



## **REPORT:** Election Accessibility for Voters with Disabilities in Ohio

### **INTRODUCTION**

Ensuring people with disabilities have full and equal access to the electoral process is one of the highest priorities of Disability Rights Ohio (“DRO”). DRO is a non-profit organization designated as the protection and advocacy system under federal law for people with disabilities in Ohio.<sup>1</sup> The mission of DRO is to advocate for the human, civil, and legal rights of people with disabilities in Ohio. In the voting context, this work includes:

- individual advocacy for people who need assistance in registering to vote, casting a ballot, or understanding or enforcing their rights, including those who contact DRO’s voter hotline on Election Day or through our regular intake department;
- systemic advocacy, including engaging the Ohio Secretary of State, county boards of elections, legislators, and other policymakers to protect the right to vote for people with disabilities throughout Ohio;
- outreach to various residential facilities and other settings to talk to people with disabilities about their voting rights and the existence of DRO and other voting rights organizations as resources for information and advocacy;
- speaking to the media to raise public awareness about obstacles to accessible electoral system in Ohio;
- conducting trainings on voting rights and working alongside other advocates and stakeholders; and
- participating in litigation, including filing amicus briefs to educate courts on the experiences and perspectives of voters with disabilities.

Based on DRO’s vast experience over the years, particularly during the primary and general elections held in 2020 during the COVID-19 pandemic, this report aims to educate the public and election stakeholders on major issues that affect voters with disabilities, creating opportunities for statewide collaboration to address these needs. Though not an exhaustive list of all accessibility concerns, this report focuses on four areas where systemic barriers to the electoral process exist for people with disabilities, and includes recommendations for change:

- **Ohio’s Unexpectedly Hospitalized Voter Process;**
- **Home- and Facility-Bound Voters Requesting Personal Ballot Delivery;**
- **Curbside Voting; and**
- **Remote Absentee Ballot Marking.**

## OHIO'S UNEXPECTEDLY HOSPITALIZED VOTER PROCESS

Ohio has a special process to help voters who planned to vote in person on Election Day, but could not because they-- or their minor children-- were unexpectedly hospitalized.<sup>2</sup> Eligible voters under these circumstances can submit a special absentee ballot request to the board of elections until 3 p.m. on Election Day. These voters then have several options to receive and submit the completed ballot. This process has helped many voters exercise their voting rights, particularly voters who unexpectedly find themselves in a psychiatric hospital on or before Election Day.

*As a result, DRO must regularly intervene to ensure that voters with disabilities get to vote when using this process.*

Despite many positive changes in recent years, the process remains flawed, and can still be extremely confusing for voters and county boards of elections alike. Many Ohio voters are still disenfranchised, especially when the voter is hospitalized outside of their county of residence and has no family willing or able to provide assistance in obtaining, completing, and returning the ballot.

In these circumstances, Ohio law says that the ballot must be mailed to the voter, which may not afford enough time. As a result, DRO must regularly intervene—often with the help of the Ohio Secretary of State, but sometimes through litigation<sup>3</sup>—to ensure that voters with disabilities can utilize this process and cast a ballot.

DRO and the state have had discussions over the years to fix this process so that it provides equal access to voters with disabilities who are unexpectedly hospitalized on or before Election Day. The state has issued Directive 2017-06, which requires county boards of elections to contact the Secretary of State's office if it receives a request from a voter with a disability who was hospitalized unexpectedly in an out-of-county hospital in Ohio between 12:00 p.m. on the Saturday before Election Day and 3:00 p.m. on Election Day.<sup>4</sup> The Secretary also created a second special absentee ballot request form to accommodate ADA out-of-county requests where the voter has a disability and does not have a family member to retrieve the absentee ballot for them.<sup>5</sup>

These efforts have solved some problems but not others, and has also created new challenges. Furthermore, this special process is not well-known among the public, especially those voters who may need to utilize it.



***The Saturday at noon cutoff can be problematic.***

The Saturday-at-noon cutoff under Directive 2017-06 could pose a barrier for some unexpectedly hospitalized voters who were hospitalized prior to the deadline but were incapacitated or otherwise unable because of their disability to timely utilize the regular absentee ballot request process, or who reasonably believed they would be discharged before Election Day and could then vote in person.

