



October 27, 2021

**Via Online Submission**

Rebecca Bond, Chief  
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Civil Rights Division  
Disability Rights Section  
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cc: Elizabeth Johnson, [elizabeth.johnson@usdoj.gov](mailto:elizabeth.johnson@usdoj.gov)

**Re: Allegations that Alabama’s Absentee Ballot Voting System Is Not Accessible to Blind Voters and Voters with Print Disabilities in Violation of Title II of the ADA and Section 504 of the Rehabilitation Act**

Dear Chief Bond:

We write on behalf of the National Federation of the Blind (“NFB”), the National Federation of the Blind of Alabama, and individual complainants who are Alabama voters who are blind or have print disabilities. As you know, it is vital to democracy that all citizens can mark their ballots privately and independently. Yet, as explained in detail below, Alabama’s absentee voting program is not accessible to voters who are blind or who have print disabilities and accessible ballot marking devices are not universally available and operable for in-person absentee voting in the state. The State and its election officials are therefore in violation of federal law, which requires that voters with disabilities have access to voting equal to that afforded to others.

During the 2020 election season—during a global pandemic—Alabamians who are blind and those with print disabilities were unable to cast ballots safely, privately, and independently in person or by mail, denying them the rights guaranteed by Title II of Americans with Disabilities Act of 1990 (“ADA”) and Section 504 of the Rehabilitation Act of 1973 (“Section 504”). The undersigned complainants and their counsel respectfully urge the Disability Rights Section to investigate Alabama’s compliance with Title II of the ADA and Section 504 with respect to its absentee ballot voting system.

Brown  
Goldstein  
& Levy



## I. Legal Standards

Federal law guarantees that access to a private and independent ballot for voters with disabilities must be equal to that afforded voters without disabilities. *See* Section 504 of the Rehabilitation Act of 1973, 29 USC § 794 *et seq.*, and Title II of the Americans with Disabilities Act, 42 USC § 12131 *et seq.* (requiring that covered entities provide meaningful access to private and independent voting for voters with disabilities); Help America Vote Act of 2002, Pub. L. 107–252 § 301, 116 Stat. 1666, 1704 (codified as amended at 52 USC § 21081) (enshrining the right to review and change one’s ballot privately and independently in federal elections).

It is also well established that an inaccessible absentee voting system violates federal law. *Nat’l Federation of the Blind v. Lamone*, 813 F.3d 494, 507 (4th Cir. 2016) (finding that “effectively requiring disabled individuals to rely on the assistance of others to vote absentee” denies such voters meaningful access to the state’s voting program).<sup>1</sup>

## II. Background

The COVID-19 pandemic has devastated the state of Alabama. To date, more than 15,000 Alabamians have died of COVID-19.<sup>2</sup> Only Mississippi and New Jersey have had more deaths

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<sup>1</sup> *Lamone* was a landmark case that resulted in Maryland developing an online ballot marking tool that allows voters to access and mark their absentee ballots on their computers. Maryland created the tool to work with screen access software used by many people who are blind or low vision to access written material, and the state has extensively tested the tool’s usability for individuals with various disabilities. In the November 2014 election, more than 1,700 Maryland voters with disabilities used the tool to mark their voting selections on their computers, review a summary screen showing their selections, and print out their ballots with their selections marked.

