# National Federation of the Blind Jernigan Institute

# Vote-By-Mail Toolkit for Disability Rights Advocates

## **Introduction**

As the number of states that are faced with replacing aging electronic voting systems increases, many of these states are looking for replacement systems that are more convenient for voters and less costly for boards of elections. The number of states and local jurisdictions that are considering converting to all vote-by-mail is increasing because it meets both of these requirements.

As with any paper ballot system, an accessible way for a blind, low vision, or other print disabled voter to privately and independently mark her ballot must be provided, as required by the Americans with Disabilities Act (ADA). This toolkit has been developed by the National Federation of the Blind Jernigan Institute with funds from a Help America Vote Act grant from the Administration for Community Living, US Department of Health and Human Services. The objective of the toolkit is to provide voting rights advocates with the information and tools they need to ensure that an accessible method of ballot marking is included in legislation to convert a state or local jurisdiction to all vote-by-mail.

## **Background Information**

The option to vote by mail, such as by absentee ballot, is already a popular way for US citizens to vote. For the 2016 presidential election, twenty-five percent of the total ballots cast were done so by mail.

In an all vote-by-mail state, a paper ballot is mailed to the home address of every registered voter for every election. After the ballot is marked, it can be mailed back to the local elections office, placed in a local drop box, or dropped off at a voting center. The convenience of a vote-by-mail system means that fewer local polling places are needed. However, a voter who prefers to cast her ballot at a polling place or who needs to use an accessible ballot marking device will need to travel to a more remote voting center during an early voting period or on Election Day.

There are currently three states that conduct all of their elections by mail. Oregon became the first state in 2000 to convert to all vote-by-mail, followed by Washington in 2011, and Colorado in 2013. In 2018, Hawaii became the fourth state to convert, and will conduct its first all vote-by-mail election in 2020. There are also a number of local jurisdictions that conduct their elections using vote-by-mail. These include: twenty-seven of twenty-nine counties in Utah, thirty-one of fifty-three counties in North Dakota, five counties in California, and the city of Anchorage, Alaska.

## The Advantages and Disadvantages of All Vote-By-Mail

The number of states and local jurisdictions that are considering and using all vote-by-mail is increasing because it offers some significant advantages over the more traditional polling place-based systems.[[1]](#endnote-1) The advantages of all-vote-by-mail include:

* Voter convenience. Voters can take their time to study issues and mark their ballot at home.
* Less costly. With a vote-by-mail system, there is no longer a need to staff traditional polling places with poll workers. In addition, fewer voting machines are needed.
* Increased voter turnout. In general, converting to vote-by-mail increases voter turnout. However, studies show a larger increase for smaller elections than for larger general elections.

There are also some potential disadvantages to all vote-by-mail. These include:

* Inaccessible to some voters. The paper ballot that is mailed to every registered voter is not accessible to blind, low vision, and other voters with print disabilities. Offering an accessible electronic ballot delivery system can provide these voters with an equal opportunity to mark their ballot privately and independently at home. However, not all voters with disabilities have access to a computer.
* Security. Coercion by family members and others can occur.
* Transition. The experience of voting with neighbors at a local polling place is eliminated.
* Slow vote counting. All-mail elections may slow down the vote counting process.

## **What Does Federal Law Require?**

Title II of the ADA requires that voters with disabilities must be provided an opportunity to exercise their right to vote that is equal to the opportunity provided to voters without disabilities.[[2]](#endnote-2) This means that states and local jurisdictions that have converted to all vote-by-mail, or are in the process of converting to all vote-by-mail, must provide an accessible way for blind, low vision, and other print-disabled voters to mark their ballot privately and independently at home, work, or other convenient location.

## **Accessible Vote-By-Mail**

An accessible electronic ballot delivery system enables a blind, low vision, or other print-disabled voter to mark her ballot privately and independently at home, work, or other convenient location, using a computer and her own access technology. Electronic ballot delivery is the only voting system that is accessible to a deaf-blind voter.

For a blind, low vision, or other print-disabled voter to access and mark a ballot using an accessible electronic ballot delivery system, she will need a computer equipped with screen access technology and a printer. The following steps are used to access and mark the ballot:

* Access the ballot by opening an email attachment or by clicking on a link to the ballot on its website.
* Mark the ballot.
* Print out the ballot, sign at the designated location, and mail it in.
* The printed ballot contains a bar code or QR code. This code is scanned at the elections office using a ballot-on-demand system, and a ballot is printed out on ballot stock. In some cases votes may be transferred by hand to the ballot that is tabulated.
* The printed ballot is reviewed, then inserted into the tabulator.

