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**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' REPLY IN SUPPORT OF
 MOTION FOR SUMMARY JUDGMENT
 AND OPPOSITION TO DEFENDANT'S
 CROSS-MOTION FOR SUMMARY
 JUDGMENT**

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I. INTRODUCTION

It is undisputed that California’s Remote Accessible Vote-by-Mail (“RAVBM”) system requires voters to return their ballot selections on paper, and that voters with print disabilities cannot complete that paper-based ballot return process without another person’s help. (Pls.’ Mot. for Summ. J. (“Pls.’ Mot.”), Dkt. No. 148 ¶¶ 13–16; Def.’s Cross-Mot. for Summ. J. (“Def.’s Cross-Mot.”), Dkt. No. 151 at 18.) As a result, voters with print disabilities are—unlike other voters—denied a core benefit of California’s Vote-by-Mail Program: the ability to cast a private and independent ballot.

The Secretary does not contest the facts of this case. She contests only whether they matter. They matter, because private, independent voting is a benefit California’s Vote-by-Mail Program provides to voters without print disabilities, and, in the case of ballot secrecy, one California has elevated to a constitutional command. The California Constitution does not describe secrecy as an optional feature of voting; it requires it: “[v]oting shall be secret.” Cal. Const. art. II, § 7. California’s Vote-by-Mail Program is designed to be completed by the voter alone: every registered voter is mailed a ballot, Cal. Elec. Code § 3000.5, which the voter marks, reviews, signs, seals, and returns without disclosing a single selection to another person, *see* Cal. Elec. Code §§ 3011, 3017. Voters with print disabilities are denied that benefit. To review, sign, and return their ballots, they must reveal their votes to another person, surrendering the very privacy and independence the Vote-by-Mail Program extends to others. (Pls.’ Mot. ¶¶ 13–16, 27–29, 36, 42.)

That disparity is what the ADA and Section 504 forbid. Title II and Section 504 prohibit denying a person the benefits of a public program because of disability, 42 U.S.C. § 12132; 29 U.S.C. § 794(a), and the Supreme Court has construed that guarantee to require that the “same benefit” offered to others be made “equally accessible” to people with disabilities, *Alexander v. Choate*, 469 U.S. 287, 308–09 (1985). Where it is not, “reasonable adjustments in the nature of the benefit offered must at times be made.” *Id.* at 301 n.21. That is, when a benefit provided to others is not equally accessible to people with disabilities, the public entity must make reasonable modifications to close the gap. *Id.* at 308–09. Private, independent ballot return is that

benefit, and California denies it to voters with print disabilities, who cannot return their ballots without disclosing their selections to another person. Because the benefit is not “equally accessible to both,” California’s ballot-return requirement denies voters with print disabilities the equal access Title II and Section 504 require. *Choate*, 469 U.S. at 308–09; *see* 42 U.S.C. § 12132; 29 U.S.C. § 794(a).

Further, the Secretary has stipulated away or otherwise conceded every possible defense. She has stipulated that she will not challenge the feasibility or effectiveness of accessible electronic ballot return, including electronic signatures and attestations. (Pls.’ Mot. ¶¶ 47–48.) She has waived the only affirmative defenses the ADA and Section 504 permit—fundamental alteration and undue burden. (*Id.* ¶ 46.) She admits that voters with print disabilities cannot return their ballots without another person’s assistance, (*id.* ¶¶ 13–16), and her Rule 30(b)(6) designee could not explain how such a voter could sign the return envelope independently, (*id.* ¶ 14). She admits that in-person voting is a separate program from the Vote-by-Mail Program, (*id.* ¶ 5), foreclosing any argument that the ability to vote some other way cures the barrier. She accepts electronically captured signatures for voter registration, signature comparison, ballot curing—everywhere, except the one context at issue here: signing a vote-by-mail return envelope. (Pls.’ Mot. ¶¶ 49–55.)

What remains is therefore a single question: whether denying voters with print disabilities the private, independent ballot return afforded every other voter violates Title II and Section 504. It does. The Court should deny the Secretary’s Cross-Motion and grant Plaintiffs’ Motion for Summary Judgment on Liability and Remedy.

II. LEGAL STANDARD

Summary judgment is proper where there is no genuine dispute of material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). On cross-motions, the court evaluates each motion on its own merits, drawing all reasonable inferences against the party whose motion is under consideration. *ACLU of Nev. v. City of Las Vegas*, 333 F.3d 1092, 1097 (9th Cir. 2003). To establish a violation of Title II and Section 504, Plaintiffs must show that (1) they are qualified individuals with disabilities; (2) they were denied the benefits of, or

1 excluded from participation in, a public program; and (3) the denial was by reason of disability.
 2 *Duvall v. County of Kitsap*, 260 F.3d 1124, 1135 (9th Cir. 2001); *Weinreich v. L.A. Cnty. Metro.*
 3 *Transp. Auth.*, 114 F.3d 976, 978 (9th Cir. 1997). Title II, Section 504, and California
 4 Government Code § 11135 are construed coextensively. *Mayfield v. City of Mesa*, 131 F.4th
 5 1100, 1109 (9th Cir. 2025); Cal. Gov't Code § 11135(b).

6 The first and third elements are not in dispute. The Secretary has stipulated that Plaintiffs
 7 and the certified class are qualified individuals with disabilities. (Pls.' Mot. ¶ 7.) And a facially
 8 neutral policy that burdens people with disabilities differently and more heavily than others
 9 discriminates "by reason of" disability as a matter of law. *McGary v. City of Portland*, 386 F.3d
 10 1259, 1265 (9th Cir. 2004); *Crowder v. Kitagawa*, 81 F.3d 1480, 1484 (9th Cir. 1996). Because
 11 that burden falls on voters with print disabilities solely by reason of their disability, and the
 12 Secretary identifies no other cause, the requirement is discriminatory under Section 504's "solely
 13 by reason of" standard as well. 29 U.S.C. § 794(a). The sole contested question is the second
 14 element: whether the paper-return requirement denies Plaintiffs the benefits of the Vote-by-Mail
 15 Program.

