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VIA ELECTRONIC SUBMISSION

National Institute of Standards and Technology
100 Bureau Drive
Gaithersburg, MD 20899

Public Comments on Draft of *Promoting Access to Voting: Recommendations for Addressing Barriers to Private and Independent Voting*

The Alabama Disabilities Advocacy Program (ADAP) appreciates the opportunity to comment on the National Institute of Standards and Technology (NIST)'s Draft Report on *Promoting Access to Voting: Recommendations for Addressing Barriers to Private and Independent Voting*, as set forth by Executive Order (EO) 14019, Promoting Access to Voting.

ADAP serves as the federally mandated protection and advocacy system for the state of Alabama. Our mission is to protect the rights of Alabamians with disabilities through individual representation, systemic litigation, education, and outreach. As part of this mission, ADAP provides assistance and representation to individuals with disabilities seeking access to the polls. ADAP also monitors procedures in probate courts and polling places throughout the state to safeguard the fundamental right of individuals with disabilities to cast a private and independent ballot.

Overall, ADAP believes this draft report is a good start in addressing access to the vote for people with disabilities. However, it is problematic that the draft available for public comment is incomplete. At the very least, all definitions, appendices, and the executive summary should have been made available for public comment, in addition to what has been released. ***In reviewing the draft report, ADAP strongly supports the public comment submitted by the National Disability Rights Network (NDRN), providing a line-by-line analysis with recommended edits.*** We take this opportunity to discuss broad recommendations for the draft report.

Election Security Has No Place In The Report

Reconsider frequent references in the report on election security concerns, as they fall outside the scope of this report as set forth by EO 14019. NIST must reduce the emphasis on elections security, which does not have a place in the report and cannot take priority over election accessibility for people with all types of disabilities. NIST should focus on recommending known solutions that address access barriers, including the availability of electronic ballot delivery for voters that need it now to ensure they can exercise their fundamental right to vote.

Personal Assistive Technology Is Not A Solution

The frequent references to assistive technology (AT) should acknowledge the difference between personal AT belonging to individual voters and the accessible technologies required to be provided by election administrators to ensure elections are accessible. Recommendations that include AT must acknowledge that voters should not be held responsible for providing their own AT, as not every voter may have the resources and some common forms of AT are barred for use in many polling places. For instance, optical character recognition software often recommended for ballot verification is typically loaded on smartphones, which often cannot be used in polling places or specifically to photograph a completed ballot.

Refrain From Using The Term “Remote Accessible Vote by Mail (RAVBM)”

This term typically describes something that would accurately be called Remote Accessible Ballot Marking. When a paper ballot must be printed by the voter and returned by mail it cannot be accessible remote voting. Including an unqualified “accessible” in the term RAVBM is inaccurate. It is unacceptable for this report to mislead election officials, voting jurisdictions, and other policy makers that only providing remote digital ballot marking is delivering fully accessible remote voting. Courts have consistently agreed that prohibiting voters with disabilities from using electronic ballot return is denying equal access to private and independent voting. And when voters covered by the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) can return ballots electronically, prohibiting voters with disabilities from doing so has been ruled discriminatory. If there is a reason to describe a process of digital blank ballot delivery with inaccessible return of a printed ballot (by mail or otherwise), then that process must have a more accurate name that does not suggest it is a fully accessible option.

Define The Legal Rights Of Voters With Disabilities

While the report demonstrates how access barriers in the electoral process fail to respect the dignity of Americans with disabilities, NIST must also stress that barriers to a private and independent vote, equal access, and integrated settings are violations of the federal laws that protect the rights of people with disabilities. The final report should provide a fundamental framework for understanding the basic civil rights of voters with disabilities to equal access to vote privately and independently. The report currently provides a cursory overview of applicable statutes and does not provide any information about the myriad of court decisions, binding settlement agreements, and the like that provide a robust understanding of what those laws mean and how they directly impact legal rights for voting accessibility. This legal underpinning, including relevant litigation decisions, is critical for inclusion in the final report. In fact, this legal framework is of greater importance to the report than lengthy descriptions of ballot marking devices (BMDs) or the Voluntary Voting System Guidelines (VVSG) 2.0.