## **What to do When Your State is Considering Converting to Vote-By-Mail**

### Education of Legislators

In most states, legislation must be passed and signed into law for a state to convert from the traditional polling place based system to all vote-by-mail. Many state and local government representatives are not familiar with accessible voting systems. Unless disability rights advocates educate state legislators about the need for an accessible way to vote-by-mail, and how the ADA requires it, it is unlikely that an accessible electronic ballot delivery system will be included in vote-by-mail legislation. When meeting with state and local legislators about vote-by-mail, it is important to include the following in your discussion:

* The paper ballot that is mailed to all registered voters is not accessible to blind, low vision, and other print-disabled voters.
* Title II of the ADA requires that states and local jurisdictions that are in the process of converting to all vote-by-mail provide an accessible way for blind, low vision, and other print-disabled voters to mark their ballot privately and independently at home, work, or other convenient location.
* Vote-by-mail legislation must include the requirement that an accessible electronic ballot delivery system be provided to enable blind, low vision, and other print-disabled voters to mark their ballot privately and independently using their own access technology.
* Vote-by-mail legislation must require that accessible electronic ballot delivery systems comply with Web Content Accessibility Guidelines (WCAG) 2.1 AA.
* Vote-by-mail legislation should also require that electronic ballot delivery systems meet the usability/accessibility guidelines developed by the National Federation of the Blind and incorporated into the NIST/Center for Civic Design report "[Principles and guidelines for remote ballot marking systems](https://civicdesign.org/wp-content/uploads/2015/09/Principles-for-remote-ballot-marking-systems-16-0210.pdf)."

See Appendix A for sample legislative language.

### Hearing Testimony

Once legislation to convert a state or local jurisdiction to an all vote-by-mail system has been introduced, a hearing will be held on the bill(s). It is important that disability rights advocates provide written and oral testimony at these hearings to show support for the need to have an accessible way for blind, low vision, and other print- disabled voters to mark their ballot privately and independently, and to further educate legislators. Written and oral testimony should include the following points:

* The paper ballot that is mailed to each voter is not accessible to blind, low vision, and other print-disabled voters.
* Title II of the ADA requires that voters with disabilities be provided an opportunity to exercise their right to vote that is equal to the opportunity provided voters without disabilities.
* When an accessible way to vote by mail is not provided and, as a result, a voter with a disability must travel to a remote voting center in order to vote privately and independently, the opportunity she has been provided to exercise her right to vote is not equal to the opportunity provided voters without disabilities who are able to mark their ballot at home.
* Accessible electronic ballot delivery systems enable a voter with a disability to mark her ballot privately and independently at home using a computer and her own access technology. Accessible electronic ballot delivery is the only voting system that is fully accessible to a deaf-blind voter.
* With an accessible electronic ballot delivery system, the opportunity provided a voter with a disability to mark her ballot is equal to the opportunity provided voters without disabilities.
* To be accessible, electronic ballot delivery systems must comply with WCAG 2.1 AA.
* Electronic ballot delivery systems should also comply with the usability/accessibility guidelines developed by the National Federation of the Blind and incorporated into the NIST/Center for Civic Design report "[Principles and guidelines for remote ballot marking systems](https://civicdesign.org/wp-content/uploads/2015/09/Principles-for-remote-ballot-marking-systems-16-0210.pdf)."

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# Appendix A

# Sample Legislative Language

"Accessible" means individuals with disabilities are able to independently acquire the same information, engage in the same interactions, and enjoy the same services within the same timeframe as individuals without disabilities, with substantially equivalent ease of use.

"Electronic Ballot Marking Tool" means a system that allows a voter to receive a blank ballot to mark electronically, print, and then cast by returning the printed ballot to the elections office. These systems shall conform to the Web Content Accessibility Guidelines (WCAG) 2.1 AA and the National Institute of Standards and Technology (NIST) report "Principles and guidelines for remote ballot marking systems.”

The State Board shall select an accessible electronic ballot marking tool that will enable voters with disabilities to mark their ballot privately and independently.

All voting center locations shall be equipped with at least one accessible ballot marking device so that voters with disabilities can mark their ballot privately and independently.

# Appendix B

# Sample Hearing Testimony

Senate (House) Bill \_\_ requires that (Name of State) elections be conducted by mail, and that the (Name of State) State Board of Elections, in consultation with the local boards of elections, select a voting system for tabulating votes. In addition SB (HB) \_\_\_ requires that voting centers be established as a place for voters to return their marked ballots, and that they provide writing surfaces so that voters may mark their ballot.

The paper mail-in ballot is inherently inaccessible to blind and low vision voters, as well as other voters with print disabilities. However, SB (HB) does not require that (State Name) voters with disabilities be provided an accessible way to mark a paper ballot. In addition, SB (HB) \_\_\_ does not require that an accessible ballot marking device be made available at each voting center for use by voters to mark their ballot. The failure to provide voters with disabilities with an opportunity to exercise their right to vote that is equal to the opportunity provided other voters is a violation of Title II of the Americans with Disabilities Act.

