Ch. 75 (A.B. 2252) (West).
 17 RAVBM was initially available to voters with disabilities, military and overseas voters, and certain
 18 voters who need non-English language assistance. *See id.* The Legislature expanded access to
 19 RAVBM to all voters in 2020. *See* Act of June 18, 2020, 2020 Cal. Legis. Serv. Ch. 4 (A.B. 860)
 20 (West) (codified at § 3016.7); *see also* § 3116.5. In contrast to a “voting system” for casting and
 21 tabulating votes used by county elections officials at polling places and vote counting centers,

22
 23 ⁴ Plaintiff’s Undisputed Material Fact (UMF) No. 49 incorrectly states that the Secretary
 24 currently requires wet ink signatures for ballot return envelopes. *See* Plaintiffs’ Motion at 9. As
 25 Plaintiffs’ cited exhibit states, “[U]nder California Elections Code section 3011(a)(7), which
 26 provides that a voter ‘must sign the [identification] envelope in the voter’s own handwriting in
 27 order for the ballot to be counted,’ a voter who uses an identification envelope to return their ballot
 28 or paper cast vote record to their county elections official must sign or mark the identification
 envelope with a handwritten, wet-ink signature *or mark, unless they instead utilize a signature stamp...*” (Emphasis Added.) UMF No. 50 states that the Secretary routinely relies on electronic
 signatures for voter registration and verification, including Department of Motor Vehicle
 touchscreen signatures. Each of these signatures display the individual’s own handwriting, as do
 the signatures discussed in UMF 52 (faxed signatures) and UMF 43 (signatures in the VoteCal
 database).

1 California law defines an RAVBM as a “mechanical, electromechanical, or electronic system and
2 its software that is used *for the sole purpose of marking an electronic vote by mail ballot* for a voter
3 who shall print the paper cast vote record to be submitted to the elections official.” § 303.3
4 (emphasis added); *see also* Robinson Decl. at ¶ 3 (explaining voting systems). Any voter can use
5 an RAVBM system to receive a blank ballot over the Internet, download a local copy to their
6 computer, and mark their ballot selections electronically (using compatible assistive technology, if
7 desired). *See* Herold Decl., Ex. B (Secretary’s RAVBM webpage); Robinson Decl. at ¶ 21.

8 California law prohibits RAVBM systems from returning a marked ballot to a county
9 elections official over the Internet. *See* § 19295(a) (an RAVBM system may not “[h]ave the
10 capability . . . to use a remote server to mark a voter’s selections transmitted to the server from the
11 voter’s computer via the Internet”); *see also* Robinson Decl. at ¶ 12. Nor can RAVBMs be
12 connected to a system that actually casts or tabulates votes (i.e., a voting system) or used for
13 returning a voter’s ballot selections directly to county elections officials. *See* § 303.3 (an RAVBM
14 system “shall not be connected to a voting system at any time” and “is used for the sole purpose of
15 marking an electronic vote by mail ballot for a voter who shall print the paper cast vote record to
16 be submitted to the elections official.”); § 362 (defining “voting system” as “a mechanical,
17 electromechanical, or electronic system and its software, or any combination of these used for
18 casting a ballot, tabulating votes, or both”). This reflects the California Legislature’s bright-line
19 policy choice to forbid all forms of Internet voting, and to retain paper records of votes. *See* § 305.5;
20 *see also* Robinson Decl. at ¶¶ 6, 12. California law explicitly prohibits any voting system—the
21 systems used for casting and tabulating votes—from connecting to the Internet or having any
22 wireless capabilities. *See* § 19205.

23 After electronically marking their RAVBM ballot, voters print their chosen ballot selections
24 and may return the printed ballot selections, termed a “paper cast vote record,” to their local county
25 elections office in one of the three ways authorized for all mail ballots. *See* § 3017(a)(1); Robinson
26 Decl. at ¶ 23; Robinson Decl., Ex. C (sample paper cast vote record). Or the voter may authorize
27 someone else to return their paper cast vote record on their behalf. *See* §§ 3017(a)(2), 3011(a)(9).
28 If the voter chooses to return their RAVBM paper cast vote record via mail, they may use any

envelope of their choice, or the prepaid identification envelope mailed to their home address with their ballot. *See* Robinson Decl. at ¶¶ 23, 27, Ex. E (L.A. County RAVBM certification) at ¶ 1, Ex. F (Five Cedars Group Inc. RAVBM certification) at ¶ 2, Ex. G (Democracy Live, Inc. RAVBM certification) at ¶ 1, Ex. H (Dominion Voting Systems, Inc. RAVBM certification) at ¶ 1. A vote-by-mail ballot is valid if the signature appears anywhere on the envelope. *See* Cal. Code Regs. tit. 2, § 20991(b)(5); Robinson Decl. at ¶¶ 18, 23; Herold Decl., Ex. B (Secretary’s RAVBM webpage). The same signature requirements for vote-by-mail ballots described above apply. *See* Cal. Code Regs. tit. 2, § 20991; § 3019; § 354.5.

Voters who elect to use an RAVBM system must also complete an attestation that acknowledges, among other things, that county elections officials will transfer their selections—as indicated on their paper cast vote record—onto an actual ballot before the voter’s choices can be tallied using certified voting systems. Robinson Decl. at ¶ 25; *id.*, Ex. D (memorandum with RAVBM attestation language); *see also* Herold Decl., Ex. C (Sacramento County RAVBM attestation example). This process, referred to as “duplicating” a paper cast vote record, necessarily requires local election officials to review a voter’s choices and confirm that they are entering them on the correct official ballot for that voter. *See* Robinson Decl. at ¶¶ 24-25.

1. Assistance with Remote Accessible Vote by Mail

Voters are entitled to assistance in voting, using any authorized voting method, from anyone of their choosing, other than their “employer or agent of that employer or officer or agent of the voter’s union.” 52 U.S.C. § 10508. Accordingly, a voter using an RAVBM system is entitled to assistance in putting their paper cast vote record in an envelope, signing the envelope, or mailing the envelope. Many counties in California also offer assistance to voters with marking or returning ballots, including voters using RAVBM systems. *See, e.g.*, Robinson Decl. at ¶ 28; Herold Decl., Ex. D (County of San Mateo Elections Website) (describing multiple ways the county will assist voters with disabilities, including personal delivery of a vote-by-mail ballot to the voter’s home and election staff assistance marking and returning the ballot; or delivery of an accessible Ballot Marking Tablet to a convenient location, setup of the equipment, and on-hand assistance from election staff, among others); *id.*, Ex. E (Alameda County Elections webpage “Information for

Voters with Disabilities”) (describing the ACVOTE On the Go program, which offers assistance from county elections officials to voters with disabilities with receiving, marking, and returning their ballot). Additionally, counties are required to offer a toll-free line or email address that voters may use for technical assistance with RAVBM. *See* Robinson Decl., Ex. E (L.A. County RAVBM certification) at ¶ 4, Ex. F (Five Cedars Group, Inc. RAVBM certification) at ¶ 5, Ex. G (Democracy Live, Inc. RAVBM certification) at ¶ 4, Ex. H (Dominion Voting Systems, Inc. RAVBM certification) at ¶ 5.

