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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 REPLY BRIEF IN
SUPPORT OF DEFENDANT'S CROSS-
MOTION FOR SUMMARY JUDGMENT**

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

Plaintiffs' claims are novel: they seek, among other forms of relief, an injunction requiring California to upend its vote-by-mail program by allowing electronic return of ballot selections to county elections officials, in contravention of the California Election Code. Second Amended Compl. (SAC), ECF No. 111 at ¶ 121(A). The Secretary noted in her Cross-Motion for Summary Judgment that Plaintiffs do not cite to, nor is the undersigned aware of, any federal court that has ever required a State to offer electronic return of ballot selections as part of its vote-by-mail program. ECF 151 (Def.'s Cross-Motion) at 1. Plaintiffs' failure to respond to this is telling. While courts have required jurisdictions to implement a vote-by-mail system that included electronic ballot marking—a parallel system to the one California currently offers—no court has gone so far as to require electronic ballot return. No court has found that a State that offers a Remote Accessible Vote-by-Mail (RAVBM) ballot marking system with print return violates Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.* (ADA) or Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 *et seq.* (Rehabilitation Act). That is so because neither the ADA nor the Rehabilitation Act require electronic return. Rather, an RAVBM ballot-marking system that allows a voter with a print disability to mark their ballot selections unassisted but requires paper return provides meaningful access to a jurisdiction's vote-by-mail system. While in Plaintiffs' Reply in Support of Motion for Summary Judgment and Opposition to Defendant's Cross-Motion for Summary Judgment (Plaintiffs' Reply), ECF 154, Plaintiffs gesture toward technology evolving in an attempt to explain contrary caselaw, that does not explain cases that have remedied ADA and Rehabilitation Act violations by instituting the exact same system California has now. *See* Plaintiffs' Reply at 7-8; *National Federation of the Blind v. Lamone*, 813 F.3d 494, 498-99 (4th Cir. 2016); *Nat'l Fed'n of the Blind, Inc. v. Lamone*, Civil Action No. RDB-14-1631, 2014 WL 4388342, at *15-16 (D. Md. Sept. 4, 2014) (ordering an injunction requiring defendants to make available an online ballot-marking tool that would allow voters to obtain and mark their ballot electronically, print out their ballot selections onto paper, sign that paper, and return the hardcopy ballot); *Hernandez v. N.Y. State Bd. of Elections*, 479 F. Supp. 3d 1, 6, 10, 13-18, 20 (S.D.N.Y. 2020)

(denying motion for preliminary injunction because Plaintiffs had not shown likelihood of success on the merits where New York’s PDF ballot marking system, which included handwritten signature and paper return, satisfied ADA obligations). The same technology was available then as it is now—yet the courts found systems that parallel California’s meet federal accessibility law mandates.

ARGUMENT

I. MEANINGFUL ACCESS IS UNDERSTOOD IN RELATION TO CALIFORNIA’S VOTE-BY-MAIL PROGRAM IN ITS ENTIRETY

Plaintiffs attempt to cast the Secretary’s position as disaggregating the voting process into discrete elements and arguing that because Plaintiffs have no trouble with one phase—ballot marking—they need not have access to a latter phase—ballot return. *See* Plaintiffs’ Reply at 5-6. This mischaracterizes the Secretary’s position. In fact, the Secretary outlined what the meaningful access standard of the ADA and Section 504 of the Rehabilitation Act requires. Meaningful access does not require identical access, access in any particular form, or a plaintiff’s preferred accommodation. *See Alexander v. Choate*, 469 U.S. 287, 301-306 (1985); *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). Instead, federal law mandates that California’s vote-by-mail program “viewed in [its] entirety” must be meaningfully accessible to individuals with disabilities. *See Cohen v. City of Culver City*, 754 F.3d 690, 694-95 (9th Cir. 2014) (“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.). Plaintiffs are correct that meaningful access must afford “equal opportunity to . . . gain the same benefit[.]” *Alexander*, 469 U.S. at 305 (internal quotation marks omitted). Here, the benefit of California’s vote-by-mail program is casting one’s vote remotely by mail. Plaintiffs have meaningful access to this benefit.