Since accessible absentee ballot programs are more necessary than ever during the COVID-19 pandemic, advocates have filed numerous lawsuits around the country on behalf of voters who are blind or have print disabilities, particularly leading up to the 2020 primary and general election. *See Hernandez v. N.Y. State Bd. of Elections*, No. 20-CV-4003 (LJL), 2020 WL 4731422 (S.D.N.Y. Aug. 14, 2020) (noting that the court had previously approved a settlement stipulating that New York defendants must provide accessible fillable PDF absentee ballots by e-mail to voters with print disabilities ahead of the 2020 primary election); *Powell v. Benson*, Case No. 2:20-CV-11023-GAD-MJH (E.D. Mich. May 19, 2020) (stipulating to voluntary consent decree making UOCAVA PDF ballots available to blind voters in Michigan); *Merrill v. Dunlap*, No. 1:20-cv-00248-JAW (D. Me. July 15, 2020) (resulting in Maine voters with print disabilities being able to receive and return accessible electronically absentee ballot electronically); *Frye v. Gardner*, No. 1:20-cv-00751 (D.N.H. July 7, 2020) (resulting in accessible absentee voting system for people with print disabilities allowing voters to request, receive, and mark absentee ballot electronically); *Drenth v. Boockvar*, No. 1:20-cv-00829-JPW (M.D. Pa. Aug. 18, 2020) (granting motion for summary judgment following agreement that remote ballot marking system will be implemented for November 2020 general election); *Gary v. Va. Dep’t of Elections*, No. 1:20-CV-860, 2020 WL 6589326, at \*1 (E.D. Va. Aug. 28, 2020) (entering partial consent decree and order committing defendants to creating accessible absentee ballot within three weeks); *Taliaferro v. N. Carolina State Bd. of Elections*, 489 F. Supp. 3d 433, 440 (E.D.N.C. 2020) (ordering North Carolina Board of Elections to allow voters who are blind to opt into already accessible electronic platform used by North Carolina’s military and overseas voters). Voters in Indiana filed a similar case after the 2020 election season. *See* Complaint, *Kersh v. Ind. Election Commission*, No. 1:20-cv-03118, \*12 (S.D. Ind. Dec. 3, 2020). Moreover, in response to a demand letter from disability rights advocates, Tennessee has begun offering accessible absentee ballots for people with print disabilities that will be available permanently. Tennessee Launches New Accessible Absentee Voting Process, Civil Rights Education Enforcement Center (July 21, 2000), <https://creeclaw.org/absentee-ballots-now-accessible-to-all>.

<sup>2</sup> *Coronavirus in the U.S.: Latest Map and Case Count*, N.Y. Times, Oct. 25, 2021, <https://www.nytimes.com/interactive/2021/us/covid-cases.html>.

per capita.<sup>3</sup> Even now, months into a nationwide vaccination campaign, case counts, hospitalizations, and deaths remain high. The state is still recovering from a third wave that began in July 2021 and peaked in September 2021 with a record 5,206 new cases reported in a single day.<sup>4</sup> This wave dwarfed the third wave triggered by holiday travel in December 2020 and January 2021, which occurred before vaccines were widely available. Alabama’s low vaccination rate and loose public health regulations helped fuel this massive increase in new cases and deaths. As of October 2021, only 44% of Alabamians over the age of twelve are fully vaccinated, significantly lower than the U.S. average of 57%.<sup>5</sup>

Despite these risks, the state has refused—and continues to refuse—to remove barriers to safe, accessible voting for voters who are blind or have print disabilities in violation of Title II of the ADA<sup>6</sup> and Section 504.<sup>7</sup> In September 2019, the NFB of Alabama urged Secretary of State John Merrill to make the state’s absentee ballot program accessible to voters who are blind or have print disabilities.<sup>8</sup> The NFB of Alabama shared their concerns with the Secretary’s office and proposed as a solution working with Voting Works, an electronic ballot delivery system which, in 2020, provided accessible electronic ballot delivery to five states.<sup>9</sup> Rather than work toward a resolution to provide accessible absentee ballots, the Secretary’s office deemed Voting Works unrepeatable and refused to seek another solution.<sup>10</sup>

As described below, Alabama requires voters who are blind or have print disabilities either to forfeit their right to vote privately and independently and rely on a third-party to assist them with inaccessible paper absentee applications and ballots or risk their health and the health of their

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<sup>3</sup> *Id.*

<sup>4</sup> *Tracking Coronavirus in Alabama: Latest Map and Case Count*, N.Y. Times, Oct. 25, 2021, <https://www.nytimes.com/interactive/2021/us/alabama-covid-cases.html>.

<sup>5</sup> *See How Vaccinations Are Going in Your County and State*, N.Y. Times, Oct. 22, 2021, <https://www.nytimes.com/interactive/2020/us/covid-19-vaccine-doses.html#by-state>.