B. Facsimile Ballot Return for Overseas and Military Voters

The Elections Code provides a narrow carve-out from the normal mail ballot procedure for certain voters in the military or residing overseas. *See* § 300(b). Those voters may receive their blank ballots electronically, including by using the RAVBM system, *see* § 3105(f), and may also return their ballots by traditional facsimile transmission. *See* § 3106. The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), as amended by the Military and Overseas Voter Empowerment (MOVE) Act in 2009, required states to transmit ballots electronically to certain military and overseas voters, among other things. *See* 52 U.S. Code § 20302(a)(7); Pub. L. No. 111-84 §§577-582, 583(a), 584-587, 123 Stat. 2190 (2009). The Elections Code does not authorize any other category of voters to return their ballots by facsimile. *See* Robinson Decl. at ¶ 35.

In keeping with California’s strong policy preference, UOCAVA voters are “encouraged to return their ballot by mail or in person if possible[,]” and UOCAVA voters “should return a ballot by facsimile transmission only if doing so is necessary for the ballot to be received before the close of polls on election day.” § 3106(d); *see also* Robinson Decl. at ¶ 31. As the Court has already recognized, the Code does not authorize *any* category of voters (including UOCAVA voters) to return marked ballots by electronic facsimile (“e-fax”) or by any other means connected to the Internet. *See* Order Denying Plfs.’ Mot. for Prelim. Inj., ECF No. 60, at 13 (“the Court cannot find that the California Elections Code presently allows qualified military and overseas voters to return their ballots through electronic facsimiles”); *see also* Robinson Decl. at ¶ 34.

UOCAVA voters who choose to return a paper cast vote record by fax must print their paper cast vote record and physically sign an “oath of voter declaration” before faxing it. § 3106(a).

1 UOCAVA voters must waive their right to a secret ballot on the oath of voter declaration. *Id.*; *see*
 2 *also* Robinson Decl. at ¶¶ 30, 33; Robinson Decl., Ex. I (example UOCAVA oath of voter
 3 declaration). And, just as with RAVBM voters, a UOCAVA voter’s signature is used to verify the
 4 voter’s identity and the faxed paper cast vote record must be duplicated onto an actual ballot.
 5 § 3106(c); Robinson Decl. at ¶ 32.

6 **III. PLAINTIFFS’ CLAIMS AND REQUESTED RELIEF**

7 In their Second Amended Complaint, Plaintiffs contend that California’s vote-by-mail
 8 program is inaccessible to voters with print disabilities. “Although California voters with print
 9 disabilities may receive and mark their vote-by-mail ballots electronically on their own devices . . .
 10 there is no option to return their ballots electronically.” Second Amended Compl. (SAC), ECF No.
 11 111, at ¶ 7 (Aug. 7, 2025). Plaintiffs contend that the “paper-based requirements” of RAVBM,
 12 including printing their RAVBM ballots, signing them, and returning them in hardcopy to their
 13 local county elections office, “deny them their fundamental right to vote privately and
 14 independently.” *Id.* at ¶¶ 8-9. The Complaint asserts violations of the ADA, the Rehabilitation Act,
 15 and California Government Code section 11135(a). *Id.* at ¶ 13. Plaintiffs request both declaratory
 16 and injunctive relief, including an order that the Secretary “certify a[n] [RAVBM] system with an
 17 accessible electronic ballot return option[.]” *Id.* at ¶ 121.

18 Plaintiffs seek a “judicial declaration that Defendant has violated and continues to violate”
 19 Title II of the ADA, the Rehabilitation Act, and section 11135 of the California Government Code
 20 by not including “a ballot return option that is accessible to them, thereby denying them meaningful
 21 and equal access to the benefits of that Program.” *Id.* at ¶ 119. Plaintiffs seek a declaration that the
 22 Secretary “must reasonably modify the Vote-by-Mail Program by providing a ballot return option
 23 that is accessible to them,” notwithstanding any state statutes or regulations that might otherwise
 24 prevent relief. *Id.* at ¶ 120.

25 Plaintiffs seek an injunction requiring Defendant to “[r]eceive and evaluate certification
 26 applications and certify or conditionally approve, subject to compliance with state and federal law,
 27 one or more RAVBM systems with an online portal that allows voters with print disabilities to
 28 return their ballot selections privately and independently,” *id.* at ¶ 121(A), and “[d]evelop

1 procedures that allow voters with print disabilities to return their vote-by-mail ballots via fax,
 2 substantially similar to the fax return option granted to certain military and overseas voters under
 3 California Elections Code section 3106,” *id.* at ¶ 121(B). Plaintiffs additionally seek an injunction
 4 to require the Secretary to “[i]nstruct county election officials that they must allow voters with print
 5 disabilities to return their vote-by-mail ballots via an accessible electronic method.” *Id.* at ¶ 121(C).
 6 Plaintiffs also seek an order that the Secretary “[m]ake available processes and procedures that can
 7 be adopted and implemented by county officials to ensure that voters with print disabilities who
 8 return their ballot electronically can accessibly satisfy other requirements accompanying vote-by-
 9 mail ballot return, including . . . [a]ccessible processes . . . for any attestation required from voters
 10 with print disabilities as to their status as qualified voters[,]” and “[a]ccessible processes and
 11 procedures for submitting their signature independently.” *Id.* at ¶ 121(D).

12 Plaintiffs additionally seek an injunction requiring the Secretary to “[m]onitor individual
 13 counties’ provision of accessible electronic vote-by-mail ballot return methods and procedures in
 14 accordance with this Court’s order, as part of Defendant’s monitoring and enforcement activities
 15 pursuant to Government Code section 12172.5.” *Id.* at ¶ 121(G).