1 **1. Neither the ADA nor the Rehabilitation Act Guarantees Unassisted**
 2 **Return of Ballot Selections**

3 In contrast to Plaintiffs’ framing of the issue, federal disability law does not ensure users of
 4 California’s vote-by-mail program, and the RAVBM adjunct to the program, can complete every
 5 phase of the voting process entirely unassisted and without another individual viewing the RAVBM
 6 ballot selections at some point in the process. Many Californians return their ballot selections with
 7 assistance. For instance, voters across California rely on others to return their ballots, due to age,
 8 physical inability, or another reason that makes a voter unable to do so. *See* California Elections
 9 Code §§ 3017(a)(2), 3011(a)(9).¹ Users of the RAVBM system must also acknowledge that their
 10 ballots will be duplicated by county election officials, which necessarily requires county elections
 11 officials to review a voter’s choices and confirm that they are entering them on the correct official
 12 ballot for that voter. *See* Def.’s Cross-Motion, Robinson Decl. at ¶¶ 24-25.

13 Plaintiffs argue that the “meaningful access inquiry turns on a specific distinction: whether
 14 the plaintiff ‘identif[ies] an obstacle that impedes their access to a government program or benefit,’
 15 or instead ‘seek[s] to expand the substantive scope of a program or a benefit.’” Plaintiffs’ Reply at
 16 4 (quoting *Am. Council of the Blind v. Paulson*, 525 F.3d 1256, 1267 (D.C. Cir. 2008)). Plaintiffs
 17 argue they are seeking the former and not the latter. *Id.* However, given that no voter in California
 18 can return their ballot electronically, it is clear Plaintiffs seek the latter. Plaintiffs seek to expand
 19 the scope of California’s vote-by-mail program (which, by its own terms is limited to voting by
 20 *mail*) to voting via the Internet. Meaningful access under the ADA does not require the Secretary
 21 to provide more benefits to Plaintiffs than afforded to others.

22 **2. Assistance from a Person of the Voter’s Choice with One Limited**
 23 **Step of the Voting Process—Return—Affords Voters Meaningful**
 24 **Access to California’s Vote-by-Mail System**

25 A voter benefiting from assistance of a person of their choice to return their ballot, as
 26 guaranteed by the Voting Rights Act, affords meaningful access to California’s vote-by-mail
 27 program. The Voting Rights Act makes clear that voting with assistance from a person of the voter’s

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¹ All statutory references throughout the remainder of this brief are to the California Elections Code, unless otherwise indicated.

choice makes “meaningful” the right to vote. *See* 52 U.S.C. § 10508; S. Rep. No. 97-417, at 62 (1982) (the Senate Judiciary Committee concluding that “the only kind of assistance that will make **fully ‘meaningful’** the vote of the blind, disabled, or those who are unable to read or write, is to permit them to bring into the voting booth a person whom the voter trusts and who cannot intimidate him.”). California’s RAVBM program allows voters with print disabilities to vote unassisted for nearly the entirety of the voting process: they can register to vote, receive their ballot, make their ballot selections, and initiate printing of those selections unassisted. That voters with print disabilities may require assistance with placing their printed RAVBM ballot selection (termed a paper cast vote record) into the voting envelope, and signing that envelope, does not deprive them of the benefit of voting by mail.²

Caselaw verifies that completely secret, unassisted voting at every stage of the voting process is not required by the ADA or the Rehabilitation Act. The court in *Rissling v. Bobo* determined that Title II of the ADA does not require ballot secrecy, because neither the text of Title II nor its regulations mention privacy in voting or the right to cast a ballot without assistance, and Title II’s operative provisions are directed at exclusion from a program in its entirety. Case No. 7:23-cv-01326-RDP, 2026 WL 797138, at *13 (N.D. Ala. Mar. 20, 2026). Likewise, the court in *American Association of People with Disabilities v. Shelley* determined that nothing in the ADA or its regulations “reflects an intention on the part of Congress to require secret, independent voting.” 324 F. Supp. 2d 1120, 1126 (C.D. Cal. 2004). Similarly, the court in *Taylor v. Onorato* determined that neither the ADA nor the Rehabilitation Act requires “an accommodation that enables disabled persons to vote in a manner that is comparable in every way with the manner in which persons without disabilities vote,” and that neither of those statutes nor their regulations “reflects an intention on the part of Congress to require private, independent voting.” 428 F. Supp. 2d 384, 388 (W.D. Pa. 2006). And the court in *Nelson v. Miller* determined that neither the ADA nor the Rehabilitation Act “should be read so broadly” as to require a right to a secret ballot. 950 F. Supp.