These voters could have their requests denied by county boards of elections because they were hospitalized prior to Saturday at noon. The Secretary's guidance is silent on this particular nuance, but it does allow flexibility for county boards of elections to provide reasonable accommodations for these voters.<sup>6</sup> The Ohio Secretary of State has accepted calls from DRO to help voters who were stuck in this narrow circumstance, and reasonable accommodations have been granted to help them vote. However, additional formal guidance to county boards of elections could help to clarify this issue and ensure hospitalized voters are able to cast a ballot.



***Submitting the absentee ballot application can be a barrier for unexpectedly hospitalized voters.***

Unexpectedly hospitalized voters are unable to physically go to the board of elections prior to Election Day or to their polling location on Election Day. And since these requests can be made up until 3 p.m. on Election Day, there is simply no way for applications submitted on Election Day to reach the board of elections by mail in time to be processed.

For hospitalized voters who do not have willing and able family members to assist, boards of elections are likely already providing reasonable accommodations under the Americans with Disabilities Act ("ADA") to these voters by accepting alternative methods to submit the application, including by fax or email.<sup>7</sup> The practice is consistent with the Secretary's guidance to provide reasonable accommodations where the current process does not offer a realistic solution.<sup>8</sup>

However, the current Elections Official Manual explicitly states that only overseas military voters may submit absentee ballot applications through alternative means. Typically-granted accommodations for unexpectedly hospitalized voters should also be formally recognized by the Ohio Secretary of State for the sake of uniformity and clarity. Accordingly, additional formal guidance to county boards of elections could help to clarify this issue and prevent the need for recurring intervention by DRO and the Secretary of State.



***The special process is not incorporated into permanent guidance or on the state's website.***

While the special out-of-county unexpectedly hospitalized voter form (Form 11-B-2) is available on the Secretary of State website and there is a specific Directive for this process, it is not mentioned at all in the Elections Official Manual. Nor is the process included on the “voters with disabilities” section on the Ohio Secretary of State’s website. These omissions may cause confusion about the process for both elections officials and voters. Since the underlying needs for the 11-B-2 process is unlikely to change, the Ohio Secretary of State should update the manual and the state’s website to reflect these nuances.



***Recent actions and current status.***

In 2020, in the wake of the COVID-19 pandemic, Secretary LaRose issued several directives, one of which addressed the influx of voters who were unexpectedly hospitalized or confined (including in their own homes) due to COVID-19, and required additional flexibility for boards of elections to accept absentee ballot requests.<sup>9</sup>

There were still problems with county boards delivering in-person absentee ballots to out-of-county hospitalized voters. During the November 2020 election, DRO directly assisted at least eight hospitalized voters by working with county boards and the Secretary of State’s office to resolve these matters. One board of elections failed to deliver ballots to multiple voters, ultimately disenfranchising them. Another board explicitly refused to follow the out-of-county ADA process, and that voter would have been disenfranchised had DRO and the Ohio Secretary of State not intervened.

## Recommendations

This process should run smoothly without the need for regular DRO and Secretary of State intervention. To that end, DRO makes the following recommendations:

- **Create additional formal or informal guidance** on reasonable accommodations that includes hypothetical examples that address problems that arise when a voter is hospitalized prior to the absentee ballot request deadline but was incapacitated or otherwise because of their disability could not submit a regular absentee ballot request;
- **Consider combining Form 11-B and Form 11-B-2** into one form to simplify the process and avoid confusion;
- **Permanently incorporate the language from Directive 2020-05**, which provides leniency for voters who submit the incorrect form, i.e. “Boards of elections must not reject a confined or hospitalized voter’s absentee ballot application request because a voter submitted the incorrect absentee ballot application request form”;<sup>10</sup>
- **Incorporate Directive 2017-06 and the ADA out-of-county unexpectedly hospitalized voter process** into the Elections Official Manual and include this information on the “voters with disabilities” page on the Ohio Secretary of State’s website;
- **Explicitly expand on acceptable means** to submit the absentee ballot application via reasonable accommodation such that the voter may submit the request (with or without the official form)<sup>11</sup>, through email, fax<sup>12</sup>, mail, or phone call;
- **Increase education and outreach efforts** to county boards of elections and hospitals to clarify the process and provide information on how to utilize this voting option in the future; and
- **Consider measures** that encourage county boards to proactively plan and collaborate with hospitals for unexpectedly hospitalized voters, and empowers hospital staff to assist patients with access to the voting process.