16 LEGAL STANDARDS

17 Summary judgment is proper where no genuine issue of material fact exists and the moving
 18 party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). A fact is “material” if it
 19 “might affect the outcome of the suit.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).
 20 An issue is “genuine” if “a reasonable jury could return a verdict for the nonmoving party.” *Id.*

21 ARGUMENT

22 I. DEFENDANT IS ENTITLED TO SUMMARY JUDGMENT BECAUSE PLAINTIFFS CANNOT 23 PROVE THEIR PRIMA FACIE CASE

24 Both Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation
 25 Act prohibit discrimination against people with disabilities. Title II states that “no qualified
 26 individual with a disability shall, by reason of such disability, be excluded from participation in or
 27 be denied the benefits of the services, programs, or activities of a public entity, or be subjected to
 28 discrimination by any such entity.” 42 U.S.C. § 12132. Similarly, Section 504 provides that “[n]o

1 otherwise qualified individual with a disability in the United States . . . shall, solely by reason of
 2 her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected
 3 to discrimination under any program or activity receiving Federal financial assistance” 29
 4 U.S.C. § 794(a). California Government Code Section 11135 “is identical to the Rehabilitation Act,
 5 except the entity must receive State financial assistance,” rather than federal financial assistance.
 6 *Y.G. v. Riverside Unified Sch. Dist.*, 774 F. Supp. 2d 1055, 1065 n.6 (C.D. Cal. 2011). Section
 7 11135 is also coextensive with the ADA. *See* Cal. Gov’t. Code § 11135(b) (stating that it
 8 incorporates the protections and prohibitions of the ADA and its implementing regulations).
 9 Accordingly, if a public entity has violated either the ADA or the Rehabilitation Act, it will also
 10 have violated Section 11135.

11 Under Title II, a plaintiff must prove: (1) that he or she is a “qualified individual with a
 12 disability”; (2) that he or she was “excluded from participation in or denied the benefits of a public
 13 entity’s services, programs or activities, or was otherwise discriminated against by the public
 14 entity”; and (3) that “such exclusion, denial of benefits, or discrimination was by reason of his [or
 15 her] disability.” *Duvall v. County of Kitsap*, 260 F.3d 1124, 1135 (9th Cir. 2001), *as amended on*
 16 *denial of reh’g* (Oct. 11, 2001) (internal quotation marks omitted). Similarly, to prove a violation
 17 of Section 504 of the Rehabilitation Act, a plaintiff must prove that (1) they are “a qualified
 18 individual with a disability”; (2) qualified to receive benefits; (3) that they were “denied the benefits
 19 of the program solely by reason of [their] disability”; and (4) “the program receives federal financial
 20 assistance.” *See Weinreich v. L.A. Cnty. Metro. Transp. Auth.*, 114 F.3d 976, 978 (9th Cir. 1997)
 21 (emphasis and internal quotation marks omitted).

22 The parties have stipulated that the three named plaintiffs, and members of California
 23 Council of the Blind and the National Federation of the Blind of California who have disabilities
 24 and are eligible to vote, are “qualified individuals with disabilities” under the ADA, Section 504,
 25 and California Government Code section 11135. ECF 121 at ¶ 7.e-g. As explained below, Plaintiffs
 26 do not create a genuine issue of material fact that they were denied or excluded from the benefits
 27 of the vote-by-mail system, or put differently, denied “meaningful access” to California’s vote-by-
 28 mail system.

A. Plaintiffs Have Meaningful Access to California’s Vote-by-Mail Program

The Elections Code provisions establishing the vote-by-mail program are facially neutral and Plaintiffs do not contend that California’s vote-by-mail program is intentionally discriminatory. “[T]o challenge a facially neutral government policy on the ground that it has a disparate impact on people with disabilities, the policy must have the effect of denying meaningful access to public services.” *K.M. ex rel. Bright v. Tustin Unified Sch. Dist.*, 725 F.3d 1088, 1102 (9th Cir. 2013). “Title II emphasizes ‘program access,’ meaning that a public entity’s programs and services, viewed in their entirety,” must be meaningfully accessible to individuals with disabilities. *Cohen v. City of Culver City*, 754 F.3d 690, 694-95 (9th Cir. 2014). Here, the parties agree that the relevant program is California’s vote-by-mail program.

1. Meaningful Access Does Not Require Identical Access

“Meaningful access” does not mean identical access, or access in any particular form. *See Alexander v. Choate*, 469 U.S. 287, 301-306 (1985). Nor does “meaningful access” guarantee “equal results” for the disabled. *Id.* at 304. An accommodation need not be perfect, nor the one preferred by plaintiffs. *See Berkeley Homeless Union v. City of Berkeley*, Case No. 25-cv-01414-EMC, 2026 WL 916930, at *17 (N.D. Cal. Apr. 3, 2026), 2026), *appeal filed* (9th Cir. May 4, 2026) (No. 26-2820); *Wright v. N.Y. State Dep’t of Corr.*, 831 F.3d 64, 72 (2d Cir. 2016); *Moody ex rel. J.M. v. NYC Dep’t of Educ.*, 513 F. App’x 95, 96 (2d Cir. 2013) (“optimal accommodations” not required) (internal quotation marks and citation omitted). Under the meaningful access standard, services “are not required to produce the identical result or level of achievement” but must afford “equal opportunity to . . . gain the same benefit[.]” *Alexander*, 469 U.S. at 305 (internal quotation marks omitted). As applied to the voting context, the Rehabilitation Act and “Title II do[] not require public entities to provide a voter’s preferred accommodation where existing measures available to that voter already provide meaningful access.” *Rissling v. Bobo*, Case No. 7:23-cv-01326-RDP, 2026 WL 797138, at *12 (N.D. Ala. Mar. 20, 2026).

