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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-



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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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