

White Paper: Accessible Absentee/Vote by Mail

Background: Absentee/Vote by Mail is the fastest growing method of voting in the United States. However, unlike polling place voting, many States still do not offer an accessible alternative to absentee/vote by mail. In the last few years and after multiple successful lawsuits, twelve states now offer solutions that provide equal access to mail balloting for voters with disabilities. The successful litigants argued that absent an accessible alternative, current absentee and mail voting options violate the American with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act.

State implementations: Latest states offering accessible absentee vote by mail ballot.

Ohio: The Secretary of State of Ohio issued a directive requiring each county in the State to provide an accessible absentee solution for voters with disabilities.

California: Following a successful lawsuit, California requires each county to offer an accessible vote by mail ballot.

Maryland: Following a successful lawsuit, Maryland requires each county to offer an accessible vote by mail ballot.

Washington: As part of the State's UOCAVA online ballot system, the State is implementing a statewide accessible vote by mail system.

Vermont: Instituted a statewide accessible absentee solution in 2018.

Florida: Florida requires each County to offer an accessible mail option for any voter with disabilities requesting an accessible mail ballot, upon approval of a certified system.

Unequal access to absentee mail voting: Most voters with disabilities are eligible to vote an absentee mail ballot. However, many of these absentee mail voters must disclose their voting selections to a person assisting them to vote a paper absentee or mail ballot. Voters with disabilities are the *only* group of eligible absentee mail voters that must go to a polling location if they wish to vote independently. Non-disabled voters can vote independently from home, whereas voters with disabilities often cannot. By definition, this is unequal access to the ballot.

Legal Requirements: The ADA guarantees equal access for qualified individuals to the benefits of the services, programs and activities of public entities. When providing an aid, benefit, or service, a public entity shall not aid or perpetuate discrimination against qualified individuals with a disability. Further, A public entity must make reasonable modifications in policies/procedures to avoid discrimination unless the public entity can

demonstrate making modifications would fundamentally alter the nature of service/activity.

Counties, election offices and the Secretary State offices are public entities under the ADA. Absentee mail voting is a program/service/activity provided by counties, election offices and Secretary of State offices. To date, every lawsuit has been successful. The argument is election offices not offering equal access to absentee mail voting are violating the ADA by failing to provide voters with disabilities an equal opportunity to benefit from the service of absentee mail voting when technologies have been readily available since 2008.

Under the Rehabilitation Act no otherwise qualified individual with a disability shall solely by reason of said disability be excluded from the participation in or denied benefits of or subjected to discrimination under any program or activity receiving federal financial assistance.

Under the Rehabilitation Act a County public entity, chief election officer is an agent of the County responsible for the administration of elections. They also receive federal financial assistance. Therefore, election officials may be in violation of the Rehabilitation Act by failing to allow blind and disabled voters the opportunity to vote from home privately and independently in the same manner as a non-disabled voter.

Solution: In order to remedy these violations, states have begun to deploy accessible absentee vote by mail solutions. Over the last five years, the availability of proven, secure and accessible absentee mail balloting has enabled voters with disabilities to access and mark mail ballots in a secure, private and independent matter. Similar to UOCAVA MOVE Act ballot delivery systems, these solutions deliver a fully accessible, audio-enabled, secure ballot and ballot materials in a fully ADA-compliant manner. Equal access to voting does not stop at the polls. It also extends to the fastest growing method of voting in the United States, absentee mail balloting.

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