² Like all voters, Plaintiffs are protected by state and federal law prohibiting intimidation or coercion in the voting process, or fraud in connection with casting a vote. *See, e.g.*, §§ 18500, 18540, 18547; 18 U.S.C. § 594. Accordingly, Plaintiffs are legally protected from any circumstance where assistance in the voting process could lead to wrongdoing.

201, 205 (W.D. Mich. 1996), *aff'd on other grounds*, 170 F.3d 641 (6th Cir. 1999).

Plaintiffs attempt to distinguish *Shelley* and *Taylor* on the grounds that they addressed whether a state secrecy provision is violated by laws permitting assisted voting, and do not address the question of whether the ADA or the Rehabilitation Act requires “equal access to the benefit the State provides.” Plaintiffs’ Reply at 9. Neither case discusses a state voting secrecy provision. *See generally Shelley*, 324 F. Supp. 2d 1120; *Taylor*, 428 F. Supp. 2d 384. Rather, both cases address whether an aspect of the State’s voting program violates the ADA, and *Taylor* also addresses the Rehabilitation Act. *Shelley*, 324 F. Supp. 2d at 1125-26; *Taylor*, 428 F. Supp. 2d at 388. The *Shelley* court addressed whether the then-California Secretary’s decertification of certain touchscreen voting machines at polling places violated the ADA by depriving plaintiffs with visual and manual disabilities of the ability to vote independently and privately. 324 F. Supp. 2d at 1124-26. The court determined at the preliminary injunction stage that the plaintiffs had not established a likelihood of success on the merits because the ADA does not require secret, independent voting. *Id.* The court made clear that the ADA “does not require accommodation that would enable disabled persons to vote in a manner that is comparable in every way with the voting rights enjoyed by persons without disabilities.” *Id.* Likewise, the reasoning of *Taylor* parallels the reasoning in *Shelley*. *See* 428 F. Supp. 2d at 388. Plaintiffs simply disagree with the courts’ holdings in these cases.

Plaintiffs also argue that the reasoning in *Shelley* and *Taylor* is no longer applicable because the cases were decided before the 2010 amendment to the ADA’s effective communication regulation, which required auxiliary aids be provided “in such a way as to protect the privacy and independence of the individual with a disability.” 28 C.F.R. § 35.160(b)(2). That the ADA’s effective communication regulation was amended in 2010 does not change the force of courts’ reasoning under the ADA before 2010. Plaintiffs concede as much, acknowledging that any privacy and independence requirement must stem from the statutes themselves, rather than the regulation. *See* Plaintiffs’ Reply at 9 (stating “[t]he privacy and independence requirement does not originate in the regulation”). Accordingly, courts’ interpretations of the ADA and the Rehabilitation Act in the voting context do not become irrelevant simply because this interpretation occurred before the 2010 amendment to the ADA’s effective communication regulation.

Moreover, the instant case presents a much narrower question than the cases discussed above. Those cases hold that the ADA does not require unassisted, private voting for any part of the voting process. Here, Plaintiffs concede they can accomplish nearly the entirety of the RAVBM process unassisted, and without revealing their ballot selections. The only dispute concerns their ability to review their printed selections and sign their ballot envelope. *See* Plaintiffs’ Reply at 12 (noting the “inaccessible step here is not . . . 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”). That Plaintiffs may use assistance from another person to accomplish the final two steps in the process does not make their access to California’s vote-by-mail system as a whole not meaningful. To the contrary, Plaintiffs may cast their vote remotely without going to a polling place almost entirely unassisted.