## HOME- AND FACILITY-BOUND VOTERS REQUESTING BALLOT DELIVERY

Ohio has a process for voters with disabilities who live in nursing facilities or other institutional settings or in their own homes and because of their disability cannot vote in person.<sup>13</sup> This process is also available for voters who are incarcerated in a jail under sentence for a misdemeanor or awaiting a trial on a felony or misdemeanor (a substantial number of whom have disabilities, particularly mental health diagnoses). In these instances, the voter can have board of elections officials personally deliver and return the ballot to their board of elections. Voters seeking to use this process submit a different form from the regular absentee ballot process and briefly state the reason for the request. The request must be received by the board of elections by noon on the Saturday prior to Election Day.

With many voters staying home and facilities heavily restricting or prohibiting visitors to avoid the spread of COVID-19, there was likely a substantial uptick in the use of this option in 2020. Indeed, Secretary LaRose issued directives to address this anticipated increase, and loosened the definition of what constitutes “confined” to include “voters who are either told by a health care professional to stay home or are otherwise following the advice of a healthcare professional to isolate themselves.”<sup>14</sup> To address visitor restrictions and other obstacles in these facilities, Secretary LaRose also required boards of elections to proactively contact facilities to devise voting plans to assist these voters.<sup>15</sup>

While Secretary LaRose issued temporary measures to aid voters and boards of elections during the COVID-19 pandemic,<sup>16</sup> there is very little permanent guidance to boards of elections on how to assist this group of voters. DRO has conducted significant outreach in past years to voters with disabilities in nursing facilities and other long-term care residential settings, and receives voter hotline calls from this group of voter for most elections.

From this perspective, it appears that the manner in which boards of elections assist voters in facilities varies widely from county to county, and perhaps even facility to facility. Some county boards of elections have ongoing relationships with facility staff and set planned dates on which elections officials visit the facilities to deliver and return ballots for these voters perhaps even outside of this special voting process. Other facilities do not have any relationship with the local board. As a result, some voters have inferior access to absentee voting options simply because of where they live. Uniform statewide guidance and practices could help increase efficiency, predictability, and overall access to voting rights for this population.

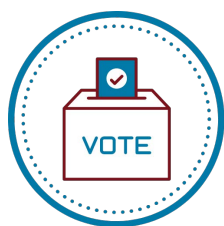
Furthermore, as noted in a recent report from All Voting is Local, there are large numbers of people with disabilities incarcerated in jails across Ohio, many of whom are disenfranchised because of barriers that make it hard to register to vote and to obtain, complete, and submit an absentee ballot.<sup>17</sup>

And like the process for unexpectedly hospitalized voters, many voters who cannot travel to vote in person because of their disabilities do not know about this option for personal delivery of their absentee ballot.



### ***Proactive delivery of ballots to facility-bound voters.***

Proactive planning among boards of elections and facilities can ensure voter access, and spread out the significant burden on boards in delivering ballots to minimize last-minute ballot deliveries. However, when elections officials visit a facility only at a certain date or time, some people wishing to utilize the program may still miss that opportunity for a number of reasons—residents might be sick or on a doctor visit, or some people may not yet be admitted to that facility. If a facility resident requests a valid in-person ballot delivery through the home- and facility-bound process, that ballot must still be delivered even if the board already visited that facility.



### ***Facility-bound in-person absentee ballot delivery.***

Problems can occur when a voter has not established residency in the county where they are confined, such as during a temporary rehabilitation stay at a nursing facility. It follows, then, that if a facility-bound voter requests in-person ballot delivery outside of her county of residence, she should be able to receive that in-person delivery by the board of elections of the county in which her facility is located, and that board should then be able to transmit the ballot to the board of residence to be counted using the same email or fax accommodation that is available for voters with disabilities unexpectedly outside of their county of residence. Boards of elections might already be doing this; however, specific formal guidance for boards of elections might help clarify for boards that it is an acceptable practice.

## Recommendations

- **Determine what measures Ohio’s county boards of elections are already taking to proactively assist home- and facility-bound voters** in absentee voting and seek feedback on what measures might improve this process;
- **Remove barriers for people incarcerated in jails across Ohio**, including by work with DRO and other voting rights advocates, like All Voting is Local.
- **Make permanent and expand upon the measures outlined in Directive 2020-11 for facility-bound voters.** This could include:
  - boards of elections identifying and establishing contacts with applicable facilities;
  - devising a voting plan at facilities; and
  - deputizing facility staff, including needed accommodations and developing plans to return ballots if the board of elections staff cannot supervise voting and return.
- **Provide guidance to boards of elections on the delivery of in-person, out-of-county facility-bound voters;** and
- **Undertake education and outreach efforts to county boards of elections and facilities** to clarify the process and provide information on how to utilize this voting option in the future.