SB (HB) \_\_ must be amended to require the inclusion of an accessible electronic ballot delivery system in any vote-by-mail system adopted by SBE to provide voters with disabilities an opportunity to exercise their right to vote that is equal to the opportunity provided other voters. The accessible electronic ballot delivery system will provide voters with disabilities the same convenience and privacy afforded to voters who receive their ballots in the mail and mark them at home by enabling them to access and mark their ballot privately and independently on a home computer using their own access technology. In addition, the electronic ballot delivery system selected by SBE must adhere to the Web Content Accessibility Guidelines (WCAG) 2.1 AA and the National Institute of Standards and Technology (NIST) report "Principles and Guidelines for remote ballot marking systems."

Not all voters with print disabilities have access to a computer or want to mark their ballot using an accessible electronic ballot delivery system. SB (HB) \_\_ must be amended to require that all voting centers be equipped with at least one accessible ballot marking device so that blind, low vision, and other voters with print disabilities are provided an opportunity to mark their ballot privately and independently.

(State name) election law must ensure that voters with disabilities are provided the opportunity to exercise their right to vote that is equal to the opportunity provided voters without disabilities in accordance with federal law. The (name of organization) urges that SB (HB) \_\_\_ be amended to require an accessible electronic ballot delivery system as part of the vote-by-mail system so that voters with print disabilities can mark their ballot privately and independently on a computer equipped with access technology. We also urge that SB (HB) \_\_ be amended to require that all voting centers be equipped with at least one accessible ballot marking device so that all voters with disabilities are provided the opportunity to mark their ballot privately and independently.

# Appendix C

# Email Template and Telephone Call Script

## Email Template

Use the following email template to educate your state legislators about accessible vote-by-mail, and to let them know you support it.

Dear \_\_\_,

My name is (name), and I live at (home address). I appreciate the work you do to represent me in the state legislature.

I am writing to you to express my concern about HB (SB) \_\_\_. This bill will convert our elections to all vote-by-mail, yet it does not include an accessible way for blind voters, like myself, to mark our ballot. There are a number of accessible electronic ballot delivery systems available that will enable me to mark my ballot privately and independently at (home, work, library) using a computer and access technology. With an accessible electronic ballot delivery system, the state will be providing me with an opportunity to vote privately and independently that is equal to the opportunity provided to voters without disabilities, as required by Title II of the Americans with Disabilities Act.

I would be happy to meet with you or your staff to discuss this issue. I may be contacted by phone at (phone number) or by email at (email address). I look forward to hearing from you!

Sincerely,

## Telephone Call Script

Use the following script when contacting your state legislator's office by telephone to educate your state legislators about accessible vote-by-mail, and to let them know you support it.

Hello, my name is (name), and I live at (home address). I am a constituent of (legislator's name) and I am calling to express my concern about HB (SB) \_\_\_. This bill will convert our elections to all vote-by-mail, yet it does not include an accessible way for blind voters, like myself, to mark our ballots. There are a number of accessible electronic ballot delivery systems available that will enable me to mark my ballot privately and independently at (home, work, library) using a computer and access technology. With an accessible electronic ballot delivery system, the state will be providing me with an opportunity to vote privately and independently that is equal to the opportunity provided to voters without disabilities, as required by Title II of the Americans with Disabilities Act.

I would be happy to meet with (legislator's name) to discuss this issue. I may be contacted by phone at (phone number) or by email at (email address). Thank you very much, and I look forward to hearing from (legislator's name).

# Appendix D

# List of Electronic Ballot Delivery Systems

Democracy Live

Secure Select

Dominion Voting Systems

ImageCast Remote

Five Cedars Group

Alternate Ballot Format

University of Florida

Prime III

# Appendix E

# National Federation of the Blind Usability/Accessibility Guidelines for Electronic Ballot Delivery Systems

Electronic Ballot Delivery System Accessibility/Usability Guidelines

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1. Introduction

Jurisdictions provide various alternatives to traditional election-day voting at the polls. Such programs include voting by mail, early voting, and absentee voting. These programs should be accessible for voters with print disabilities, including voters who are blind, deaf-blind, visually impaired, and dexterity impaired. For these voters, delivery of ballots by mail does not provide needed voting accessibility. Reading and completing mailed ballots requires assistance by people other than the voters with print disabilities. This inaccessibility can be effectively ameliorated by electronic ballot delivery to the disabled voter’s own computer, permitting the disabled voter to use accessibility software to read, fill out, and print the ballot. The guidelines below provide standards to be followed to make electronic ballot delivery systems accessible.