Federal law governing voting rights makes clear that the right to assistance from a person of the voter’s choosing makes “fully meaningful” the right to vote. Title II of the ADA and Section 504 of the Rehabilitation Act are broad frameworks for accessing governmental services, and when

1 applied to the voting context, must be construed in light of a more specific voting rights law that
 2 predates their enactment by nearly a decade: the Voting Rights Act. *Compare* Pub. L. No. 97-205,
 3 96 Stat. 131, § 5 (June 29, 1982) (enacting predecessor to 52 U.S.C. § 10508) *with* Pub. L. No. 101-
 4 336, 104 Stat. 327, Title II, § 202 (July 26, 1990) (enacting Title II of the ADA); *see also* *Miles v.*
 5 *Apex Marine Corp.*, 498 U.S. 19, 32 (1990) (courts “assume that Congress is aware of existing law
 6 when it passes legislation”). Congress was aware of the difficulties voters with print disabilities
 7 faced in voting and prescribed a remedy: assistance from a trusted person of the voter’s choice.
 8 Specifically, the Voting Rights Act contemplates that some voters will require “assistance to vote
 9 by reason of blindness, disability, or inability to read or write,” 52 U.S.C. § 10508, and authorizes
 10 any voter with a disability to receive assistance from any “person of the voter’s choice, other than
 11 the voter’s employer or agent of that employer or officer or agent of the voter’s union.” 52 U.S.C.
 12 § 10508. The Act contemplates that this assistance may be needed at all stages of the voting process,
 13 from registration, to marking, completing, and submitting the ballot. *See* 52 U.S.C. § 10310(c)(1).
 14 The Senate Judiciary Committee concluded that “the only kind of assistance that will make **fully**
 15 **‘meaningful’** the vote of the blind, disabled, or those who are unable to read or write, is to permit
 16 them to bring into the voting booth a person whom the voter trusts and who cannot intimidate him.”
 17 S. Rep. No. 97-417, at 62 (1982). Accordingly, in enacting this provision of the Voting Rights Act,
 18 Congress made clear that assistance from a person of the voter’s choosing during all aspects of the
 19 voting process constitutes meaningful access to voting. The ADA and the Rehabilitation Act post-
 20 date the Voting Rights Act, do not expressly require any specific voting logistics, and do not reject
 21 or undermine the Voting Rights Act’s provision of the right to assistance in voting.

22 Courts have endorsed this understanding, finding that assistance from a person of the voter’s
 23 choice constitutes meaningful access to voting. In *Rissling v. Bobo*, the district court concluded that
 24 plaintiffs with print disabilities had meaningful access to Alabama’s absentee voting program by
 25 virtue of their right to assistance guaranteed by the Voting Rights Act, even though plaintiffs were
 26 required to use paper ballots to vote by mail while certain military and overseas voters had access
 27 to an RAVBM ballot marking system that allows electronic return. 2026 WL 797138, at *2-4, 11-
 28 13. That district court determined that Title II does not require ballot secrecy, because neither the

1 text of Title II nor its regulations mention privacy in voting or the right to cast a ballot without
 2 assistance, and Title II's operative provisions are directed at exclusion from a program in its
 3 entirety. *Id.* at *13. Because Plaintiffs could select an individual of their choice to help them mark
 4 and return their absentee ballots, “[m]eaningful access, in the sense that *Alexander* demands it,
 5 plainly already exists, and it is unnecessary to provide Plaintiffs with access to the RAVBM system
 6 to vote absentee.” *Id.*

7 Other district courts have likewise determined that neither the ADA nor the Rehabilitation
 8 Act requires absolute secrecy and independence in voting, apart from the secrecy and independence
 9 that is guaranteed by the right to assistance from a person of the voter's choice. A district court
 10 explained:

11 the ADA does not require accommodation that would enable disabled persons to vote
 12 in a manner that is comparable in every way with the voting rights enjoyed by persons
 13 without disabilities. Rather, it mandates that voting programs be made accessible,
 14 giving a disabled person the opportunity to vote. Nothing in the Americans with
 Disabilities Act or its Regulations reflects an intention on the part of Congress to
 require secret, independent voting.

15 *Am. Ass'n of People with Disabilities v. Shelley*, 324 F. Supp. 2d 1120, 1126 (C.D. Cal. 2004); *see*
 16 *also Taylor v. Onorato*, 428 F. Supp. 2d 384, 388 (W.D. Pa. 2006) (finding that neither the ADA
 17 nor the Rehabilitation Act requires “an accommodation that enables disabled persons to vote in a
 18 manner that is comparable in every way with the manner in which persons without disabilities
 19 vote,” and that neither of the statutes nor their regulations “reflects an intention on the part of
 20 Congress to require private, independent voting”); *Nelson v. Miller*, 950 F. Supp. 201, 205 (W.D.
 21 Mich. 1996) (determining that neither the ADA nor the Rehabilitation Act “should be read so
 22 broadly” as to require a right to a secret ballot), *aff'd on other grounds*, 170 F.3d 641 (6th Cir.
 23 1999).

24 To the extent Plaintiffs argue their right to vote privately is a benefit protected by the ADA
 25 because the California Constitution states “voting shall be secret,” Cal. Const. art. II, § 7, this
 26 secrecy mandate coexists harmoniously with federal and state law allowing voting assistance from
 27 a person of a voter's choice. *See* 52 U.S.C. § 10508; *see also* § 14282 (California law allowing
 28 disabled voters assistance in marking a paper ballot or ballot marking device). Courts have

1 construed other States' ballot secrecy provisions harmoniously with voter assistance laws. *See, e.g.,*
 2 *Rissling*, 2026 WL 797138, at *13 (finding Alabama's law requiring ballot secrecy exists
 3 harmoniously with the Voting Rights Act and a parallel Alabama law allowing assisted voting);
 4 *Am. Ass'n of People with Disabilities v. Smith*, 227 F. Supp. 2d 1276, 1288-89 (M.D. Fla. 2002)
 5 (concluding that that the Florida Constitution's secret-vote provision was not violated by laws
 6 permitting voters with disabilities assistance in voting). The Sixth Circuit determined that
 7 Michigan's constitutional ballot-secrecy provision coexists harmoniously with state law providing
 8 third-party assistance to blind voters in marking their ballots; thus Michigan's voting program,
 9 which did not offer a way for blind voters to cast their ballot without assistance, did not violate the
 10 ADA or the Rehabilitation Act. *Nelson v. Miller*, 170 F.3d 641, 644, 653 (6th Cir. 1999). The Sixth
 11 Circuit recognized that Michigan's constitutional ballot-secrecy provision could have been read as
 12 "requiring the state legislature to modify its election laws when the technology becomes available
 13 that would allow blind voters to exercise their voting rights without third-party assistance." *Id.* at
 14 650. Nevertheless, the court construed this constitutional provision in harmony with state law
 15 providing blind voters with third-party assistance marking their ballots (rather than unassisted
 16 voting), because no Michigan court has found the relevant constitutional and statutory provisions
 17 in conflict, and statutes are entitled to the presumption of constitutionality. *Id.* at 650-653. Here
 18 too, no California court has found 52 U.S.C. § 10508 or section 14282 of the California Elections
 19 Code, which allow assisted voting, in conflict with the California Constitution's voting secrecy
 20 provision.

