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### Accessibility

## Court to Hear First Ever ADA Voter Website Accessibility Case

BY ALEXIS KRAMER

**S**ight-impaired voters and others with disabilities are accustomed to accommodations at physical polling places that enable them to exercise their right to vote.

As the 2016 presidential elections near, voters expect those accommodations to extend to online voter services. These expectations, however, have not been fulfilled everywhere according to sight-impaired individuals who have sued in California, Maryland and Ohio.

On April 25, a federal district court in Ohio will hear a claim that the state's voter services website violates the Americans with Disabilities Act because, plaintiffs say, it cannot be accessed using commonly available screen-reading technology (*Hindel v. Husted*, S.D. Ohio, No. 2:15-cv-03061, trial scheduled, 4/25/15).

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SUSAN MIZNER, AMERICAN CIVIL LIBERTIES UNION

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The case marks the first voter website accessibility lawsuit brought under Title II of the ADA, disabilities law experts told Bloomberg BNA.

The *Hindel* case could be the first of many if state governments don't move quickly to adopt prevailing website accessibility standards, they said.

State and local governments should look to the World Wide Web Consortium's web content accessibility guidelines (WCAG) 2.0 AA, which recommend that websites, among other things, provide text alternatives for non-text content and make all website functionality available from a keyboard.

“If states do not make their voter websites fully accessible soon, I would expect more lawsuits to follow,” Susan Mizner, disability counsel with the American Civil Liberties Union in San Francisco told Bloomberg BNA Jan. 11.

Twenty-nine states and the District of Columbia allow online voter registration, but these voter websites create access issues for the visually impaired. Only Cali-

fornia's voter website is completely accessible to the visually impaired, according to a 2015 study conducted by the American Civil Liberties Union.

Ohio's voter website doesn't allow online voter registration, but permits registered voters to change their voting addresses online.

**Inaccessible Website, Absentee Ballots.** Title II of the ADA, 42 U.S.C. § 12132, requires state and local government entities to ensure that people with disabilities have equal opportunities to participate in government programs and services.

The National Federation of the Blind and three blind, registered Ohio voters filed a lawsuit against Ohio Secretary of State Jon A. Husted, alleging that Ohio violated the ADA by failing to provide an accessible voter services website. They also alleged that Husted failed to provide an online alternative to paper absentee ballots, thereby denying blind users an equal opportunity to vote absentee privately and independently.

The plaintiffs initially sought a court order requiring Husted to fix the voter services website and implement online absentee ballot-marking technology in time for the March 15 presidential primary elections.

Jessica Weber, counsel for the plaintiffs and an associate at Brown Goldstein Levy in Baltimore, Md., told Bloomberg BNA that the plaintiffs decided instead to seek a permanent injunction in time for the November presidential election.

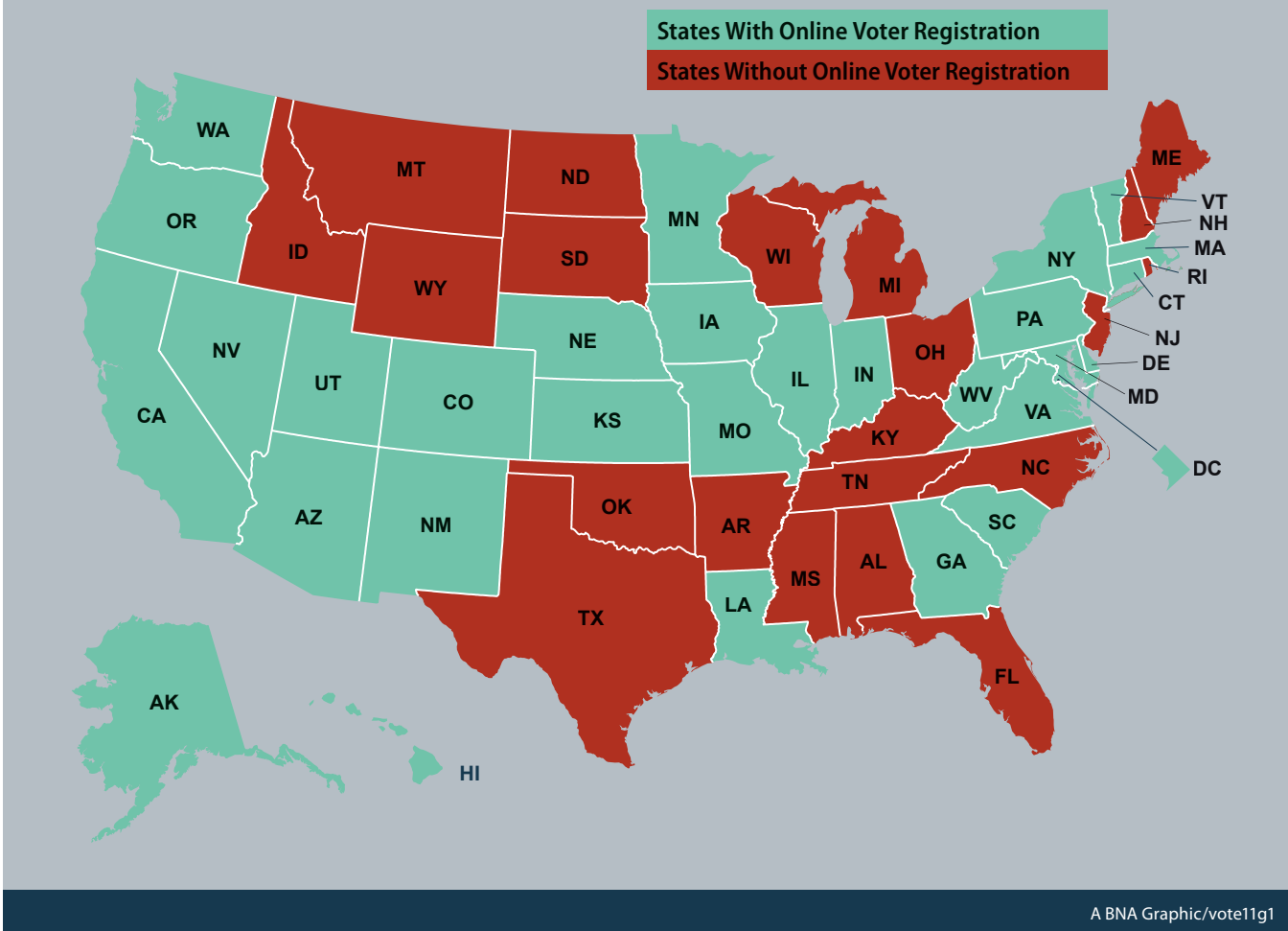
Lawsuits in two other states raised related website accessibility issues.