16 **III. ARGUMENT**

17 **A. Meaningful Access Requires Equal Access to the Same Benefit Provided to** 18 **Others**

19 The Secretary's brief rests on the premise that "meaningful access" under Section 504
 20 requires something less than equal access to the benefits a program provides. (Def.'s Cross-Mot.
 21 at 11–14.) That premise is wrong. To have "meaningful access" to a public program, a person
 22 with a disability must be "provided with meaningful access to the benefit that the grantee offers,"
 23 and the benefit "cannot be defined in a way that effectively denies... meaningful access." *Choate*,
 24 469 U.S. at 301. If not, the Supreme Court has held that "reasonable adjustments in the nature of
 25 the benefit offered must at times be made." *Id.* at 301 n.21. In other words, if a benefit provided
 26 to others is not equally accessible to people with disabilities, the public entity must make
 27 reasonable modifications to close the gap. *Id.* The Ninth Circuit applies this same equality
 28 standard in the context of Title II, which "require[s] that any benefits provided to non-disabled

persons must be equally made available for disabled persons.” *Rodde v. Bonta*, 357 F.3d 988, 997 (9th Cir. 2004) (alteration in original) (citation omitted).

The Secretary quotes *Choate* for the proposition that access need not produce “equal results.” (Def.’s Cross-Mot. at 11.) *Choate* does not permit denying voters with disabilities the same benefit everyone else receives. 469 U.S. at 306, 308–09. Plaintiffs do not seek a different or greater benefit, or a guaranteed result. They seek the same benefit every other vote-by-mail voter already enjoys: the opportunity to return their ballot privately and independently. The meaningful access inquiry turns on a specific distinction: whether the plaintiff “identif[ies] an obstacle that impedes their access to a government program or benefit,” or instead “seek[s] to expand the substantive scope of a program or a benefit.” *Am. Council of the Blind v. Paulson*, 525 F.3d 1256, 1267 (D.C. Cir. 2008). Meaningful access requires removing the former; it does not require the latter. *Choate* itself illustrates this point. The plaintiffs there sought to eliminate a durational limit on hospital coverage—which the Court understood as a request for greater substantive privileges than others received, beyond what Section 504 requires. 469 U.S. at 302–06; see *Se. Cmty. Coll. v. Davis*, 442 U.S. 397, 407–08 (1979). Plaintiffs lost these cases because they sought more than the program offered others—the opposite of what Plaintiffs seek here.

The Secretary notes that California’s vote-by-mail provisions are facially neutral and that Plaintiffs do not allege intentional discrimination. (Def.’s Cross-Mot. at 11.) But neither observation defeats the claim: the Ninth Circuit has “repeatedly recognized that facially neutral policies may violate the ADA,” *Martinez v. County of Alameda*, 512 F.Supp.3d 978, 982 (N.D. Cal. 2021) (quoting *McGary*, 386 F.3d at 1265), and a Title II plaintiff “need not allege either disparate treatment or disparate impact,” *Payan v. L.A. Cmty. Coll. Dist.*, 11 F.4th 729, 738 (9th Cir. 2021). What matters is whether the policy denies meaningful access—and here it does. And the Ninth Circuit has made clear that facially neutral policies that have a discriminatory impact on people with disabilities are precisely what the ADA and Section 504 were meant to remedy: “to 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);

1 *see also Crowder*, 81 F.3d at 1484–85 (finding that a facially neutral quarantine policy that
 2 burdened travelers who are blind denied such travelers meaningful access to state services); *see*
 3 *also Rodde*, 357 F.3d at 997 (“[A]ny benefits provided to non-disabled persons must be equally
 4 made available for disabled persons.”) (citation omitted). Here, the parties agree the relevant
 5 program is California’s Vote-by-Mail Program, and that program, as applied to voters with print
 6 disabilities, denies the very benefit it extends to everyone else.

7 Other circuits concur that “meaningful access” requires equal access to the benefits
 8 actually provided. *See, e.g., Durand v. Fairview Health Servs.*, 902 F.3d 836, 844 (8th Cir. 2018)
 9 (“The meaningful access standard requires entities to provide . . . individuals with [disabilities]
 10 an equal opportunity to gain the same benefit as their . . . peers [without disabilities].”); *Segal v.*
 11 *Metro. Council*, 29 F.4th 399, 404 (8th Cir. 2022) (stating that meaningful access is access
 12 “substantially equal to the services provided to non-disabled persons”); *Ellison v. U.S. Postal*
 13 *Serv.*, 84 F.4th 750, 757 (7th Cir. 2023) (same); *Am. Council of the Blind of Metro. Chi. v. City*
 14 *of Chicago*, 667 F. Supp. 3d 767, 776 (N.D. Ill. 2023) (requiring public entities to give
 15 “evenhanded treatment” for people with and without disabilities). Because California offers
 16 private, independent Vote-by-Mail to others, it must make the same benefit “meaningfully” and
 17 “equally accessible” to voters with print disabilities. *Choate*, 469 U.S. at 308–09.

18 **1. Private, Independent Ballot Selection Review, Signature and Return Is a** 19 **Benefit of the Vote-by-Mail Program**

20 The benefit the Vote-by-Mail Program provides is not a series of severable tasks, but a
 21 single benefit: a secret ballot, reviewed, verified, and returned by the voter without disclosing its
 22 contents to another person. The Secretary cannot defend the barrier by observing that voters with
 23 print disabilities can complete *some* of the intervening steps unaided. A building is not accessible
 24 when it has an accessible ramp that leads to a step, and a voting program does not provide its
 25 benefit when a voter can complete every part except the last. In each case the person with a
 26 disability is left unable to obtain the benefit that everyone else receives.