1. Key Terms

Electronic ballot delivery system: systems that voters use to mark their ballot outside of a polling place or voting center. These systems allow a voter to receive a blank ballot to mark electronically, print, and then cast by returning the printed ballot to the elections office.

1. Technical Standard

The electronic ballot delivery system web pages shall conform to the WCAG 2.0 AA with the following clarifications, additions, and/or exceptions:

* 1. User Access

3.1.1 In general, electronic ballots shall be accessed through a website. Electronic ballots may be delivered by email at the discretion of election officials.

* + 1. For security reasons, access to electronic ballot delivery systems via unsupported browsers and other software shall be denied. At a minimum, access shall be possible using the two most recent major versions of the three most commonly used browsers.
		2. Any authentication used to confirm that content is being accessed by a human rather than a computer shall be accessible.
	1. Testing for compatibility with voter's computer system and software.

3.2.1 After the user has logged in, but before the user accesses the ballot, the electronic ballot delivery system should test the user's computer system and software for compatibility. At a minimum, the two most recent major versions of the three most commonly used software programs required to access and mark the ballot shall be supported.

* + 1. When incompatibility is discovered, the electronic ballot delivery system should identify the incompatible components to the user.
		2. The electronic ballot delivery system should prevent access to the ballot by users with incompatible hardware and software.
		3. Instructions on how a user can upgrade incompatible hardware and software should be provided.
		4. Instructions on how a user can contact the board of elections for other voting options should be provided.
	1. Time limit before system times out—warning that system is about to time out.

3.3.1 Electronic ballot delivery systems that include a time limit may time out after fifteen minutes of user inactivity.

* + 1. A notice must be provided to the user at the top of each page that the system will time out after fifteen minutes of inactivity by the user.
		2. Additional warnings that the system will time out must be provided to the user when the user has been inactive for ten minutes and fourteen minutes.
		3. Following the second warning at fourteen minutes, the user can extend the time limit with a simple action.
		4. If the system times out, the time-out page must provide the user instructions on how to return to the ballot.
	1. Printing of ballot

3.4.1 Printing instructions shall be in an accessible media and shall be usable without vision.

* + 1. Printing instructions shall include a list of the order in which pages are printed.
		2. Signature page shall print before the ballot. At least one page shall separate the signature page and ballot to ensure secrecy.
		3. Each generation of the ballot shall have a unique number.

3.5 Provision of help line that voters can call if they are not able to resolve problems on their own.

* + 1. The Board of Elections shall provide a help line that voters can call when they experience problems while using the system.
		2. The contact information for the help line and the hours that it is available shall be displayed on each page of the electronic ballot delivery system.
1. User testing by people with disabilities

4.0.1 Usability testing of the electronic ballot delivery system shall include testing by voters with disabilities. Testers shall have a broad range of experience using computers and assistive technology.

* + 1. Testing shall demonstrate the compliance of the electronic ballot delivery system web pages with WCAG 2.0 AA and these guidelines.
		2. The assistive technology used for usability testing shall consist of the technology commonly used by individuals with disabilities at the time of the testing, and shall include, but not be limited to, screen reading software, screen magnification software, refreshable Braille displays, keyboard only, and voice recognition.

# Appendix F

# Resources

Principles and Guidelines for Remote Ballot Marking Systems

<http://civicdesign.org/wp-content/uploads/2015/09/Principles-for-remote-ballot-marking-systems-16-0210.pdf>

Web Content Accessibility Guidelines (WCAG) 2.1 AA. Retrieved from

<https://www.w3.org/TR/WCAG21/>.

1. ## Endnotes

 Flaxman, S., Hyacinthe, M., Lawson, P., & Peters, K. (2013). *Voting by mail: Increasing the use and reliability of mail-based voting options, A memorandum for the Presidential Commission on Elections Administration*. Retrieved from

<http://web.mit.edu/supportthevoter/www/files/2013/11/Vote-by-Mail-Reform-Memo.pdf>.

Lynch, Dylan. (2018, August 8). National Conference of State Legislatures. *All-Mail Elections (AKA Vote-By-Mail)*. Retrieved from <http://www.ncsl.org/research/elections-and-campaigns/all-mail-elections.aspx>.

Wilson, R. (2014, December 16). *The pros and cons of all-mail elections, as told by two Republican secretaries of state*. Washington Post. Retrieved from <https://www.washingtonpost.com/blogs/govbeat/wp/2014/12/16/the-pros-and-cons-of-all-mail-elections-as-told-by-two-republican-secretaries-of-state/?noredirect=on&utm_term=.a68f34bd0afd>. [↑](#endnote-ref-1)
2. 42 U.S.C. §12132, 28 C.F.R. §35.130(b)(1)(ii)-(iii), 28 C.F.R §35.160(b)(1)-(2). [↑](#endnote-ref-2)