21 Accordingly, construing the ADA and Rehabilitation Act together with the Voting Rights
 22 Act makes clear that if a voter receives assistance from a person of their choice returning the ballot,
 23 that voter has meaningful access to the voting process.

24 **2. No Federal Court Has Held that the ADA or Rehabilitation Act** 25 **Requires Electronic Ballot Return**

26 The cases Plaintiffs rely on to argue that voters with disabilities relying on third-party
 27 assistance denies them meaningful access miss the mark. *See* Plaintiffs' Motion at 23. None of the
 28 cases Plaintiffs cite deal with the issue in this case—whether the electronic return of an accessibly

1 marked ballot is required to make a vote-by-mail system that employs RAVBM ballot marking
2 meaningfully accessible. In *Council of the Blind v. County of Alameda*, the magistrate judge
3 determined that voters at polling places have a right to private and independent voting; however,
4 the holding is limited to voting at polling places. 985 F. Supp. 2d 1229, 1238, 1245 (N.D. Cal.
5 2013). The district court’s reasoning, relying on ADA regulations and Section 301 of the Help
6 America Vote Act (HAVA), 42 U.S.C. § 15301 *et seq.*, pertains to in-person voting. *See id.* at 1238
7 (reasoning that “most voters at the polls cast their ballots in private, without threat of interference
8 by poll workers, the government, or curious onlookers”). This is a different circumstance than the
9 present case, where Plaintiffs may mark their ballots independently in the privacy of their homes,
10 and if assistance is needed, it is only assistance returning the ballot.

11 That electronic ballot return is not required for meaningful access is made evident in
12 *National Federation of the Blind v. Lamone*, where the Fourth Circuit affirmed the district court’s
13 determination that Maryland’s absentee voting program—a fully paper-based program—violated
14 the ADA. 813 F.3d 494 (4th Cir. 2016). However, the remedy instituted to correct the ADA
15 violation was an injunction requiring defendants to make available an online ballot-marking tool
16 nearly identical to California’s current RAVBM system: the online ballot-marking tool would allow
17 voters to obtain their ballot electronically, mark their ballot electronically, print out their ballot
18 selections onto paper, sign that paper, and return the hardcopy ballot to the local board of elections.
19 *See id.* at 498-99; *Nat’l Fed’n of the Blind, Inc. v. Lamone*, Civil Action No. RDB-14-1631, 2014
20 WL 4388342, at *15-16 (D. Md. Sept. 4, 2014); *see also Hernandez v. N.Y. State Bd. of Elections*,
21 479 F. Supp. 3d 1, 6, 10, 13-18, 20 (S.D.N.Y. 2020) (denying motion for preliminary injunction
22 because Plaintiffs had not shown likelihood of success on the merits where New York’s PDF ballot
23 marking system, which included handwritten signature and paper return, satisfied ADA
24 obligations). In other words, California’s current vote-by-mail system already delivers the court-
25 ordered remedy that alleviated the ADA violation in that case.

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1 **3. The ADA’s Effective-Communication Regulation Does Not Change**
 2 **the Meaningful Access Analysis⁵**

3 Perhaps recognizing the weakness of a claim to a standalone right to private and
 4 independent online voting under federal law, Plaintiffs rely primarily on the ADA’s “effective
 5 communications” regulation, 28 C.F.R. § 35.160, to argue that the Secretary must provide an
 6 appropriate auxiliary aid—here, electronic ballot return—which must be private and independent.
 7 Plaintiffs’ Motion at 18-21. Plaintiffs’ reliance on this regulation fares no better.

8 First, the ADA’s regulations cannot impose a higher standard than the ADA itself. Thus,
 9 the ADA’s effective communication regulation cannot be read to require more than meaningful
 10 access. Construing the ADA’s effective communication regulation to require equal access, rather
 11 than meaningful access, to public programs, would depart from what Congress has provided in the
 12 ADA and the Rehabilitation Act. *See Alexander v. Sandoval*, 532 U.S. 275, 285 (2001) (invalidating
 13 a Title VI disparate impact regulation and holding that regulation forbidding what statute permits
 14 is unenforceable); *Hunsaker v. Contra Costa County*, 149 F.3d 1041, 1043 (9th Cir. 1998) (stating
 15 that “the regulation cannot be interpreted independently of the statute under which it was
 16 promulgated” and that “[d]enial of ‘meaningful access’ is a necessary element of an actionable
 17 disparate impact claim”). Courts have rejected a literal reading of the ADA’s effective
 18 communication regulation as inconsistent with *Alexander*, and analyzed claims under the
 19 meaningful access standard instead. *See, e.g., Loye v. County of Dakota*, 625 F.3d 494, 499 (8th
 20 Cir. 2010) (citing *Alexander*, 469 U.S. at 305-06); *Civic Ass’n of the Deaf of N.Y.C., Inc. v. City of*
 21 *New York*, No. 95 Civ. 8591, 2011 WL 5995182, at *10 (S.D.N.Y. Nov. 29, 2011) (finding that to
 22 the extent the ADA’s effective communication regulation requires “equal access, rather than
 23 meaningful access [to], public programs, [it] would not be enforceable” and thus analyzing the
 24 claims under the meaningful access standard.). So even if the effective communications regulation
 25 applies to the instant case, we are back where we started—analyzing whether California’s vote-by-

26 _____
 27 ⁵ Plaintiffs did not make an argument under any Rehabilitation Act regulations, which are
 28 distinct from ADA regulations. *See, e.g., Bax v. Drs. Med. Ctr. of Modesto, Inc.*, 52 F.4th 858, 868
 (9th Cir. 2022).