Indeed, Plaintiffs’ argument that the ADA and the Rehabilitation Act require independent, private voting at every stage of the voting process is undercut by reasoning in the case they rely on most heavily, *Council of the Blind v. County of Alameda*. 985 F. Supp. 2d 1229 (N.D. Cal. 2013). The court in *County of Alameda*, in finding that voting privately is guaranteed at polling places, reasoned that “most voters at the polls cast their ballots in private, without threat of interference by poll workers, the government, or curious onlookers.” *Id.* at 1238. Those concerns disappear in the remote voting context, where people vote in the privacy of their own homes, outside of a public setting full of potential onlookers.

Indeed, the statutory framing of the Voting Rights Act and caselaw cited above make clear that voting with assistance from a trusted person in one’s home, away from onlookers, or any threat of interference, constitutes voting privately. So even if voting privately were required by the ADA or the Rehabilitation Act—which it is not—voters with print disabilities can vote privately using California’s vote-by-mail program.

II. PLAINTIFFS HAVE MEANINGFUL ACCESS TO CALIFORNIA’S VOTE-BY-MAIL SYSTEM

As explained above, neither the ADA nor the Rehabilitation Act requires a voter be able to vote unassisted at every stage of the voting process. But even if the Court interpreted the ADA to

1 require unassisted voting at each critical stage of the voting process, Plaintiffs still have meaningful
 2 access to California's vote-by-mail system under that standard. Plaintiffs do not dispute that they
 3 can register to vote, receive their RAVBM ballot, mark their ballot selections, and initiate printing
 4 of the RAVBM paper cast record completely unassisted. *See* Def.'s Cross-Motion at 18-19; *see*
 5 *generally* Plaintiffs' Reply. Plaintiffs also concede that returning the ballot envelope to county
 6 elections officials is not inaccessible. Plaintiffs' Reply at 11. Plaintiffs indicate the only part of the
 7 voting process during which they may require assistance is signing the envelope and reviewing
 8 their printed ballot selections. *Id.*

9 Plaintiffs can privately review their RAVBM ballot selections on their computer before
 10 printing. Herold Decl., Ex. A (Sacramento County RAVBM simulation webpage); Ex. B (Zavoli
 11 Depo.) at 38:21-39:11; Ex. C (Dawson Rawlings Depo.) at 31:5-23; *see also* Ex. D (Gray Depo.)
 12 at 53:13-54:12 (indicating Mr. Gray has no personal experience using an RAVBM system and has
 13 never used an RAVBM system to vote in an actual election), 82:6-84:20 (describing RAVBM
 14 demonstration at a convention, and noting that "if the computer screen reader is reading the
 15 information correctly and you have no reason to believe it isn't, then I might not rely on sighted
 16 assistance."). And Plaintiffs can avail themselves of numerous accommodations while signing the
 17 ballot envelope. Plaintiffs may use the identification envelope mailed to every voter, which has two
 18 hole-punches surrounding the signature line that can guide voters with vision-related disabilities to
 19 the line, or any envelope of their choice. *See* Def.'s Cross-Motion, Robinson Decl. at ¶¶ 15, 23, 27;
 20 *id.*, Ex. B (King's County sample identification envelope), Ex. E (L.A. County RAVBM
 21 certification) at ¶ 1, Ex. F (Five Cedars Group Inc. RAVBM certification) at ¶ 2, Ex. G (Democracy
 22 Live, Inc. RAVBM certification) at ¶ 1, Ex. H (Dominion Voting Systems, Inc. RAVBM
 23 certification) at ¶ 1; Def.'s Cross-Motion, Herold Decl., Ex. A (Robinson Depo.) at 73:19-25,
 24 116:17-23; Ex. B (Secretary's RAVBM webpage). Plaintiffs may sign their signature by hand, or
 25 make a mark, such as an X, or use a registered signature stamp. *See* Cal. Code Regs. tit. 2, § 20991;
 26 § 3019; § 354.5.³ A vote-by-mail ballot is valid if the signature legibly appears anywhere on the

27 ³ Plaintiffs argue California Election Code's handwritten signature requirement contained
 28 in Section 3011(a)(7) is preempted as applied to the class of plaintiffs in this suit. *See* Plaintiffs'

(continued...)