<sup>6</sup> 42 U.S.C. § 12131 *et seq.*

<sup>7</sup> 29 U.S.C. § 794(a) *et seq.* During the 2020 election season, the Secretary of State made absentee voting available to any registered voter, but the state failed to protect high-risk voters and voters with disabilities from the risk of contracting COVID-19. Specifically, the state failed to eliminate the requirement to include a photocopy of one’s photo ID with an absentee ballot application and the requirement to have one’s absentee ballot envelope notarized or simultaneously witnessed by two witnesses. The Secretary of State also refused to lift a de facto ban on curbside voting, a practice recommended by the Centers for Disease Control as a safe alternative for in-person voting during the pandemic and a common accessible in-person voting option used for voters with disabilities in many states. Each of these challenged provisions required high-risk voters and voters with disabilities to risk their health to exercise their right to vote. Even after a federal district court enjoined these practices ahead of both the primary and general elections in 2020 as violating plaintiffs’ rights under the U.S. Constitution, the Voting Rights Act of 1965, and Title II of the Americans with Disabilities Act, the state of Alabama continued to insist that they were necessary. Instead of removing barriers to safe and accessible voting for high-risk voters, the state defended the use of the provisions all the way to the U.S. Supreme Court.

<sup>8</sup> The National Federation of the Blind has also advocated for accessible absentee voting in Alabama. In September 2019, NFB President Mark Riccobono wrote to Secretary of State Merrill to remind him of his obligation, as required by federal law and recent court decisions, to provide voters who are blind or have print disabilities an accessible way to privately and independently mark an absentee ballot. *See* <https://nfb.org/images/nfb/publications/bm/bm20/bm2001/bm200107.htm>.

<sup>9</sup> Those states are Kentucky, Virginia, Illinois, Massachusetts, and New Hampshire.

<sup>10</sup> The Secretary also drafted legislation that would further restrict blind voters’ access to absentee voting by requiring that all blind voters requesting to vote absentee be first certified as blind by the Alabama Institute of Deaf and Blind. HB 238 was not passed during Alabama’s 2021 legislative session.

loved ones by traveling to a polling place to cast their vote in person. And many voters cannot be guaranteed that their right to a private and independent vote will be found at their polling location because the state fails to ensure that accessible ballot marking devices are available to them.

### **III. Alabama's Voting Systems Are Inaccessible.**

#### **A. Mail-In Absentee Voting**

Alabamians who are blind or have print disabilities have no way to vote accessibly, privately, and independently by absentee ballot. Alabama's absentee voting program is thus inaccessible in violation of Title II of the ADA and Section 504. Alabamians who are blind or have print disabilities cannot independently fill out an absentee ballot application. Though the applications are available electronically at <https://www.sos.alabama.gov/alabama-votes/voter/absentee-voting>, they are not electronically fillable and must be printed out, filled in by hand or typewriter, and delivered in person or by mail, thus requiring a blind voter or voter with a print disability to be assisted by a third-party at multiple steps. In Alabama, voters must select a party affiliation when completing an absentee ballot application during a primary election. For many voters, choosing a political party is a private matter. Yet, for Alabama's voters who are blind or have print disabilities, privacy is not an option because of the state's failure to ensure accessibility.

Absentee ballots are only available in paper and are not readable or fillable by voters who are blind or have print disabilities, thus requiring these voters to be assisted by a third-party. Accordingly, voters are unable to complete their absentee ballot privately and independently. Again, because of the state's failure to comply with its obligations under federal law, voters who are blind or have print disabilities are denied their right to a private, independent ballot and must reveal their choice for candidate to the third party willing to assist them.

For example, Gregory Kelly, a blind voter in Montgomery County, chose to vote by mail-in absentee ballot in the 2020 general election. While he normally chooses to vote in person, Mr. Kelly requested an absentee ballot during the COVID-19 pandemic for both his personal safety and the safety of his family. Because Alabama only provides paper absentee ballots, Mr. Kelly was unable to complete his ballot independently. Instead, he was forced to hand his ballot to a sighted third-party to complete on his behalf. Mr. Kelly's only option for safe, at-home voting during the COVID-19 pandemic required him to trust that the person filling out his ballot for him completed it properly and in line with his instructions. He did not have an opportunity to vote privately or cast the secret ballot his sighted peers enjoy while taking advantage of Alabama's absentee voting system.

Additionally, many of the NFB of Alabama's members would have voted by mail-in absentee ballot during the 2020 election season had the process been accessible, independent, and private.<sup>11</sup> Since it is not, these members voted in person during the COVID-19 pandemic.

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<sup>11</sup> The NFB of Alabama can make the list of members available upon request of the DOJ.