## CURBSIDE VOTING

Curbside voting is an available in-person voting method for voters with disabilities who face barriers accessing polling locations on Election Day. Instead of physically entering the polling location, voters can stay outside and request that poll workers deliver and return a completed paper ballot on-site.<sup>18</sup> In 2020, Secretary LaRose extended curbside voting to all voters who were “concerned about entering a polling location” because of the pandemic.<sup>19</sup> With loosened restrictions and record voter turnout in Ohio for the November 2020 general election, curbside voting increased significantly as well. But this uptick in usage exposed shortcomings with Ohio’s curbside voting process.

While all 88 Ohio counties are required to offer a curbside option to voters, there are few requirements on how curbside voting must be made accessible for voters.<sup>20</sup> There is no statewide requirement to provide accessible signage to alert voters that a curbside option exists or how it can be utilized. Current guidance to elections officials also assumes that voters wishing to curbside vote have an individual accompanying them who can physically enter the building to alert poll workers of the curbside request.<sup>21</sup> Even when officials attempt to accommodate unaccompanied voters, they also may assume that all voters have access to a mobile phone that they can use to call the polling location to alert elections officials of their need to curbside vote.

Secretary LaRose issued at least two directives in 2020 recommending that boards of elections “consider including signage outside the polling location setting forth the process for curbside voting and how to contact someone inside the polling location,” and also “consider” designating curbside parking spots and having officials monitor the process. While these were important and timely measures that could help to increase awareness of the curbside voting and how to contact someone inside the polling location,” and also “consider” designating curbside parking spots and having officials monitor the process.<sup>22</sup> While these were important and timely measures that could help to increase awareness of the curbside voting process in some counties, they are still discretionary guidance that fall far short of ensuring that voters with disabilities can independently access the curbside voting option across Ohio. Without mandatory signage posting instructions and contact information and other measures, unaccompanied voters with disabilities have no clear means to alert poll workers of their arrival or intent to utilize this voting method.

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DRO received at least 10 of calls related to curbside voting through our voter hotline for the November 2020 general election. Many of these calls related to confusion about how voters could access curbside voting, if curbside voting would be available at their polling location, or difficulties using curbside voting due to the process or wait times at their polling location.

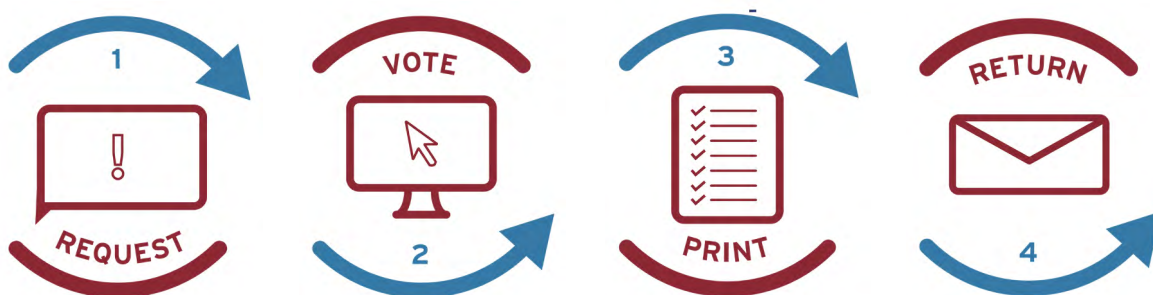
## Recommendations

Ohio should update and formalize the curbside voting process to empower curbside voters with disabilities to initiate the process independently. Ohio's curbside voting system should include the following elements:

- **Accessible signage informing voters** of the availability, location, and process for voting curbside;
- **A location that allows the curbside voter** to obtain information from candidates and others campaigning outside the polling place;
- **A method for poll workers to know that a voter with a disability who does not have a cell phone and needs to vote curbside**, such as designated spots at the polling location that is monitored by poll workers;
- **Guidance on standards for ensuring a prompt response from election officials** that shows they are aware of the voter's need to vote curbside;
- **A portable and accessible voting system** that allows the voter to cast their ballot privately and independently; and
- **Guidance for boards of elections** to post online in advance of Election Day curbside voting check-in and procedures.