1 envelope. *See* Cal. Code Regs. tit. 2, § 20991(b)(5); Def.’s Cross-Motion, Robinson Decl. at ¶¶ 18,
2 23. Upon receipt of the voting envelope, county elections officials are required to contact voters to
3 cure any issue they detect with a voter’s signature. *See* § 3019(d). Accordingly, if a voter’s signature
4 was illegible for whatever reason, the voter would be contacted and given an opportunity to cure
5 the issue.

6 Further, many counties offer assistance to voters with disabilities, as outlined in the
7 Secretary’s Cross-Motion for Summary Judgment. *See* Def.’s Cross-Motion at 20-21; *id.*, Herold
8 Decl., Exs. D, E, J, K, L, M (collectively, county elections offices’ webpages on accessible voting).
9 Assistance from county elections officials does not require Plaintiffs to rely upon the kindness of
10 strangers, as Plaintiffs argue, but on diligent government workers conducting their jobs. *See*
11 Plaintiffs’ Reply at 6. The in-home assistance many counties provide allows voters with disabilities
12 to keep their ballot choices secret from friends, family, and assistants, and only reveal the selections
13 to the same people who will duplicate their ballots anyway. *See* Def.’s Cross-Motion, Robinson
14 Decl. at ¶¶ 24-25 (describing duplication); *see also id.*, Ex. D (memorandum with RAVBM
15 attestation language).

16 Plaintiffs, however, reject the option of county assistance. Plaintiffs state they would not
17 choose to avail themselves of this assistance regardless. For example, Ms. Zavoli lives in Alameda
18 County, which offers assistance to voters with disabilities in receiving, marking, and returning the
19 ballots. *See* Def.’s Cross-Motion, Herold Decl., Ex. E (Alameda County Elections webpage
20 “Information for Voters with Disabilities”). All that is required to sign up for the free program is a
21 call or email. *Id.* Yet Plaintiffs state Ms. Zavoli is not comfortable with a county elections official
22 who she has not met before coming to her home to assist. *See* Plaintiffs’ Reply at 15-16. Although
23 she is entitled to this position, it does not necessarily follow that the Secretary must instead make
24 available electronic return of vote-by-mail ballots to Plaintiffs. Plaintiffs are entitled to meaningful
25 access, not their preferred accommodation. *See, e.g., Berkeley Homeless Union v. City of Berkeley*,
26 Reply at 17-18. Not so. As explained, voters have numerous ways to mark or sign a ballot: with a
27 handwritten signature, with a handwritten mark such as an X, or with a signature stamp, all of
28 which can validly be placed anywhere on the voting envelope as long as it’s legible. *See* Cal.
Code Regs. tit. 2, § 20991(b)(5); § 3019; § 354.5; Def.’s Cross-Motion, Herold Decl., Ex. B
(Secretary’s RAVBM webpage); Def.’s Cross-Motion, Robinson Decl. at ¶¶ 23, 27.

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). Plaintiffs' ability to register to vote, mark their ballot selections, initiate printing, and have assistance from any person of their choice—or in many instances assistance from a neutral county elections official—in returning their RAVBM paper cast vote record and signing the voting envelope, plainly affords Plaintiffs meaningful access to California's vote-by-mail system properly viewed in its entirety.

Plaintiffs also make much of the fact that some of the county elections websites do not state the precise services they offer to voters with disabilities, or state they offer only delivery and return. *See* Plaintiffs' Reply at 15. However, one phone call would reveal the full extent of the services each county offers, which may be much more than indicated on the websites. For example, Santa Cruz County Election's website states ballot delivery and return services are offered. *See* Def.'s Cross-Motion, Herold Decl., Ex. M. Yet, previously in this case, Ms. Tricia Webber, the Registrar for Santa Cruz County, testified that the assistance Santa Cruz County provides includes, but is not limited to "helping a voter fill out a registration card, assisting a voter with marking a ballot, witnessing a voter's signature on a return envelope, dropping off election materials including a ballot, retrieving a voted ballot to be returned to the Department, and providing rides to voters who wish to access a voting location." Herold Decl., Ex. E (ECF 54, Webber Decl.) at ¶ 8. One could reasonably infer that other counties have similar practices of not detailing every possible service they offer on their websites, but nonetheless that assistance is available. This is particularly likely when counties emphasize their longstanding commitment to assisting voters with disabilities and proactively encourage requests for assistance, like Sacramento County does. *See, e.g.*, Def.'s Cross-Motion, Herold Decl., Ex. L (Sacramento County elections webpage).