1 mail program provides meaningful access.⁶

2 Nor do Plaintiffs cite any caselaw demonstrating that this Court should endorse the
3 presumption that online electronic ballot-return technology is an “appropriate” and required
4 auxiliary aid for vote-by-mail voters. This is because 28 C.F.R. § 35.160(b) does not require the
5 electronic return of ballots. Even if the regulation covered a ballot-marking system such as
6 RAVBM, which conveys information such as ballot choices, it does not apply to the administrative
7 task of returning those ballot selections. The *return* of ballot selections goes beyond effective
8 communications and into the realm of election administration. *C.f. Loye*, 625 F.3d at 499 (“[T]here
9 is a difference between providing information—a service—and the series of meetings at which
10 information is provided. Plaintiffs confuse the two when they argue that Title II required that an
11 ASL interpreter must be present at every meeting.”). While the *County of Alameda* district court
12 considered 28 C.F.R. § 35.160 in its interpretation of the ADA, as stated *supra*, the reasoning relates
13 to in-person ballot marking at polling places, not the more attenuated return of ballots. 985 F. Supp.
14 2d at 1238. The “primary consideration” language of the effective communications regulation,
15 which would require the Secretary to honor the plaintiffs’ requested accommodation unless she can
16 demonstrate that an equally effective alternative exists, reinforces that this regulation cannot require
17 electronic ballot return.⁷ See 28 C.F.R. § 35.160(b)(2); *Bax v. Drs. Med. Ctr. of Modesto, Inc.*, 52
18 F.4th 858, 867–68 (9th Cir. 2022) (explaining primary consideration). If a State were required to
19 honor an individual’s request for electronic return, such a requirement would improperly impinge
20 on the State’s ability to administer safe, secure elections—a quintessential state responsibility.

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23 _____
24 ⁶ Indeed, likely because of the difficulties applying 28 C.F.R. § 35.160 to RAVBM voting,
25 and because a denial of meaningful access must be proven in any event, the Fourth Circuit refused
to consider intervenor United States’ argument in *Lamone* that 28 C.F.R. § 35.160 is a “sufficient
basis to affirm.” 813 F.3d 494, 505 n.7 (4th Cir. 2016).

26 ⁷ To the extent Plaintiffs argue that “primary consideration” must be given to their
27 requested accommodation and granted, Plaintiffs offered no evidence that Ms. Zavoli, Mr. Gray,
28 and Mr. Dawson Rawlings themselves requested electronic return from the Secretary’s office. See
Plaintiffs’ Motion at 21.

4. Plaintiffs Have Meaningful Access to California's Vote-by-Mail System

California's vote-by-mail system provides meaningful access to print-disabled voters. In fact, the accessibility of California's vote-by-mail system is nearly identical to the remedies ordered in other ADA vote-by-mail cases. *See Lamone*, 2014 WL 4388342, at *6, 16 (imposing injunction requiring Maryland Board of Elections to make available a ballot-marking tool with print return), *aff'd*, 813 F.3d 494 (4th Cir. 2016); *Hernandez*, 479 F. Supp. 3d at 6, 10, 17, 20 (determining on a motion for preliminary injunction that New York's provision of an accessible PDF ballot-marking system that must be printed out on paper, signed, and put in an envelope was likely to comply with ADA requirements); *Johnson v. Callanen*, No. SA-22-CV-00409-XR, 2023 WL 4374998, at *2-3, 12 (W.D. Tex. July 6, 2023) (instituting injunction allowing blind plaintiffs access to Bexar County's absentee system for UOCAVA voters, which includes accessible digital ballot marking and paper-based return); Herold Decl., Ex. F (*Johnson* Permanent Injunctive Order, filed 7/27/23) (instituting permanent injunction allowing legally blind individuals in Bexar County access to an RAVBM ballot marking system with paper-based return that includes envelopes with tactile hole punch marking). Plaintiffs cite no case in which a court has found that a State that offers an accessible RAVBM ballot marking system with print return violates the ADA or Rehabilitation Act. This is because an RAVBM ballot-marking process that allows a voter with a print disability to make their ballot selections unassisted but requires paper return provides meaningful access to a jurisdiction's vote-by-mail system.

Plaintiffs' meaningful access to California's vote-by-mail system is evidenced in their ability to complete voter registration, receive their ballot, and make their ballot selections without assistance. There is no dispute about those facts. And there is no dispute that Plaintiffs can choose assistance from nearly any person with any aspect of the voting process. This constitutes meaningful access to California's vote-by-mail system.

Even if the Court interpreted the ADA to broadly require unassisted voting at each critical stage of the voting process, Plaintiffs have meaningful access to unassisted voting through California's current vote-by-mail program. Because meaningful access is understood in relation to

1 the vote-by-mail program in its entirety, *see, Lamone*, 813 F.3d at 504, Plaintiffs have meaningful
 2 access because they are able to vote unassisted for the vast majority of the vote-by-mail process.
 3 And even when examining the return phase in isolation, Plaintiffs can complete most of the steps
 4 to return their paper cast record unassisted. For example, Ms. Zavoli stated that she can print
 5 something from her computer without assistance from another person. *See Herold Decl., Ex. G*
 6 *(Zavoli Depo.)* at 24:23-25:8; 66:12-19; 70:23-71:5. Likewise, Mr. Gray and Mr. Dawson Rawlings
 7 can do the same. *See Herold Decl., Ex. H (Gray Depo.)* at 26:20-27:11; *Herold Decl., Ex. I*
 8 *(Rawlings Depo.)* at 31:24-32:5 (stating that he was able to initiate printing without assistance).
 9 Once the paper cast vote record is printed, an individual plaintiff may be able to put the paper cast
 10 vote record into an envelope themselves. *See Zavoli Depo.* at 66:12-19 (confirming she can retrieve
 11 a printout from her printer and place it in an envelope); *Gray Depo.* at 82:10-83:1 (noting it's
 12 relatively easy to fold the paper print out, and acknowledging he could get it into the envelope).

13 And numerous accommodations are provided at the return stage of the process. Voters may
 14 use the provided identification envelope or any envelope of their choice to return the RAVBM
 15 paper cast vote record, *see Robinson Decl.* at ¶¶ 23, 27; *Robinson Decl., E (L.A. County RAVBM*
 16 *certification)* at ¶ 1, *Ex. F (Five Cedars Group Inc. RAVBM certification)* at ¶ 2, *Ex. G (Democracy*
 17 *Live, Inc. RAVBM certification)* at ¶ 1, *Ex. H (Dominion Voting Systems, Inc. RAVBM*
 18 *certification)* at ¶ 1. Voters may sign their name anywhere on the envelope, or they may make a
 19 mark, such as an X, or use a registered signature stamp. *See Cal. Code Regs. tit. 2, § 20991(b)(5);*
 20 *Herold Decl., Ex. B (Secretary's RAVBM webpage); § 3019; § 354.5.* If a discrepancy with a
 21 voter's signature is detected, county elections officials contact the voter to cure the issue. *See*
 22 *§ 3019(d).* Given the limited assistance Plaintiffs require to return their ballots, Plaintiffs have
 23 meaningful access to California's vote-by-mail system. *See Rissling*, 2026 WL 797138, at *2-4, 13,
 24 15 (finding Alabama's program, which required plaintiffs with print disabilities to use paper ballots
 25 to vote by mail despite allowing UOCAVA voters to use RAVBM and electronic return, did not
 26 violate the ADA); *Shelley*, 324 F. Supp. 2d at 1126 (finding completely independent and private
 27 voting is not required by the ADA); *Taylor*, 428 F. Supp. 2d at 388 (finding completely independent
 28 and private voting is not required by the ADA or the Rehabilitation Act); *Nelson*, 170 F.3d at 644,

1 653-654 (same). This is consistent with the Voting Rights Act’s express permitting of assistance
2 from another person in voting.