## REMOTE ABSENTEE BALLOT MARKING

Since 2018, to ensure accessibility for voters with vision impairments and other print disabilities, Ohio has offered an alternative method to paper absentee ballots. Voters who use this method can request an absentee ballot using a special form,<sup>23</sup> have their ballot emailed to them, complete and print the ballot using their own computer accessibility software, and return the ballot to the board of elections.<sup>24</sup> This process allows these voters with disabilities to privately and independently submit absentee ballots.<sup>25</sup> All Ohio county boards of elections are required to provide the remote absentee ballot marking option to voters with disabilities, and there are uniform statewide requirements for carrying out this process.<sup>26</sup>



In *Updated Health Guidance for Boards of Election* dated September 2020, Secretary LaRose urged boards of elections to promote absentee voting, including the use of ballot marking systems for voters with disabilities.<sup>27</sup> However, underutilization of this voting option persists, as many voters with disabilities likely are not even aware it exists. Since the process and forms are separate and unique from the regular paper absentee ballot request process, voters and boards of elections may be confused about how to use the process in the first place.

Before the November 2020 election, DRO worked with a voter who was worried about experiencing delays in receiving her ballot through this special process, which we were able to resolve with the boards of elections. In a follow-up discussion, the board of elections shared that it would be very helpful to have statewide training videos or other information to share with voters on how to properly use the remote absentee ballot marking process.<sup>28</sup> Specifically, the option to print out the voter's identification envelope or receive the identification envelope from the board of elections can be confusing for voters. While there may be some minor variations in the process based on different counties' voting systems,<sup>29</sup> there are still standardized requirements for remote ballot marking usage across all 88 counties.

## Recommendations

- **Ohio should develop training, informational videos, and materials** to better inform voters about how to properly use remote absentee ballot marking in Ohio and to give clarity to county boards of elections. The training should include information about the entire process and include eligibility criteria and requesting, filling out, and returning the ballot.
- **The state should also identify opportunities for collaboration** with other stakeholders to raise awareness of this voting option.

## CONCLUSION

DRO shares these recommendations as practical ways of improving accessibility for these voting options and to highlight opportunities for collaboration among DRO and other disability groups and voting advocates, the Ohio Secretary of State and county boards of elections, and stakeholders like nursing facilities and hospitals to increase voter participation and education. Strengthening statewide capacity for these various ways to vote is critical to ensuring an electoral system that is truly accessible to all voters with disabilities.

## REFERENCES

- 1 See 42 U.S.C. § 15001, *et seq.*, Ohio Rev. Code §5123.60.
- 2 Ohio Rev. Code § 3509.08(B).
- 3 *Mooneyhan v. Husted*, No. 3:12-cv-379, 2012 WL 5834232 (S.D. Ohio Nov. 16, 2012) (holding that an Ohio board of elections must provide reasonable accommodations under the Americans with Disabilities Act to a voter with a disability who was unexpectedly hospitalized and needed a ballot by email or fax).
- 4 Ohio Sec'y of State, *Directive 2017-06* (2017), <https://www.ohiosos.gov/globalassets/elections/directives/2017/dir2017-06.pdf>.
- 5 Ohio Sec'y of State, *Forms and Petitions*, Form 11-B-2, <https://www.ohiosos.gov/elections/elections-officials/forms-petitions/>.
- 6 “The Americans with Disabilities Act may require a board of elections to make a reasonable accommodation to assist an unforeseeably hospitalized voter who also is a voter with a disability when the accommodation in existing law does not offer realistic solution.” Ohio Sec'y of State, *Directive 2017-06* (2017), <https://www.ohiosos.gov/globalassets/elections/directives/2017/dir2017-06.pdf> (citing 28 C.F.R. § 35.130(b)(7)-(8); 52 U.S.C. § 20101).
- 7 These voters receive in-person delivery by elections officials and must confirm their identities in person with those officials.
- 8 See Ohio Sec'y of State, *Directive 2017-06*, 1 (2017), <https://www.ohiosos.gov/elections/elections-officials/rules/#manual> (citing 28 C.F.R. § 35.130(b)(7)-(8); 52 U.S.C. § 20101).
- 9 Ohio Sec'y of State, *Directive 2020-05* (2020), <https://www.ohiosos.gov/elections/elections-officials/rules/#manual>.
- 10 Ohio Sec'y of State, *Directive 2020-05* (2020), <https://www.ohiosos.gov/elections/elections-officials/rules/#manual>.
- 11 The Elections Official Manual already allows voters to make the request without submitting the actual form. See Ohio Sec'y of State, *Election Official Manual*, 216-17 (2021), <https://www.ohiosos.gov/elections/elections-officials/rules/#manual>.
- 12 Note that while Form 11-B-2 specifically allows board of elections to send another board of elections an absentee ballot, only UOCAVA voters may submit absentee ballot requests via email or fax. *Id.* at 219.
- 13 *Ohio Rev. Code § 3509.08(A)*; Ohio Sec'y of State, *Application for Absentee*