Define Voting As Marking, Verifying, and Casting

The voting process should be carefully defined throughout the report to acknowledge that voting is done in three parts - marking, verifying, and casting of the ballot. Voting systems cannot be considered accessible, and people with disabilities will not be able to vote privately and independently, unless all three steps are made accessible. No voting systems should be recommended in this report that do not provide a person with a disability the ability to accessibly mark, verify, and cast a ballot.

Make Concrete, Actionable Recommendations

The report should strive to make bold, concrete recommendations designed to have a direct impact on accessibility. Most of the current recommendations are process in nature, such as forming work groups, supporting development of technical assistance materials, conducting research, etc. While these recommendations are good, they do not propose actions that will directly increase accessibility.

Most would take extended time to yield results and results would be limited in scope (individual jurisdictions opting to avail themselves of materials). Voters with disabilities are done waiting for actions that improve accessibility. Decades of undelivered promises of accessibility require bold systemic change recommendations. Examples of recommendations included in NDRN's detailed comments are establishing and funding a National Voting Access Research Center to tackle the issue of accessible paper verification and paper handling mechanisms for BMDs and directing the US Election Assistance Commission (EAC) and Access Board to issue guidelines to prevent segregated voting where all voters hand-mark paper ballots and only a few people with disabilities use the "segregated" BMD.

Engage The Disability Community As Primary Stakeholders

The EO directed this report to identify access barriers and recommend solutions to those barriers. The disability community is the stakeholder group that will directly gain or lose access as a result of report recommendations. Input from disability and accessibility experts/advocates must be considered with due diligence and rejected only when justification can be provided. The final report must guard against overinfluence of input from stakeholders whose interest and expertise are not disability and accessibility. Far greater resources/expertise is devoted to cybersecurity than accessibility in all aspects of election work. NIST must commit to collaborating with disability and accessibility experts to craft a final report that is not rejected out-of-hand by those it is designed to help.

Refrain From Overstating The Impact of Current Technologies and the VVSG 2.0

Finally, the report also must not overstate the effectiveness of current voting technologies, like BMDs, in providing access to a private and independent vote and the effectiveness of VVSG 2.0 to ensure development of accessible voting technologies. Paper based voting systems are not fully accessible. VVSG 2.0 does not ensure a private and independent ballot for all voters in a fully integrated experience that respects the dignity of the voter and the secrecy of the ballot. NDRN and many other disability rights organizations have cautioned that no voting system currently in widespread use is fully accessible to all voters and submitted public comments opposing adoption of VVSG 2.0, as it falls far short of its intended purpose to establish guidelines to ensure accessible voting systems. While NIST played a role in the development of VVSG 2.0, using this report to promote NIST's work is inappropriate. Any discussion of VVSG 2.0 needs to be carefully vetted as terms like "will ensure" are inaccurate and misleading. The following limitations of the VVSG need to be clarified:

- The VVSG only applies to in-person voting systems, remote voting systems are not covered. Any statements about VVSG need to carefully separate in-person voting from all other voting.
- VVSG only provides standards for required access features that the in-person voting system must be able to deliver. Even when a system is able to deliver required access features, that does not mean it will be configured or deployed to actually do so. Many current "accessible" voting systems are configured and/or deployed in ways that negate available access features, and VVSG 2.0 does nothing to change that.
- VVSG 2.0 as a whole, because of significantly increased security requirements, will ensure increased reliance on paper based voting (and expanded use of hand-marked paper ballots) which will have a negative impact on accessibility.

Summary

ADAP understands that the barriers facing voters with disabilities are many, complex, and present in every aspect of the electoral process with which voters interact. Drafting a report that captures all of these barriers and proposes solutions to them is an immense undertaking. While this draft report is a promising start to capturing all of these barriers and proposing recommendations to mitigate them, edits are warranted to strengthen the report.

Just as America's elections are only as strong as their ability to hear the voices of all Americans, the *Promoting Access to Voting: Recommendations for Addressing Barriers to Private and Independent Voting* report is only as strong as its ability to acknowledge the expertise of people with disabilities.

Thank you for the opportunity to comment on this important draft report. If you have any questions, please contact Madison Ard via telephone at 251-362-4363 or email at mard@adap.ua.edu.