3 Further, many voters with print disabilities may preserve the secrecy of their ballot choices
4 from others to the same extent as other users of the RAVBM system with assistance from county
5 elections officials. Put differently, if Plaintiffs are assisted by county elections officials in returning
6 their RAVBM paper cast record, their ballot choices are kept secret from all but county elections
7 officials—the same level of secrecy afforded to all RAVBM users and UOCAVA voters, whose
8 votes are seen by county elections officials when processed. For example, Alameda County, where
9 Plaintiff Vita Zavoli lives, administers the “ACVOTE On the Go” program, which “partners with
10 facilities and administration offices to coordinate sending a team to assist voters with receiving,
11 marking the ballot, and returning the ballot” for voters with disabilities. Zavoli Depo. at 13:11-18
12 (stating Ms. Zavoli lives in Alameda); Herold Decl., Ex. E (Alameda County Elections webpage
13 “Information for Voters with Disabilities”). The Alameda County elections website has a dedicated
14 phone number and email address for voters to sign up for this program. *Id.* Likewise, San Mateo
15 County offers many options for voters with disabilities to vote, aside from using an RAVBM
16 system. *See* Herold Decl., Ex. D (County of San Mateo Elections Website). Voters in San Mateo
17 County may have a vote-by-mail ballot delivered to their home at a convenient time by county
18 elections staff, who will assist them in marking and returning the ballot. *Id.* County elections staff
19 can deliver to a “convenient location” an accessible Ballot Marking Tablet, which the staff sets up
20 and then stays “available to assist the voter during the process.” *Id.* Or a voter could get free
21 transportation to and from a vote center. *Id.* Similarly, San Benito County offers delivery of vote-
22 by-mail ballots to voters’ homes by election staff at a “convenient time,” and assistance marking
23 and returning the ballot. Herold Decl., Ex. J (San Benito County Elections “Accessible Voting”
24 webpage).

25 Other county websites are less explicit in the precise assistance offered, but nonetheless
26 indicate that voters with disabilities can receive assistance from county elections officials with any
27 part of the vote-by-mail process they need. San Francisco County, where Plaintiff Christopher Gray
28 resides, offers ballot delivery and pickup services upon request. Gray Depo. at 14:19-15:13 (stating

1 Mr. Gray lives in San Francisco); Herold Decl., Ex. K (San Francisco County “Accessible Voting”
2 webpage). San Francisco County’s website states that it offers ballot-marking help from poll
3 workers and curbside voting, where an elections worker brings a ballot outside the center and
4 collects the ballot. Herold Decl., Ex. K (San Francisco County “Accessible Voting” webpage).
5 Likewise, Sacramento County’s elections website describes the county’s “long standing
6 commitment to work with voters with disabilities to help them exercise their right to vote” and
7 states that “voters are encouraged to contact us with specific requests for assistance.” Herold Decl.,
8 Ex. L. Santa Cruz County’s election website states ballot delivery and return services are offered.
9 Herold Decl., Ex. M.

10 Accordingly, assistance from county elections officials with returning their RAVBM paper
11 cast record would allow Plaintiffs to preserve the secrecy of their ballot selections to the same
12 extent all other users of the RAVBM system can. Like all RAVBM users, Plaintiffs can use an
13 RAVBM system to make their ballot selections without assistance. And like all RAVBM users,
14 county elections officials necessarily see Plaintiffs’ ballot choices. UOCAVA voters and other
15 RAVBM users have the option of their RAVBM paper cast records being viewed only by county
16 elections officials, and Plaintiffs also have that option if they avail themselves of assistance from
17 county elections officials. While assistance from local elections officials may not be the method
18 that Plaintiffs prefer or find most convenient, services “are not required to produce the identical
19 result or level of achievement for handicapped and nonhandicapped persons.” *Alexander*, 469 U.S.
20 at 305 (internal quotation marks omitted).

21 Given the many ways in which Plaintiffs can mark and submit a vote-by-mail ballot in
22 California, and the assistance available to Plaintiffs with that process, Plaintiffs have meaningful
23 access to California’s vote-by-mail system. The ADA and the Rehabilitation Act do not require
24 strict equivalence at every phase of the voting process. Far from it. Federal law only requires
25 meaningful access. *See Alexander*, 469 U.S. at 300. When viewing the vote-by-mail program as a
26 whole, it is uncontested that voters with print disabilities can vote unassisted for the vast majority
27 of the process, making the program as a whole meaningfully accessible to people with print
28 disabilities. Additionally, the assistance that voters with disabilities may receive from county

elections officials affords them the same level of secrecy as any other user of an RAVBM system.⁸

II. IF THE COURT FINDS AN ADA OR REHABILITATION ACT VIOLATION, ANY RELIEF SHOULD BE TAILORED TO ADDRESS THE SPECIFIC DEFICIENCY WHILE LEAVING OPEN THE PRECISE MEANS BY WHICH THE DEFICIENCY WILL BE ADDRESSED

In the event the Court determines an injunction is appropriate, the injunction “must be tailored to remedy the specific harm alleged,” *Melendres v. Arpaio*, 784 F.3d 1254, 1265 (9th Cir. 2015), and “should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiff[s] before the court.” *Columbia Pictures Indus., Inc. v. Fung*, 710 F.3d 1020, 1049 (9th Cir. 2013) (internal quotation marks omitted). In other words, the injunction must be tailored to cure the specific violation at issue. Although Plaintiffs request that the Court impose electronic-ballot return, such an order may be overbroad given that the parties contest whether absolute ballot secrecy and completely unassisted return of a vote-by-mail ballot is required by federal disability law, as well as the precise contours of ballot secrecy and independent voting. The Secretary requests any injunction imposed be targeted precisely at remedying a specific deficiency with California’s vote-by-mail system and leave open-ended the precise means by which that may be achieved. Electronic ballot return is not the only means available to remedy an alleged deficiency. Should the court find that the ADA and Rehabilitation Act require further protections be implemented to expand existing privacy protections in voting, the Secretary requests the Court permit additional briefing addressing remedial options. For example, the potential for nonelectronic solutions, such as a required cover page or alternate paper cast vote record layouts, should be considered. Additional briefing would permit the Secretary to address potential county and vendor implementation and administrative hurdles associated with any remedy prior to adoption by the Court.