27 The Second Circuit squarely rejected the premise that partial access is good enough,
 28 refusing to treat the benefit of a voting program as “merely the opportunity to vote at some time

and in some way.” *Disabled in Action v. Bd. of Elections in City of New York*, 752 F.3d 189, 198–200 (2d Cir. 2014) (finding a denial of meaningful access, even though some plaintiffs “were ultimately able to cast their vote with the fortuitous assistance of others”). *National Federation of the Blind v. Lamone* is in accord: parsing Title II’s text, the Fourth Circuit held that the statute “separately prohibits ‘den[ying] the benefits’ of” a program, 813 F.3d 494, 503–04 (4th Cir. 2016) (alteration in original) (quoting 42 U.S.C. § 12132), and that the benefit of absentee voting—a completed, returned ballot afforded to the entire electorate—was denied when blind voters were forced to rely on others, *id.* at 506–07. The question is whether voters with print disabilities obtain that benefit, not whether they can complete some steps of the process. The Secretary admits that some voters with print disabilities cannot return their ballots without another person’s assistance. (Pls.’ Mot. ¶¶ 13–16; Def.’s Cross-Mot. at 18.)

2. Requiring Voters with Print Disabilities to Rely on Others Denies Them Meaningful Access

The courts that considered paper-based absentee voting have consistently held that requiring voters with print disabilities to depend on another person denies them meaningful and equal access to core benefits of the relevant program. This is so because federal disability statutes were enacted to end the era in which people with disabilities had no choice but to rely on the “kindness of strangers.” *Paulson*, 525 F.3d at 1269. Conditioning access to a public program on the cooperation and presence of another person is thus “anathema to the stated purpose” of the ADA and Section 504. *Id.*

In *Lamone*, Maryland’s absentee program required voters to mark their ballots entirely on paper—steps blind voters could not complete without assistance. 813 F.3d at 498. The Fourth Circuit affirmed summary judgment for the plaintiffs, holding that the program denied them the ability to vote “privately and independently,” which it identified as a “central feature[] and benefit[]” of absentee voting, and that requiring “disabled individuals to rely on the assistance of others to vote absentee” denied them “meaningful access.” *Id.* at 506–07. Other courts agree. *See, e.g., Johnson v. Callanen*, 610 F. Supp. 3d 907, 915–16 (W.D. Tex. 2022) (holding that voters with disabilities who could not vote by mail privately and independently lacked “an

1 opportunity to vote by mail that is equal to the opportunity . . . offer[ed] to other voters who are
 2 eligible to vote by mail”); *Am. Council of the Blind of Ind. v. Ind. Election Comm’n*, No. 1:20-
 3 cv-03118-JMS-MJD, 2022 WL 22881983, at *18 (S.D. Ind. Sept. 2, 2022) (finding that failure to
 4 enable independent vote-by-mail participation violates the ADA and Section 504).

5 The Secretary responds that some of these systems, including the remedy in *Lamone*,
 6 permitted electronic marking but still required paper return, and that courts nonetheless found
 7 them adequate. (Def.’s Cross-Mot. at 15.) That gets both the facts and the law of *Lamone* wrong:
 8 the accommodation sought and ordered in *Lamone* was electronic *marking*; the plaintiffs there
 9 did not seek electronic *return*, and the court did not address it. 813 F.3d at 498. The same is true
 10 of the cases the Secretary invokes, as discussed below. None holds that electronic return is not
 11 required, because plaintiffs did not seek electronic return. (Def.’s Cross-Mot. at 15.) A decision
 12 is not authority for a question it never confronted,¹ and the Secretary cannot identify a single
 13 case holding that accessible electronic return is not required where, as here, it is both actually
 14 sought and undisputedly feasible.

15 Moreover, the requirements of the ADA were designed to evolve with technology. In its
 16 original 1991 Title II regulation, the Department explained that any list of auxiliary aids could
 17 not be exhaustive because such a list “would omit the new devices that will become available
 18 with emerging technology,” a view the Department “continues to endorse.” 28 C.F.R. pt. 35, app.
 19 A; *see also* Nondiscrimination on the Basis of Disability; Accessibility of Web Information and
 20 Services of State and Local Government Entities, 89 Fed. Reg. 31320, 31328 (Apr. 24, 2024)
 21 (reiterating that Title II regulations should “keep pace with developing technologies”). As the
 22 Ninth Circuit held in *Baughman v. Walt Disney World Co.*, in deciding what is reasonable and
 23 required under the ADA, covered entities and courts must “take into account evolving
 24 technology.” 685 F.3d 1131, 1135 (9th Cir. 2012); *id.* (holding that, as technology advanced,

26 ¹ *See Webster v. Fall*, 266 U.S. 507, 511 (1925) (holding that questions “which merely lurk in the
 27 record, neither brought to the attention of the court nor ruled upon, are not to be considered as
 28 having been so decided as to constitute precedents”); *Lum v. City & County of Honolulu*, 963
 F.2d 1167, 1170 n.1 (9th Cir. 1992) (declining to treat as authoritative decisions those that
 “stumble into” resolutions of questions “neither raised nor discussed,” and are thus mere
 “unstated assumptions and nonlitigated points”).