The California Council of the Blind filed a Dec. 17 lawsuit alleging that San Mateo County, Calif., failed to provide an accessible online absentee ballot (*California Council of Blind v. County of San Mateo*, N.D. Cal., No. 3:15-cv-05784, complaint filed, 12/17/15).

In Maryland, a federal district court ruled that the state violated the ADA by failing to make available an online absentee ballot marking tool for the 2014 general election. The case is now on appeal before the U.S. Court of Appeals for the Fourth Circuit (*Nat'l Fed. of the Blind Inc. v. Lamone*, 4th Cir., No. 14-02001, notice of appeal filed, 9/22/14). In written arguments submitted to the Fourth Circuit, Maryland officials argued that the plaintiffs failed to demonstrate that the lack of an online ballot marking tool denied blind voters “meaningful access” to vote under the ADA.

**Cases Are ‘Bubbling Up.’** Inaccessible election sites and absentee ballots are common barriers for blind voters around the country. Advocates are struggling to get government entities to acknowledge accessibility issues and make them a priority, Larry Paradis, executive di-

## Online Voter Registration



rector at Disability Rights Advocates in Berkeley, Calif. told Bloomberg BNA Jan. 8.

“It takes a lot of effort to get people organized around the issues and assert their rights to independent voting,” he said. “And the cases are just bubbling up.”

The U.S. Department of Justice is expected to issue in early 2016 regulations on how governments can meet their website accessibility obligations under the ADA (20 ECLR 1711, 12/9/15).

Those regulations may lead to an increase in litigation by providing a roadmap for potential plaintiffs as to what is or is not a violation of the ADA, Disability Rights Ohio attorney Kristen Henry told Bloomberg BNA Jan. 11.

A decision in the *Hindel* case, if issued, could also spark fresh litigation by setting a precedent for other blind users and advocates to pursue similar claims, said Henry, counsel for the plaintiffs.

Not everyone sees additional litigation as a certainty.

Disability rights attorney Lainey Feingold, of the Law Office of Lainey Feingold in Berkeley, Calif., told Bloomberg BNA Jan. 11 that although an increase in litigation may follow from the *Hindel* case, it is also possible that governments will take preventive action by making their voter websites accessible.

“Hopefully when there’s a high profile case like this, states and counties will become more proactive and look to see if their sites and voting systems are accessible,” she said.

**Keyboard, CAPTCHA Barriers in Ohio.** A review of Ohio’s voter change of address form indicates two major issues, Ryan Jones, senior trainer at Freedom Scientific Inc., a screen reader developer based in St. Petersburg, Fla., told Bloomberg BNA Jan. 11.

First, the online form is not programmed in a manner that allows sight-impaired users to locate the form on the webpage and submit information with a keyboard. Second, the form contains an anti-spam technology called CAPTCHA (Completely Automated Public Turing Tests to Tell Computers and Humans Apart) that displays distorted phrases or images that users must replicate prior to submitting online forms or transactions.

Jones said that these two features of the Ohio website make it inaccessible to sight-impaired users.

These problems generally can easily be fixed without changing the way the website looks, Jones said. “It’s what is behind the scenes that causes the problems.”

Consultants are analyzing how to make the appropriate changes to the Ohio website, Mike Brickner, senior policy director of the ACLU of Ohio, told Bloomberg BNA Jan. 7.

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**Ohio, Others Making Site Repairs.** The Ohio Secretary of State's office says it is working to make its website accessible in time for the March 15 primary election.

"We have been working for nearly a year now to make improvements to our website that would make it ADA compatible and we're expecting to launch the new pages before the March 15th primary," a spokesperson for the Ohio Secretary of State told Bloomberg BNA Jan. 7. "I'm not sure on the exact launch date yet, but I believe we are close to a very effective upgrade."

Elsewhere across the country, eight ACLU affiliate offices are working with state officials to make their voter websites more accessible, according to Mizner. The states are Delaware, Minnesota, Missouri, Nevada, Utah, Virginia, Washington, as well as Ohio.

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