That said, to assist the Court and parties if a change to California’s election system must be ordered, the Secretary provides the following information about how the process for certifying

⁸ It is not entirely clear whether Plaintiff are advocating striking certain sections of the California Election Code in their entirety if the Court were to determine Plaintiffs do not have meaningful access to California’s vote-by-mail system. *See* Plaintiffs’ Motion at 14-18. To be clear, in this instance the relevant provisions of the California Election Code would not be struck down in the entirety, but only preempted as applied to the class of plaintiffs in this lawsuit.

1 voting systems works in the regular course. At a high level, to certify a new voting system or
 2 RAVBM system, a vendor must submit an application to the Secretary and fund an escrow account
 3 to cover the testing and certification process, and the Secretary must retain an outside consultant
 4 via the competitive bidding process to test the system. Robinson Decl. at ¶¶ 7-8. The competitive
 5 bidding process typically takes 8 to 12 weeks, but may take longer in certain circumstances. *Id.* at
 6 ¶ 8. The outside consultant and Secretary staff then test the system, which can take 6 to 12 months.
 7 *Id.* Within 60 days of completing testing, the Secretary makes a report available to the public, which
 8 is then followed by a 30-day notice and comment period that includes a public hearing. *Id.* at ¶ 9;
 9 *see also* §§ 19213, 19211; Cal. Gov. Code § 6064. After this process is complete, the system is
 10 certified. Robinson Decl. at ¶ 10; *see also id.*, Ex. A (summary of Secretary’s voting-system-
 11 certification process).

12 In the regular course, the Secretary would also be required to modify the California Voting
 13 System Standards. *See* Cal. Code Reg. tit. II, § 20700; Robinson Decl. at ¶ 13. Typically, to modify
 14 the California Voting System Standards, the Secretary would submit a new testing standard to the
 15 Office of Administrative Law to undergo its rulemaking process. Robinson Decl. at ¶ 13. The
 16 quickest the rulemaking process could take is 12 months. *See id.*

17 The Secretary also flags for consideration that any order should take into account the division
 18 of responsibility for administering elections between the counties, who are not parties to this
 19 lawsuit, and the Secretary. The Secretary is required to “study and adopt regulations governing the
 20 use of voting machines, voting devices, vote tabulating devices, and ballot marking systems,” and
 21 is “responsible for certifying voting systems for use in this state.” § 19100. While the Secretary
 22 must certify systems for counties to select among, the Elections Code does not require counties to
 23 adopt any particular certified system. *See* § 19006(d); *see also* Robinson Decl. at ¶ 10. County
 24 elections officials choose which approved RAVBM or voting system they will purchase. *See*
 25 § 19006(d); Robinson Decl. at ¶ 10; *see also* §§ 19202(d), 19281.

26 Thus the Secretary is unable to control adoption by counties of any particular RAVBM or
 27 voting system that she certifies. If ordered by the Court to make available a certain RAVBM or
 28 voting system that cured a specific ADA or Rehabilitation Act violation, the Secretary could certify

1 the system and create guidance for the counties on implementation. But the Secretary cannot order
 2 a county to adopt any particular system. If a county failed or refused to implement the system, the
 3 most the Secretary could do is “call the violation to the attention of the district attorney of the
 4 county or to the Attorney General,” and she “may assist the county elections officer in discharging
 5 the officer’s duties.” Cal. Gov. Code 12172.5(b). Furthermore, the Secretary cannot predict whether
 6 some counties may be unable to comply with the requirements due to lack of resources. Thus the
 7 Court should limit any relief to ordering the Secretary to perform tasks she has authority to perform,
 8 including evaluating systems that would address the precise violation at issue; certifying and
 9 making available such systems; and if necessary, developing guidance to effectuate the
 10 implementation of such systems.

11 Specifically, relief should not require the Secretary to instruct counties to adopt a particular
 12 voting or RAVBM system or monitor counties’ adoption and implementation of said system. *See*
 13 SAC at ¶ 121 (C), (G). Plaintiffs have not made the counties party to this suit, and courts follow a
 14 “general rule against binding nonparties.” *Smith v. Bayer Corp.*, 564 U.S. 299, 308 (2011). And the
 15 Secretary does not have specific supervisorial authority over counties. For all these reasons, any
 16 order should not address the counties.

17 In sum, if the Court finds a specific ADA or Rehabilitation Act violation, the Secretary
 18 requests the opportunity to provide additional briefing on any specific remedy contemplated.

19 CONCLUSION

20 The Secretary is entitled to summary judgment on Plaintiffs’ claims against her. Because
 21 Plaintiffs cannot demonstrate they lack meaningful access to California’s vote-by-mail program,
 22 their claims fail on the merits.

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1 Dated: July 7, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

Case Name: **California Council of the Blind,
et al. v. Shirley N. Weber** Case No. **3:24-cv-01447-SK**

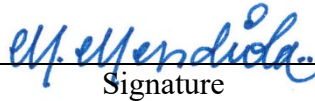
I hereby certify that on July 7, 2026, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

- 1. DEFENDANT'S NOTICE OF MOTION AND CROSS-MOTION FOR SUMMARY JUDGMENT**
- 2. DECLARATION OF NAKESHA ROBINSON IN SUPPORT OF DEFENDANT'S OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT, AND CROSS-MOTION FOR SUMMARY JUDGMENT with Exhibits A- I**
- 3. DECLARATION OF KIANA S. HEROLD IN SUPPORT OF DEFENDANT'S OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT, AND DEFENDANT'S CROSS-MOTION SUMMARY JUDGMENT with Exhibits A- M**
- 4. [PROPOSED] ORDER GRANTING DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on July 7, 2026, at San Francisco, California.

M. Mendiola
Declarant


Signature