“our expectations of what is reasonable changed,” and that as new technologies become available, covered entities “must consider using or adapting them to help disabled [people] have an experience more akin to that of [the] non-disabled”). This means that what may have been infeasible when an earlier court ruled can be both reasonable and required where—as here—technology has changed what it is feasible to do. *See id.*

3. The Secretary’s Contrary Authority Is Distinguishable

The Secretary’s primary case, *Rissling v. Bobo*, No. 7:23-cv-01326-RDP, 2026 WL 797138 (N.D. Ala. Mar. 20, 2026), is a non-binding, out-of-circuit outlier that conflicts with the governing authority. (Def.’s Cross-Mot. at 12.) It held that Alabama’s paper-return absentee program provided meaningful access because voters could obtain assistance under the Voting Rights Act. *Rissling*, 2026 WL 797138, at *11–13. The Secretary’s reliance on *Rissling* fails for two reasons. First, *Rissling* rests on the premise that assistance from others provides people with disabilities with meaningful access—the “kindness of strangers” theory that *Paulson* forecloses. *Paulson*, 525 F.3d at 1269. This premise—which is “anathema to the stated purpose” of the ADA and Section 504—must be rejected. *Id.*; *see supra* Part III.A. Second, *Rissling* held that Title II does not require ballot secrecy, but whether Title II has an independent requirement of ballot secrecy is wholly irrelevant. As *Lamone* explained, such a claim does not depend on “a standalone right to vote privately and independently without assistance” but on Defendant “provid[ing] such a benefit to non-disabled voters while denying that same benefit to plaintiffs on the basis of their disability.” 813 F.3d at 506.

The benefit denied here—casting a ballot without revealing one’s selections to another person—is one a court in this district has already recognized as protected. In *California Council of the Blind v. County of Alameda*, blind voters could vote only by disclosing their selections to a third party, and the court held that this arrangement provided “an inferior voting experience not equal to that afforded others,” because those voters were “forced to reveal a political opinion that others are not required to disclose.” 985 F. Supp. 2d 1229, 1238–39 (N.D. Cal. 2013) (internal quotation marks and citation omitted). Although *Alameda* arose in the in-person context, its reasoning applies with equal force to vote-by-mail: the harm is the forced disclosure, not the

1 setting in which it occurs.

2 The Secretary's remaining authorities fare no better, because they answer a question
3 Plaintiffs do not raise. (Def.'s Cross-Mot. at 13–14.) *Shelley*, *Taylor*, and *Smith* each addressed
4 whether a state secrecy provision is violated by laws permitting assisted voting. *See Am. Ass'n of*
5 *People with Disabilities v. Shelley*, 324 F. Supp. 2d 1120, 1126 (C.D. Cal. 2004); *Taylor v.*
6 *Onorato*, 428 F. Supp. 2d 384, 388 (W.D. Pa. 2006); *Am. Ass'n of People with Disabilities v.*
7 *Smith*, 227 F. Supp. 2d 1276, 1288–89 (M.D. Fla. 2002). But Plaintiffs do not claim that
8 California's secrecy provision is violated by *permitting* voter assistance; they object to being
9 *required* to seek assistance in order to vote-by-mail. Their claim is federal: that Title II and
10 Section 504 require California—which has chosen to provide other Vote-by-Mail voters the
11 benefit of private and independent ballot return—to extend the same benefit to voters with print
12 disabilities. *See* 42 U.S.C. § 12132. Whether a state secrecy law independently forbids assisted
13 voting is beside the point; the question is whether federal law requires equal access to the benefit
14 the State provides. None of the Secretary's cases reaches that question.

15 These cases are inapposite for a second reason as well: each was decided before the 2010
16 amendments that added the effective communication regulation's requirement that auxiliary aids
17 be provided “in such a way as to protect the privacy and independence of the individual with a
18 disability.” 28 C.F.R. § 35.160(b)(2) (eff. Mar. 15, 2011); *see Smith* (2002); *Shelley* (2004);
19 *Taylor* (2006). *Alameda*, by contrast, decided after the amendment, applied both that regulatory
20 standard and the statutory guarantee of meaningful access—and on both grounds held that
21 forcing voters with disabilities to rely on third-party assistance denies them equal access. 985 F.
22 Supp. 2d at 1239. The privacy and independence requirement does not originate in the
23 regulation. As *Alameda* recognized and as explained below, Title II and Section 504
24 independently guarantee equal access to the benefits a program provides. *See infra* Part III.B.
25 The Secretary's pre-2011 authorities speak to neither basis for Plaintiffs' claim.

26 The Secretary's remaining arguments all turn on the Voting Rights Act's assistance
27 provision, 52 U.S.C. § 10508, and that it establishes that assisted voting satisfies federal law.
28 (Def.'s Cross-Mot. at 14.) It does no such thing. Section 10508 confers a right on the voter—to

1 bring an assistant of her choice—not a limit on what the State must provide. Nothing in its text
2 licenses a State to require voters with disabilities to disclose ballot choices to a third party as the
3 price of voting. It guarantees voters with disabilities a companion if they want one; it does not
4 permit the State to force one upon them as an alternative to providing meaningful and equal
5 access to its Vote-by-Mail Program.

6 Chronology does not help the Secretary either. She argues that the ADA and Section 504
7 post-date the Voting Rights Act. (Def.’s Cross-Mot. at 12.) But sequence is beside the point,
8 because the two guarantees do not conflict. Section 10508 gives a voter the right to bring an
9 assistant; Title II and Section 504 guarantee independent access to the benefits a program
10 provides. A statute securing the option of assistance does not silently foreclose the distinct
11 guarantee of independent access; the two operate together. The right to bring an assistant does
12 not displace Plaintiffs’ entitlement to meaningful and equal access to all of the benefits the State
13 provides—including, here, the right to both mark and return a Vote-by-Mail ballot privately and
14 independently.