Plaintiffs have ready access to the entirety of California's vote-by-mail program. The many ways in which Plaintiffs can mark and submit a vote-by-mail ballot in California, and the assistance available to Plaintiffs with that process, give Plaintiffs meaningful access to the program. That some Plaintiffs may require limited assistance with returning their RAVBM ballot selections does not negate their meaningful access to the program as whole.

III. THE ADA’S EFFECTIVE COMMUNICATION REGULATIONS CANNOT REQUIRE MORE THAN MEANINGFUL ACCESS

Plaintiffs ask the Court to interpret the ADA’s effective communication regulation, 28 C.F.R. § 35.160, to require more than the ADA itself requires. Such an interpretation of a regulatory scheme is impermissible. The ADA’s regulations cannot impose a higher standard than the ADA itself. Thus, the ADA’s effective communication regulation cannot be read to require more than meaningful access. In their reply brief, Plaintiffs concede that the ADA’s effective communication regulation “cannot be interpreted independently of the statute under which it was promulgated” and that Plaintiffs must prove denial of meaningful access. *See Hunsaker v. Contra Costa County*, 149 F.3d 1041, 1043 (9th Cir. 1998); Plaintiffs’ Reply at 13-14.

In their reply brief, Plaintiffs fail to address decisions rejecting a literal reading of the ADA’s effective communication regulation as inconsistent with *Alexander*, and that instead analyzed claims under the meaningful access standard. *See, e.g., Loye v. County of Dakota*, 625 F.3d 494, 499 (8th Cir. 2010) (citing *Alexander*, 469 U.S. at 305-06)⁴; *Civic Ass’n of the Deaf of N.Y.C., Inc. v. City of New York*, No. 95 Civ. 8591, 2011 WL 5995182, at *10 (S.D.N.Y. Nov. 29, 2011) (finding that to the extent the ADA’s effective communication regulation requires “equal access, rather than meaningful access [to], public programs, [it] would not be enforceable” and thus analyzing the claims under the meaningful access standard.); *see generally* Plaintiffs’ Reply at 11-14.

It is notable that Plaintiffs do not cite a single case applying the ADA’s effective communication regulation to ballot return, or any comparable context. *See* Plaintiffs’ Reply at 11-12. Plaintiffs argue that there is not an “administration” carve-out from the effective communication regulation’s applicability. *Id.* at 12. That is true because there does not need to be—administrative acts are not communications. Plaintiffs concede that returning the envelope is not inaccessible,

⁴ Plaintiffs briefly address *Loye v. County of Dakota* in their Reply brief, but only in relation to whether returning a ballot is an administrative act. *See* Plaintiffs’ Reply at 12 (citing 625 F.3d 494, 499 (8th Cir. 2010)). Plaintiffs did not address the court’s rejection of a literal reading of the ADA’s effective communication regulation as inconsistent with *Alexander*. *See Loye*, 625 F.3d at 499 (“We disagree that Title II of the ADA demands compliance with Plaintiffs’ literal reading of this [effective communication] regulation.”); *see generally* Plaintiffs’ Reply at 11-14.

1 rather they contend signing the envelope and reviewing the ballot selections are inaccessible. *Id.*
 2 But placing a signature stamp or a signature on an envelope is not a communication under 28 C.F.R.
 3 § 35.160—it, too, is an administrative act. And Plaintiffs can accessibly review their ballot choices
 4 on the RAVBM marking system before printing. Herold Decl., Ex. A (Sacramento County
 5 RAVBM simulation webpage); Ex. B (Zavoli Depo.) at 38:21-39:11; Ex. C (Dawson Rawlings
 6 Depo.) at 31:5-23; *see also* Ex. D (Gray Depo.) at 82:6-84:20.

