



December 7, 2023

Dear Secretary:

The National Federation of the Blind seeks to protect the rights of blind and low-vision voters, both at the polls and when voting by-mail. It is vital to our democracy that all citizens are able to exercise the right to cast a secret ballot independently. Unfortunately, the right of many by-mail voters with disabilities to mark and return their ballots privately and independently continues to be denied due to the implementation of paper-based and other inaccessible systems that require them to depend on others to assist them in the ballot-marking and return process. In advance of the 2024 elections, I am writing to remind you of your obligation, as required by federal law and recent court decisions, to provide voters with print disabilities an accessible way to privately and independently mark and return a by-mail ballot.

Title II of the Americans with Disabilities Act (ADA) requires states to ensure that voters with disabilities are offered an opportunity to vote—whether in person or by-mail—that is equal to the opportunity offered to voters without disabilities. Thus, if all other voters can vote by-mail privately and independently, voters with disabilities must be offered the same opportunity. Furthermore, Section 504 of the Rehabilitation Act states that public entities that receive federal financial assistance may not discriminate against people with disabilities in their programs, services, or activities. The law on this issue, particularly in the Fourth Circuit, is quite clear. In *National Federation of the Blind v. Lamone*, the United States Court of Appeals for the Fourth Circuit held that the Maryland State Board of Elections violated Title II of the ADA and Section 504 by providing only a paper absentee ballot that was inaccessible to people with print and dexterity disabilities, while refusing to allow access to a ballot marking tool¹ that would grant them the same opportunity provided to voters without disabilities to mark their absentee ballot independently.

The Fourth Circuit explained that the opportunity to mark an absentee ballot privately and independently was a benefit that the Maryland State Board of Elections provided to voters without disabilities but denied voters with disabilities on the basis of their disability. It was of no consequence that Maryland made other methods of voting, like in-person voting, available to voters with disabilities on an equal basis. The right to vote absentee privately and independently was a distinct benefit, and the denial of this opportunity was “precisely the sort of harm the ADA seeks to prevent.” *Nat’l Fed’n of the Blind v. Lamone*, 813 F.3d 494, 506 (4th Cir. 2016). The opinion further states “that by effectively requiring disabled individuals to rely on the assistance of

¹ The Maryland ballot-marking tools allow voters to mark an electronic version of the absentee ballot on devices such as computers, tablets, or smartphones. No votes are cast electronically; voters must still print and mail in their ballots to have their votes counted.

others to vote absentee, defendants have not provided plaintiffs with meaningful access to Maryland's absentee voting program." *Id.* at 507.

The Fourth Circuit also noted that state law, such as a requirement that voting systems be certified, does not exempt "public entities from making otherwise reasonable modifications to prevent disability discrimination" because the "Constitution's Supremacy Clause establishes that valid federal legislation can pre-empt state laws." *Id.* at 508. The Sixth Circuit in, *Hindel v. Husted*, also found that certification procedures required by state law could not block enforcement of the ADA when it comes to the right to vote absentee on an equal basis. See *Hindel v. Husted*, 875 F.3d 344, 349 (6th Cir. 2017). Subsequent lawsuits filed in Michigan, Florida, Virginia, New York, Pennsylvania, and Maine all resulted in court orders and/or settlement agreements that required these states to provide an accessible vote-by-mail system to blind voters and voters with print disabilities.

Requiring blind and other voters with print disabilities to print out their by-mail ballot after having marked it privately and independently using an online ballot marking tool is a barrier that prevents by-mail voting from being fully accessible because many blind voters do not own printers, or need sighted assistance to verify that a ballot printed correctly, or to show the voter where to sign the ballot. Currently, thirty-two states permit military and overseas (UOCAVA) voters to return their ballots electronically via email or fax, but only 13 states² offer the same opportunity to voters with disabilities.

Recent cases in North Carolina, Indiana, and Massachusetts have resulted in these states being ordered to extend to voters with disabilities the ability to return by-mail ballots electronically when that option was available to UOCAVA voters. The U.S. District Court for the Eastern District of North Carolina found in granting plaintiff's motion for preliminary injunction that for blind voters who did not feel comfortable voting in person during the November 3, 2020 election "accessing the Democracy Live voting portal already utilized by North Carolina UOCAVA voters is a reasonable accommodation." *Taliaferro, et al v. N.C. State Bd. of Elections*, 489 F. Supp. 3d 433 (E.D.N.C. 2020). In response to security concerns raised by the North Carolina State Board of Elections, the order noted "The Court is unpersuaded by defendants' argument that the addition of blind voters to the Democracy Live portal will intolerably increase any security risk." A second order issued by the court in this case extended access to accessible vote-by-mail, including the opportunity to return by-mail ballots electronically, for blind voters to a 2021 municipal election and all subsequent elections.

In the order issued by the U.S. District Court for the Southern District of Indiana in *American Council of the Blind v. Indiana Election Commission*, the court noted that it was "significant" that Indiana "does allow completed ballots to be transmitted by electronic means such as email in some circumstances, namely by UOCAVA Voters," and that the parties seemed to agree that providing for the electronic return of accessible ballots by email "would comply with the ADA and the Rehabilitation Act." In a subsequent settlement agreement³, the Indiana Election Commission agreed to provide a remote accessible vote-by-mail (RAVBM) system for use by Indiana voters

² Colorado, Delaware, Hawaii, Indiana, Louisiana, Maine, Massachusetts, Nevada, North Carolina, North Dakota, Rhode Island, Utah, and West Virginia

³ [IDR: ACBI v. IEC Settlement Agreement \(in.gov\)](#)

with print disabilities to mark their absentee ballot privately and independently, and to return their marked ballots by email. *Am. Council of the Blind of Ind. v. Ind. Elec. Comm'n*, No. 1:20-cv-03118, 2023 Pacer (S.D. Ind., 2023).

Currently, there are a number of RAVBM systems available for use in US elections. The Maryland State Board of Elections makes its accessible ballot-marking tool available at no charge. Enhanced Voting, Democracy Live, and Dominion Voting are examples of vendors that can also provide RAVBM systems. Many of these systems have now met Ohio and California's certification requirements for election technology. Given the requirements of the ADA and Section 504, as well as the wide availability of RAVBM systems, I strongly encourage you to implement such a system for use in the 2024 elections, and all subsequent federal, state, and local elections in which by-mail voting is available. The National Federation of the Blind will be monitoring the availability of accessible by-mail voting through our 2024 national blind voter survey, and subsequent surveys following each presidential general election.

Voters with disabilities must be considered as you design and plan your by-mail voting process. Providing an RAVBM system with electronic return capability will guarantee that people with disabilities have an opportunity to cast their by-mail ballots privately and independently that is equal to the opportunity provided to voters without disabilities, as required by the ADA. The National Federation of the Blind is available as you consider the accessibility of your current by-mail voting system. We welcome an opportunity to advise you on the development, or in the procurement process, of an accessible vote-by-mail system.

Please do not hesitate to contact us with questions, or if you need assistance with the implementation of accessible by-mail voting.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. Riccobono", with a long, sweeping horizontal line extending to the right.

Mark A. Riccobono, President
National Federation of the Blind

MAR/lb