## **B. Early In-Person Absentee Voting**

In Alabama, there is no early voting. Unless a voter qualifies for a specific excuse to vote by absentee ballot, they must vote in-person on election day.<sup>12</sup> During the 2020 election season, Secretary of State Merrill allowed any registered voter to qualify for an absentee ballot due to fear of contracting COVID-19. The exception is no longer in place and voters must again qualify for an excuse to vote by absentee ballot, even though the COVID-19 pandemic rages on.<sup>13</sup>

If a voter qualifies for an absentee ballot, they may vote with an absentee ballot by mail or in person at their county absentee election manager's office, which is typically the county registrar's office.<sup>14</sup> According to the Secretary of State's website, "[e]ach county is equipped with at least one handicap-accessible voting machine to assist voters with disabilities. Absentee voting begins 55 days before each election, at which time these machines are ready for use." But during the 2020 election season, as the demand for absentee and in-person absentee ballots grew, the state demonstrated its failure to protect voters who are blind or have print disabilities and thus its violation of Title II of the ADA and Section 504.

For example, Jill Rossiter, a blind voter from Lauderdale County, wanted to vote absentee in person using an accessible ballot marking device for the 2020 general election. But when she called to inquire about the presence of an accessible ballot marking device, Ms. Rossiter was informed no such accessible ballot marking device was available. She later received a call informing her that, in fact, there was an accessible ballot marking device, but the clerk was unsure whether it was operable. The following day, Ms. Rossiter arrived to vote and learned that the accessible ballot marking device was in a supply closet. When asked why it was not in a more public area, the staff stated it could not be placed anywhere else. Ms. Rossiter ended up voting in the supply closet, isolated from other voters.

Jeff Wilson, a blind voter of Jefferson County, also wanted to vote by absentee ballot independently and privately via accessible ballot marking device early and in person. When he visited the location designated for early in-person absentee voting, the staff were unaware of any accessible ballot marking devices. After Mr. Wilson made several inquiries, the workers asked the manager, who was unsure if the device was operable. Staff then made numerous attempts to assist Mr. Wilson with casting his ballot, though he told them he preferred to return the next day to vote independently. The persistent offer to help Mr. Wilson vote was only halted when Mr. Wilson indicated he was the President of the National Federation of the Blind, Magic City Chapter, serving the Birmingham area, and members were checking the availability of ballot marking devices throughout the city.

Barbara Manuel, President of the National Federation of the Blind of Alabama, wanted to vote by absentee ballot early in person independently via an accessible ballot marking device. Ms. Manuel visited her designated location located at 151 Government Street in Mobile. Her driver helped her complete the initial, inaccessible absentee ballot application. Then she was told that

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<sup>12</sup> <https://www.sos.alabama.gov/index.php/alabama-votes/voter/absentee-voting>. Alabama's absentee ballot application can be found here: <https://www.sos.alabama.gov/alabama-votes/absentee-ballot-applications>.

<sup>13</sup> <https://www.al.com/news/2021/08/alabama-no-longer-allows-covid-concerns-as-reason-for-absentee-ballot.html>.

<sup>14</sup> <https://www.sos.alabama.gov/alabama-votes/voter/assistance-disability>.

the ballot marking device needed to be set up. After more than thirty minutes, the machine had not yet been successfully set up, and Ms. Manuel was offered assistance with voting her paper absentee ballot. Because Ms. Manuel wanted to vote privately and independently, and because her driver could not continue to wait, Ms. Manuel decided to leave her polling place and vote at another time.

#### **IV. Remedies**

The undersigned complainants and counsel respectfully request that the Department of Justice Civil Rights Division investigate the State of Alabama's and Secretary of State Merrill's blatant and willful violations of the ADA and Section 504 by denying voters who are blind or have print disabilities a safe, secure, and independent means to cast a ballot. Specifically, the undersigned complainants and counsel seek a process to remedy the following findings, once made by the Division:

1. Accessible absentee voting via electronically fillable ballots must be available to Alabama voters with disabilities.
2. Absentee voting applications must be accessible to voters with disabilities.
3. Accessible ballot marking devices must be available, operable, and ready to use for elections, including for in-person early absentee voting at county absentee election manager and registrar locations.
4. Election officials, including absentee election managers and their staff, registrars and their staff, and poll workers must have knowledge of how to set up, use, and maintain accessible ballot marking devices during in-person early absentee voting and on election day.

Thank you for your time and consideration. We remain available at your convenience to discuss this matter further.

Respectfully,



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