Sincerely,

Madison Ard
Voting Rights Fellow

Selected Edits Related to Election Security

Line 187 Text Box: 5. Accessibility **MUST BE OF EQUAL IMPORTANCE AS CYBERSECURITY; CYBERSECURITY CANNOT COME FIRST AND ACCESSIBILITY BE DELIVERED ONLY AFTER SECURITY REQUIREMENTS ARE MET** [~~and cybersecurity must work together~~].

Line 218 Text Box: Design of security solutions **ARE PRIORITIZED OVER** [~~may not consider~~] accessibility **NEEDS**.

Rationale: The edits above are to stop continued statements about cybersecurity and accessibility "working together" which sound good but simply are not doable when paper ballots are required. It must be acknowledged that a security requirement for printed paper ballots makes accessible remote voting impossible to deliver. The aspirational goal must shift from cybersecurity and accessibility somehow coexisting to cybersecurity no longer being prioritized over accessibility. Both must be of equal importance and if electronic ballot return is the ONLY way to provide accessible remote voting, then that must be allowed to happen or policy makers must admit that security was prioritized over accessibility.

Line 565: Recommended actions for promoting accessible voting options at the national level (by federal agencies or other organizations). Insert new text below:

- **Commit to equalizing federal investment in voting accessibility to that currently invested in voting security through staffing levels within the EAC, NIST and CISA.**

Line 754: Developing accessible and secure methods for future voting. Future research should explore how to continue to [~~securely~~] integrate next generation technology into the voting process. For example, electronic ballot return **IS CURRENTLY NECESSARY TO** [~~would~~] overcome many barriers faced by voters with disabilities **WHEN VOTING REMOTELY**. [~~However~~] It is vital that research **IMPROVE** security **TO THE MAXIMUM EXTENT POSSIBLE FOR ELECTRONIC**

BALLOT RETURN WHILE MAINTAINING ACCESSIBILITY. [continue as electronic ballot return systems are being implemented.]

Rationale: Clarifies the goal for R&D is to ensure accessibility with the maximum level of security possible rather than provide as much accessibility as is possible within the security constraints established as a higher priority.

Line 1105: Although electronic return methods currently exist **THAT WOULD ELIMINATE ACCESS BARRIERS FOR REMOTE VOTING, [several] security [challenges and] concerns HAVE BEEN PRIORITIZED OVER ACCESSIBILITY PREVENTING WIDESPREAD USE. [should be addressed when expanding the use of electronic returns to ensure these methods are secure enough to confidently use to vote.]**

Rationale: Line 1105 statement inappropriately prioritizes security over accessibility (e.g., a known solution to an access barrier is prohibited because of security concerns). If this is the only way to provide access the question to be addressed should be how to make it as secure as possible so that voters who must have it to vote privately and independently are not disenfranchised. The recommended edits are intended to provide a factual description of the current access barrier which is that security concerns prevent widespread use of electronic ballot return despite the fact that is the only known option for providing accessible ballot verification and casting for remote voting for voters with print disabilities.

Line 1154: **ENSURE AN ACCESSIBLE ELECTRONIC RETURN OPTION IS AVAILABLE TO VOTERS WITH PRINT DISABILITIES FOR ACCESSIBLE VERIFICATION AND CASTING OF THE MARKED BALLOT. AN APPROPRIATE FEDERAL AGENCY (EAC, NIST AND/OR ACCESS BOARD) SHOULD IDENTIFY ACCEPTABLE SECURITY PROTOCOLS FOR ELECTRONIC BALLOT RETURN TO ENSURE VOTERS WITH PRINT DISABILITIES CAN VERIFY AND CAST THEIR VOTE PRIVATELY AND INDEPENDENTLY. [Research is needed to explore how to expand options to support electronic ballot return.]**

Rationale: Line 1142 statement is expanded to include entire voting process rather than partial process ending with ballot marking. It is unacceptable to ignore the access barriers for ballot verification and casting just because the solution raises security concerns. Line 1154 recommendation for research is changed to a declarative statement that an accessible means of verification and casting a remote ballot must be available to voters with print disabilities. Asking voters with print disabilities to continue to give up their civil right to vote privately and independently while patiently waiting for "research" to identify something "secure enough" for electronic ballot return is not an acceptable recommendation. That continues the status quo for the last two decades. There MUST be an accessible option provided now with research focused on improving security without denying access while that research is occurring.