15 The Secretary’s related argument—that California’s ballot-secrecy provision “coexists
16 harmoniously” with statutes permitting assisted voting, 52 U.S.C. § 10508 and California
17 Elections Code § 14282—fails for the same reason. (Def.’s Cross-Mot. at 13–14.) Those statutes
18 confer a right the voter may invoke; they do not authorize the State to make assistance the only
19 avenue of return. Secrecy and optional assistance coexist without conflict: a voter who wants an
20 assistant may have one, and a voter who wants to vote privately and independently is entitled to
21 that opportunity. What the statutes do not permit is what the Secretary does here: leaving voters
22 with print disabilities no way to return a ballot except by disclosing their ballot selections to
23 another person. The case the Secretary cites for harmonization does not hold otherwise. *Nelson v.*
24 *Miller*, rejected an unassisted-voting claim only because the technology to permit independent
25 voting by blind voters did not then exist; the court expressly contemplated that the state’s secrecy
26 provision might require modification “when the technology becomes available.” 170 F.3d 641,
27 650 (6th Cir. 1999). That technology now exists, and the Secretary has stipulated it is feasible—
28 so *Nelson*’s own reasoning points the other way.

B. Ballot Return Is Communication Covered by the Applicable Regulations

1. Reviewing, Signing and Returning a Ballot is Communication and the Paper Return Process is Not “As Effective As” That Afforded Other Voters

Title II requires that a public entity’s communications with people with disabilities be “as effective as” its communications with others. 28 C.F.R. § 35.160(a)(1). The public entity must furnish auxiliary aids “where necessary” to afford “an equal opportunity to participate in, and enjoy the benefits of,” its programs. *Id.* § 35.160(b)(1). Those aids must be provided “in such a way as to protect the privacy and independence of the individual with a disability.” *Id.* § 35.160(b)(2). The same principle disfavors forcing a person with a disability to rely on another individual to accomplish what others do independently. *Id.* § 35.160(c); *Martinez*, 512 F. Supp. 3d at 987.

The Ninth Circuit enforces these standards as affirmative obligations: the ADA and Section 504 “include an affirmative obligation for public entities to make benefits, services, and programs accessible to people with disabilities,” *Updike v. Multnomah County*, 870 F.3d 939, 949 (9th Cir. 2017), and courts assessing communications access are “guided by the specific standards of the Title II effective communications regulation,” *K.M.*, 725 F.3d at 1102.

Reviewing and signing a ballot is communication. In the act of return, the voter conveys two things to elections officials: her ballot selections and her authenticating signature and attestation. Reviewing the printed selections for accuracy, confirming they are correctly recorded, signing the identification envelope, and attesting to the voter’s identity are not clerical afterthoughts—they are the expressive substance of the return. The paper return process cannot convey that information “as effective[ly] as” it is conveyed for other voters, because a voter with a print disability cannot complete it without disclosing her selections to, or having them handled by, another person. 28 C.F.R. § 35.160(a)(1). The Secretary admits that some voters with print disabilities cannot return their ballots without assistance, (Pls.’ Mot. ¶¶ 13–16); her Rule 30(b)(6) designee could not explain how such a voter signs the return envelope independently, *id.* ¶ 14; and the named Plaintiffs testified without contradiction that they cannot review, sign, or return their selections privately or independently, *id.* ¶¶ 19–25, 27–33, 35–40. A process that

requires a third person to see or handle the voter's selections at the decisive step forfeits the privacy and independence 28 C.F.R. § 35.160(b)(2) exists to protect.

Whether an auxiliary aid is effective is ordinarily a fact intensive inquiry. *Updike*, 870 F.3d at 958. Here, however, effectiveness is not disputed. The Secretary has stipulated that she will not contest the feasibility or effectiveness of accessible electronic ballot return, including electronic signatures and attestations. (Pls.' Mot. ¶¶ 47–48.) And 28 C.F.R. § 35.160(b)(2) places on the Secretary the burden of showing that some other means of communication is equally effective; she has identified none that preserves privacy and independence, and the alternatives she floats, including county-official assistance, replicate the very disclosure and dependence the regulation forbids. *See infra* Part III.C. With effectiveness and feasibility conceded, no defense preserved, and no equally effective alternative in the record, the effective communication violation is established as a matter of law.

2. Reviewing, Signing and Returning a Ballot is Not Exempt “Election Administration”

The Secretary's sole answer is that ballot return is “election administration” rather than communication. (Def.'s Cross-Mot. at 17.) That misreads *Loye v. County of Dakota*, 625 F.3d 494 (8th Cir. 2010), the case on which she relies. *Loye* distinguished the substantive information an entity communicates from the logistical events at which information happens to be exchanged, and held that the effective communication duty attaches to the former. *Id.* at 499. That distinction defeats the Secretary, not Plaintiffs. The inaccessible step here is not an ancillary logistical act like carrying a sealed envelope to a drop box; it is the voter's review and verification of her selections and her signed authorization of them, the communicative core of the return, precisely what *Loye* holds the duty reaches. In any event, *Loye* is out-of-circuit, and the Ninth Circuit's effective communication cases recognize no “administration” carve-out that would exempt the very act of transmitting a voter's choices to the government. *See K.M.*, 725 F.3d at 1102; *Updike*, 870 F.3d at 949.²

² The Secretary suggests in a footnote that Plaintiffs' claim fails because the named Plaintiffs did not personally request electronic return. (Def.'s Cross-Mot. at 17 n.7.) That misstates the duty.