*Voter's Ballot by Confined Voter or a Voter With a Personal Illness, Physical Disability, or Infirmary* (2017), <https://www.ohiosos.gov/globalassets/elections/forms/11-f.pdf>.

14 Ohio Sec'y of State, *Directive 2020-05*, 1 (2020), <https://www.ohiosos.gov/elections/elections-officials/rules/#manual>.

15 Ohio Sec'y of State, *Directive 2020-11* (2020), <https://www.ohiosos.gov/elections/elections-officials/rules/#manual>.

16 See Ohio Sec'y of State, *Directive 2020-05* (2020), <https://www.ohiosos.gov/elections/elections-officials/rules/#manual>; Ohio Sec'y of State, *Directive 2020-11* (2020), <https://www.ohiosos.gov/elections/elections-officials/rules/#manual>.

17 See All Voting is Local's December 2021 report *Voter Policies Are Nonexistent in Jails*, available at <https://allvotingislocal.org/reports/voter-policies-are-nonexistent-in-ohio-jails/>

18 Ohio Sec'y of State, *Election Official Manual*, 283-85 (2021), <https://www.ohiosos.gov/elections/elections-officials/rules/#manual>.

19 See Ohio Sec'y of State, *Directive 2020-11*, 12 (2020) <https://www.ohiosos.gov/elections/elections-officials/rules/#manual>; Ohio Sec'y of State, *Directive 2020-16*, 2 (2020) <https://www.ohiosos.gov/elections/elections-officials/rules/#manual>.

20 Ohio Sec'y of State, *Directive 2020-11*, 12 (2020) <https://www.ohiosos.gov/elections/elections-officials/rules/#manual>.

21 Ohio Sec'y of State, *Election Official Manual*, 283 (2021) <https://www.ohiosos.gov/elections/elections-officials/rules/#manual> ("Curbside voting is the process followed when a person who is physically unable to enter a polling location can send another person into the polling location to inform precinct election officials of their desire to vote.").

22 See fn. 24; Ohio Sec'y of State, *Directive 2020-16*, 2 (2020) <https://www.ohiosos.gov/elections/elections-officials/rules/#manual>.

23 Ohio Sec'y of State, *Application for Absent Voter's Ballot by a Voter with a Disability & Request to use Remote Ballot Marking System*, <https://www.ohiosos.gov/elections/voters/11-g/>.

24 *Hindel v. Husted*, 875 F.3d 344 (6th Cir. 2017).

25 See Ohio Sec'y of State, *Accessible Absentee Voting in Ohio: Frequently Asked Questions*, <https://www.ohiosos.gov/elections/voters/voters-with-disabilities/Votingfaqs/>.

26 See Ohio Sec'y of State, *Election Official Manual*, 208-11 (2021) <https://www.ohiosos.gov/elections/elections-officials/rules/#manual>.

27 Ohio Sec'y of State, Ohio Secretary of State Updated Health Guidance for Boards of Elections, 2 (2020), <https://www.sos.state.oh.us/globalassets/elections/directives/2020/2020-09-25.pdf>.

28 At least one such training video does exist, but it is not sponsored by the Ohio Secretary of State. See All Voting Is Local, *Voting With a Disability Just Got Easier in Ohio - Audio Description Version*, YouTube (Apr. 1, 2020), <https://youtu.be/2Dtm5XDXNWw>.

29 Ohio Counties utilize 13 different voting systems and have 5 different remote absentee ballot marking systems available for use with those systems. See Ohio Sec'y of State, County Voting Equipment, <https://www.sos.state.oh.us/elections/elections-officials/county-voting-equipment/>

