

DISABILITY RIGHTS CENTER - NH

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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

Disability Rights Center-NH (DRC-NH) 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.

DRC-NH is the federally designated Protection and Advocacy agency for New Hampshire authorized by federal statute to protect the civil rights of individuals with disabilities. As a designated Protection and Advocacy agency, DRC-NH has a federal mandate, to ensure the full participation in the electoral process for individuals with disabilities, including registering to vote, casting a vote, and accessible polling places. DRC-NH worked with the NH Secretary of State and a coalition of blind and vision impaired voters on advocacy on implementation and accessibility improvements to NH's accessible ballot marking device known as the One4all. Most recently, DRC-NH worked to increase the accessibility of absentee voting for voters with print disabilities and make the NH Secretary of State's website fully accessible for blind and vision impaired voters.

Overall, DRC-NH believes this draft report is a good start in addressing access to the vote for people with disabilities. In reviewing the draft report, *DRC-NH 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.

Opportunity For Public Comment On The Report

It is problematic that the draft report 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 order to allow the public to fully understand and comment on the 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 voters with disabilities. NIST should focus on recommending known solutions that address access barriers, including the availability of electronic ballot delivery for voters that need it to ensure they can exercise their fundamental right to vote privately and independently.

For example (new language in *italics*):

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.~~

Personal Assistive Technology Is Not A Solution

The frequent references to assistive technology (AT) must distinguish 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 are not responsible for providing their own AT, as not every voter may have the resources. Additionally, some common forms of AT are barred for use in many polling places. For instance, optical character recognition software that could be used 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 UOCAVA voters in 26 states are permitted to return their ballots electronically, prohibiting voters with disabilities from doing the same is 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 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 but 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.

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. 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 unless it allows a voter with a disability 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 to jurisdictions that opt to avail themselves of technical assistance materials. Voters with disabilities are done waiting for actions that improve accessibility. Decades of undelivered promises of accessibility require bold systemic change recommendations. NDRN's detailed comments include many helpful specific recommendations, such as 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 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 contains specific recommendations and strategies to overcome the barriers identified in the draft report..

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. As the draft report acknowledges, paper based voting systems are not accessible (Line 327 states "the use of paper is a barrier"). 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. The guidelines fall short of its intended purpose to establish standards to ensure the accessibility of 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.

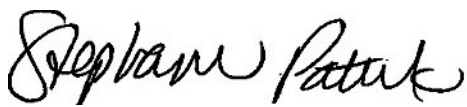
Summary

DRC-NH 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 James Ziegler at (603) 228-0432 or jamesz@drcnh.org.

Sincerely,

A handwritten signature in black ink that reads "Stephanie Patrick". The signature is written in a cursive, flowing style.

Stephanie Patrick
Executive Director