3. Neither *Sandoval*, *Hunsaker*, nor *Loper Bright* Narrows the Effective Communication Regulation

The Secretary contends that reading 28 C.F.R. § 35.160 to require private, independent communication would impermissibly expand Title II beyond what Congress enacted, relying on *Alexander v. Sandoval*, 532 U.S. 275 (2001). (Def.’s Cross-Mot. at 16.) The argument misreads both *Sandoval* and Plaintiffs’ claim. *Sandoval* holds only that a regulation cannot create an obligation the statute does not. It refused to allow private enforcement of a Title VI disparate impact regulation precisely because the operative provision, Section 601, reaches only intentional discrimination, so a regulation extending to discriminatory effects forbade conduct that Section 601 permits. 532 U.S. at 280–81, 285. There is no comparable gap here. *Sandoval* itself distinguishes regulations that apply the statute—which are privately enforceable—from those that “forbid conduct that [Section] 601 permits,” which are not. 532 U.S. at 284–85. Section 35.160 is the former: it implements Section 12132’s prohibition on denying “the benefits of” a public program, not a freestanding obligation of the sort *Sandoval* placed beyond private enforcement. Moreover, the Supreme Court has construed Section 504, on which Title II of the ADA was based, to require that the benefits provided to the public are “meaningfully and equally offered” to those with disabilities. *Choate*, 469 U.S. at 308–09. Section 35.160 does not expand these obligations; it spells out what that requirement demands in the communication context.

The Secretary’s Ninth Circuit authority confirms the point. *Hunsaker v. Contra Costa County* holds that an implementing regulation “cannot be interpreted independently of the statute under which [it] was promulgated,” and that denial of “meaningful access” is “a necessary element” of the claim. 149 F.3d 1041, 1043 (9th Cir. 1998). Section 35.160 satisfies both

Section 35.160 requires a public entity to “take appropriate steps to ensure” effective communication and to “furnish appropriate auxiliary aids and services where necessary,” 28 C.F.R. § 35.160(a)(1), (b)(1) — an affirmative duty whose breach is the failure to act. *Cf. Am. Council of the Blind v. Astrue*, No. C 05-04696 WHA, 2009 WL 3400686, at *20–21 (N.D. Cal. Oct. 20, 2009) (analyzing a parallel effective communication Section 504 regulation). Once on notice of the barrier, the entity “must undertake a fact-specific investigation” and “may not merely speculate” that the requested aid is infeasible; that duty turns on notice, not on a request from any named plaintiff. *Martinez*, 512 F. Supp. 3d 986–87 (N.D. Cal. 2021). And the Secretary was on notice: she has long known of the return-stage barrier through her own user testing, the 2021 accessibility webinar, and repeated feedback from her Voter Accessibility Advisory Committee. (Pls.’ Mot. ¶¶ 15–16.)

requirements: it implements § 12132's core prohibition against discrimination, and Plaintiffs independently satisfy *Hunsaker's* meaningful access standard. *See supra* Parts III.A–B. *Hunsaker* thus states the very standard Plaintiffs meet; it affords the Secretary no defense.

Moreover, the premise on which *Sandoval* turned is absent here. Unlike Title VI's Section 601, Title II and Section 504 are not confined to intentional discrimination. Congress defined the discrimination they prohibit to include “the discriminatory effects of architectural, transportation, and communication barriers” and the “failure to make modifications to existing facilities and practices.” 42 U.S.C. § 12101(a)(5). And *Choate* recognized that Section 504 reaches unjustified denials of meaningful access even absent discriminatory intent, because Congress understood most disability discrimination to flow not from animus but from “thoughtlessness,” “indifference,” and “benign neglect.” 469 U.S. at 295–97; *accord Payan*, 11 F.4th at 738 (stating that a facially neutral policy is actionable where it has “the effect of denying meaningful access to public services”) (quoting *K.M.*, 725 F.3d at 1102).

Nor does *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), change the analysis. Plaintiffs' claim does not ask this Court to defer to any agency's interpretation of an ambiguous statute; it rests on the definition of “meaningful access”—as requiring that benefits provided to the public be “meaningfully and equally offered” and “equally accessible” to people with disabilities—that the Supreme Court articulated in *Choate*. Where the governing standard comes from the Supreme Court rather than an agency, there is no deference to withdraw and nothing for *Loper Bright* to reach.

C. County-Official Assistance, Even if Available, Does Not Provide Equal Privacy and Independence

The Secretary must give “primary consideration” to the requests of voters with print disabilities, honoring the requested auxiliary aid unless she determines that an alternative is equally effective, including ensuring that it protects the voter's privacy and independence. 28 C.F.R. § 35.160(b)(2); 28 C.F.R. pt. 35, app. A. She has made no such showing. The Secretary responds that assisted return preserves secrecy “to the same extent” as for other RAVBM users. (Def.'s Cross-Mot. at 20–21.) But § 35.160(b)(2) protects privacy and independence, and forcing

1 a voter to rely on another person to return her ballot defeats independence regardless of secrecy.
2 Plaintiffs seek no “identical result” —only the same private, independent return every other voter
3 receives. *Choate*, 469 U.S. at 305.

4 The Secretary claims voters with disabilities can get county assistance with “any” part of
5 the vote-by-mail process, but concedes she does not oversee, track, or audit these programs or
6 show that they exist in all counties where class members reside. (Def.’s Cross-Mot. at 20
7 (emphasis added); Lanvers Decl., Ex. 1 (Def.’s Resp. to RFA No. 5)). Her brief identifies only
8 three counties—Alameda, San Mateo, and San Benito—that offer home-based assistance with
9 ballot delivery, marking, and return; San Francisco and Santa Cruz offer only delivery and
10 return; and Sacramento, where Plaintiff Russell Dawson Rawlings resides, has no designated
11 home-based assistance program. (Def.’s Cross-Mot. at 20–21; Lanvers Decl., Ex. 2 (Gray Dep.)
12 at 14:18–21; Ex. 3 (Dawson Rawlings Dep.) at 9:12–14.) The Secretary says nothing about the
13 remaining fifty-two counties. Sacramento illustrates the problem. The county’s website states a
14 general commitment to assisting voters with disabilities and tells them to contact the elections
15 office with requests. (Def.’s Cross-Mot. at 21.) That leaves Mr. Dawson Rawlings to seek
16 individualized assistance, election after election, without knowing whether home-based help
17 exists—a scramble no voter without a disability must undertake. A service that may or may not
18 materialize cannot be the “equally effective alternative” the Secretary bears the burden to prove.
19 28 C.F.R. pt. 35, app. A.