7 **IV. IF THE COURT FINDS AN ADA OR REHABILITATION ACT VIOLATION, ANY RELIEF**
 8 **SHOULD NOT COMPEL THE SECRETARY TO ACT BEYOND HER AUTHORITY**

9 In their reply brief, Plaintiffs confusingly argue that the California Elections Code does not
 10 prohibit electronic return of RAVBM ballot selections. Plaintiffs’ Reply at 16-17. This is incorrect.
 11 California Elections Code § 303.3 defines a Remote Accessible Vote-by-Mail System as a
 12 “mechanical, electromechanical, or electronic system and its software that is used *for the sole*
 13 *purpose of marking an electronic vote by mail ballot* for a voter who shall print the paper cast vote
 14 record to be submitted to the elections official.” (Emphasis added.) And § 19295(a) provides that
 15 an RAVBM system may not “[h]ave the capability . . . to use a remote server to mark a voter’s
 16 selections transmitted to the server from the voter’s computer via the Internet.”

17 Plaintiffs also maintain that their requested relief falls within the Secretary’s authority, and
 18 seem to imply that the Secretary could compel county adoption of a voting system ordered by the
 19 Court. Plaintiffs’ Reply at 18-19. In her Cross-Motion for Summary Judgment, the Secretary
 20 acknowledged the authority she does have: she can certify voting systems, and create guidance for
 21 counties on implementation. Def.’s Cross-Motion at 23-24. If a county refused to implement a
 22 court-ordered system, the Secretary could “call the violation to the attention of the district attorney
 23 of the county or to the Attorney General,” and she “may assist the county elections officer in
 24 discharging the officer’s duties.” Cal. Gov. Code 12172.5(b). Contrary to Plaintiffs’ assertions, the
 25 Secretary is not trying to “disclaim” her authority to “avoid relief.” *See* Plaintiffs’ Reply at 19.
 26 Rather, the Secretary seeks to flag for the Court’s consideration the limits of her authority, to allow
 27 the Court to craft any remedy that may be ordered in this case with that understanding. Here, any
 28 remedy ordered should not require the Secretary to compel counties to adopt a particular voting

1 system, as this goes beyond her authority.

2 The Secretary also reiterates that because the counties are not parties to this suit, and courts
3 follow a “general rule against binding nonparties,” any court order in this case should not address
4 the counties. *See Smith v. Bayer Corp.*, 564 U.S. 299, 308 (2011).

5 Finally, if the Court were to find a specific ADA or Rehabilitation Act violation, the
6 Secretary again requests supplemental briefing on the shape of any potential remedy the Court may
7 order. Any injunction ordered “must be tailored to remedy the specific harm alleged,” *Melendres*
8 *v. Arpaio*, 784 F.3d 1254, 1265 (9th Cir. 2015), and “should be no more burdensome to the
9 defendant than necessary to provide complete relief to the plaintiff[s] before the court.” *Columbia*
10 *Pictures Indus., Inc. v. Fung*, 710 F.3d 1020, 1049 (9th Cir. 2013) (internal quotation marks
11 omitted). As the Secretary noted in her Cross-Motion for Summary Judgment, Plaintiffs’ requested
12 relief of electronic ballot return may be overbroad, and other means are available to remedy discrete
13 alleged deficiencies with California’s vote-by-mail program.

14 **V. CONCLUSION**

15 The Court should grant the Secretary’s Cross-Motion for Summary Judgment. Because
16 Plaintiffs cannot demonstrate they lack meaningful access to California’s vote-by-mail program,
17 their claims fail on the merits.

18 Dated: July 28, 2026

Respectfully submitted,

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20 Attorney General of California
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27 Attorneys for Defendant
28 California Secretary of State
Shirley N. Weber, Ph.D.

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 28, 2026, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

- **DEFENDANT'S REPLY BRIEF IN SUPPORT OF DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT**
- **DECLARATION OF KIANA S. HEROLD IN SUPPORT OF DEFENDANT'S REPLY IN SUPPORT OF DEFENDANT'S CROSS MOTION SUMMARY JUDGMENT (with Exhibits A-E)**

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 28, 2026, at San Francisco, California.

D. Woo

Declarant

dw

Signature

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