20 Even where some assistance exists, it is not an equally effective alternative, because it
21 imposes burdens no other voter must bear. A voter relying on a county home-assistance program
22 must schedule an appointment, wait for a county employee to arrive, and admit a stranger into
23 her home—conditions no voter without a print disability faces to return a ballot. For some voters,
24 that requirement is not merely inconvenient but untenable. Plaintiffs testified they would not use
25 such programs for exactly these reasons. Mr. Gray testified that he would not avail himself of
26 county home-based assistance because “[i]t’s not independent. It’s not private. And I don’t even
27 know them.” (Lanvers Decl., Ex. 2 (Gray Dep.) at 73:6–11.) Ms. Zavoli testified that she would
28 not use Alameda County’s home-assistance program because she is “not comfortable with

someone coming to my home who I don't know," cannot "identify a badge," and regards it as "a safety issue." (Lanvers Decl., Ex. 6 (Zavoli Dep.) at 53:21–54:6.) An "alternative" that requires voters with print disabilities to surrender their privacy, schedule official visits, and admit strangers into their homes—while every other voter simply seals and mails a ballot—is not equal access. County-official assistance also fails to provide equal secrecy. The Secretary contends that officials see ballot selections during duplication anyway, but that comparison ignores the distinction ballot secrecy turns on. In duplication, the identifying envelope is separated from the ballot, so officials see how votes were cast but not whose they are. In-person assistance eliminates that separation: the official who marks or returns the ballot sees both the selections and the voter, learning exactly how an identifiable person voted. Ballot secrecy protects that link between voter and vote—and the workaround exposes it, forcing voters with print disabilities to reveal to a government official how they personally voted as no other voter must. (Lanvers Decl., Ex. 4 (Robinson Dep.) at 36:11–37:15; Ex. 5 (Zavoli Decl.) ¶¶ 4–5; Ex. 6 (Zavoli Dep.) at 53:21–54:15.)

D. Neither California Law Nor Election-Integrity Concerns Bars the Requested Relief

The Secretary's suggestion that California law forbids the relief Plaintiffs seek misreads the statutes she cites. (Def.'s Cross-Mot. at 5.) Section 19295 bars an RAVBM system from marking selections on a remote server, storing them there, or tabulating votes; Section 303.3 of the California Elections Code provides that the system's sole purpose is marking and that it may not connect to a voting system. Cal. Elec. Code §§ 19295, 303.3. These provisions govern the marking system. None prohibits a voter from transmitting an already-marked, printed cast vote record to county officials, who duplicate it onto an official paper ballot for tabulation—Section 303.3 itself contemplates that the voter will "submit[]" the printed record "to the elections official" without prescribing the method. California's paper-record and tabulation-integrity requirements are thus fully preserved: the voter's selections are still duplicated onto paper and tabulated through the certified voting system. Cal. Elec. Code § 303.3. What changes is only that a voter with a print disability could transmit them independently.

In any event, even if the Elections Code did prohibit accessible electronic return, the ADA and Section 504 would preempt it. A state statute cannot excuse noncompliance with Title II, *Hindel v. Husted*, 875 F.3d 344, 349 (6th Cir. 2017), and “[r]eliance on state statutes to excuse noncompliance with federal laws is simply unacceptable under the Supremacy Clause,” *Barber ex rel. Barber v. Colo. Dep’t of Revenue*, 562 F.3d 1222, 1233 (10th Cir. 2009). State law yields unless the State can prove the modification would fundamentally alter the program, a defense the Secretary has waived. (Pls.’ Mot. ¶ 46.) Plaintiffs’ motion addresses this preemption question in full, on both impossibility and obstacle grounds. (*Id.* at 14–18.)

California also already provides non-mail ballot return options to at least some Vote-by-Mail voters. UOCAVA requires States to transmit blank ballots to military and overseas voters electronically but leaves the method of return to each State. 52 U.S.C. §§ 20301–20311. California has chosen to let those voters return their ballots by facsimile, after which officials duplicate the selections onto paper for tabulation. (Def.’s Cross-Mot. at 7.) California’s choice thus establishes that non-mail return followed by paper duplication is compatible with the State’s interests in integrity and auditability. The Secretary cannot invoke those same interests to deny accessible electronic return to voters with print disabilities when she already provides non-paper-based return to others.

1. The Wet-Ink Signature Requirement Is Preempted As Applied

To the extent the Elections Code requires a signature that voters with print disabilities cannot execute on paper without assistance, it must yield to Title II and Section 504.³ *See Hindel*, 875 F.3d at 349 (6th Cir. 2017) (“[A] state procedural requirement may not excuse a substantive ADA violation.”). Some voters with print disabilities cannot independently produce the wet-ink signature that Section 3011(a) requires. (Pls.’ Mot. ¶¶ 13–14, 24, 30, 36.) The only defense is

³ The Secretary suggests that UMF 49 “incorrectly” states she requires wet-ink signatures for ballot return. (Def.’s Cross-Mot. at 9 n.4.) It does not. UMF 49 is drawn directly from the Secretary’s verified interrogatory response, which states that a voter “must sign or mark the identification envelope with a handwritten, wet-ink signature or mark, unless they instead utilize a signature stamp.” (Lanvers Decl, Ex. 7 (Resp. to Interrog. No. 16).) The mark and signature stamp exceptions the Secretary now emphasizes do not make that statement inaccurate; they confirm Plaintiffs’ point. If the State lets a voter satisfy the requirement with a mark or a rubber stamp, the requirement cannot rest on anything a handwritten, paper signature uniquely provides.

fundamental alteration, and the Secretary has waived it. (Pls.’ Mot. ¶ 46.) Even if she had not waived fundamental alteration, the State’s own scheme—which accepts electronically captured signatures for registration, signature comparison, and ballot curing—shows that accepting one here would not fundamentally alter the program. (Pls.’ Mot. ¶¶ 49–55.) The Secretary also concedes the form this relief would take: as-applied preemption for the class, not facial invalidation. (Def.’s Cross-Mot. at 22 n.8.) The signature requirement, is therefore preempted.

E. The Secretary Concedes She Can Certify an Accessible System and Guide Its Implementation, and Thus Can Provide the Relief Plaintiffs Seek

The Secretary’s objections go to the scope and mechanics of relief, not to liability, and none supply a basis to deny summary judgment. The relief Plaintiffs seek runs entirely to authority the Secretary concedes she holds.

1. The Secretary Concedes She Holds the Authority to Provide the Relief Plaintiffs Seek

The Secretary does not deny that she can certify an accessible system and issue guidance. She argues only that she should not be required to do more—a remedy argument, not a defense to liability. (Def.’s Cross-Mot. at 23–24; Pls.’ Mot. ¶¶ 59–62.) The Secretary largely concedes the authority on which the requested relief depends. She acknowledges that, if ordered, she “could certify the system and create guidance for the counties on implementation.” (Def.’s Cross-Mot. 23–24.) She is responsible for certifying and conditionally approving RAVBM systems; she may issue guidance and regulations governing their use; she distributes the federal HAVA funds that support accessible voting technology; and she oversees county compliance with state and federal election law. (Pls.’ Mot. ¶¶ 59–62.) The order Plaintiffs seek runs to precisely those powers: certification of RAVBM systems with accessible electronic ballot return, and the guidance, funding, and enforcement authority through which the Secretary administers California’s elections. (Pls.’ Mot. ¶¶ 59–64; Second Am. Compl., Dkt. No. 111, at 28–31.)

2. The Rule Against Binding Nonparties Does Not Limit Relief, Because the Order Runs to the Secretary, Not the Counties

The Secretary’s principal reservation is that she cannot compel counties to adopt a certified system and that an order reaching the absent counties would offend the rule against

binding nonparties. (Def.'s Cross-Mot. at 24 (citing *Smith v. Bayer Corp.*, 564 U.S. 299 (2011)).) *Bayer Corp* states that “[a] court’s judgment binds only the parties to a suit.” 564 U.S. at 312. Plaintiffs’ requested relief honors that rule. Plaintiffs do not seek to enjoin the fifty-eight counties; they seek an order directed at the Secretary, operating through the certification, guidance, funding, and enforcement authority she concedes she holds. Any county adoption that follows flows from the Secretary’s exercise of her statewide authority.

3. The Record Confirms the Secretary’s Power Over County Adoption

The record refutes any claim that the Secretary is powerless over county adoption. When Shasta County resisted accessible voting technology in 2023, the Secretary intervened: her staff explained the accessibility violation to the county’s Board of Supervisors, she directed the county to comply, and, when it refused, she referred the matter to the Attorney General. (Pls.’ Mot. ¶ 63.) Her Rule 30(b)(6) designees confirmed that this was an exercise of the Secretary’s enforcement authority under the ADA and HAVA, and that the Secretary oversees county compliance with state and federal election law. (Pls.’ Mot. ¶¶ 62–63.) And the Secretary is not aware of a single county that has ever refused to comply with the anti-discrimination laws governing California’s vote-by-mail system. (Pls.’ Mot. ¶ 64.) Having wielded exactly this authority when it suited her, the Secretary cannot disclaim it now to avoid relief.⁴

4. The Court Should Rule on Both Liability and Remedy Now; Leaving Implementation to a Tailored Remedial Phase

The Secretary’s remaining arguments concern the shape of the remedy, not liability, and none warrants withholding judgment. She asks the Court to leave open the precise means of compliance and to permit further briefing on remedial options such as cover pages or alternate paper-ballot layouts. (Def.’s Cross-Mot. at 22.) But those paper-based alternatives are foreclosed on this record: none permits a voter with a print disability to review, sign, and return her

⁴ The Secretary’s authority over counties is further illustrated by her recent petition, filed jointly with the Attorney General, for a writ of mandate and injunctive and declaratory relief against Shasta County and its elections officials to block Measure B, which would eliminate no-excuse vote-by-mail beginning with the November 2026 election. (Lanvers Decl., Ex. 8 (*Verified Pet. for Writ of Mandate & Compl., People ex rel. Bonta v. County of Shasta*, No. 26CV-021192 (Shasta Cnty. Super. Ct. filed June 30, 2026)); Pls.’ Req. for Judicial Notice.)

selections privately and independently. *See supra* Parts III.A–B. And to the extent the Secretary gestures at unspecified county resource constraints or the possibility that counties might select different systems, that is speculation, not evidence, and it bears on implementation, not liability. (Def.’s Cross-Mot. at 23–24.) None of this justifies deferring a ruling on liability or remedy. Plaintiffs seek an order directing the Secretary to certify or conditionally approve RAVBM systems with accessible electronic ballot return, and to take all steps within her authority to ensure county implementation. Plaintiffs do not oppose flexibility on the timing and means of implementation, but the Court should rule now on liability and remedy.

IV. CONCLUSION

The Court should deny the Secretary’s Cross-Motion and grant Plaintiffs’ Motion for Summary Judgment on Liability and Remedy. The paper-return barrier recurs in every election and, absent relief, will persist in every election and continue denying voters with print disabilities the benefit of private, independent ballot return the State provides to voters without disabilities who participate in the Vote-by-Mail Program.

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Respectfully submitted,

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