



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

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VIA ELECTRONIC SUBMISSION

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The Disability Law Center (DLC) 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.

The DLC is Utah's Protection and Advocacy agency. The agency is a private, non-profit organization. Our mission is to enforce and strengthen laws that protect the opportunities, choices, and legal rights of Utahns with disabilities. Our services are available statewide and free of charge, regardless of income, legal status, language, or place of residence. Because our time and money are limited, the DLC focuses on cases that can help as many Utahns with disabilities as possible now and in the future. While we cannot assist everyone, we will at least offer all those who contact us information and/or referral options.

In accordance with our federal mandate to "ensure the full participation in the electoral process for individuals with disabilities, including registering to vote, casting a vote, and accessing polling places" under the Help America Vote Act, the DLC is the leading expert on access to the vote for Utahns with disabilities. As such, we worked with a hospital to overcome coronavirus-related health and safety concerns, allowing an elderly patient to cast their ballot in the 2020 election. We also filed a complaint against a county whose only voting center was closed. The alternative ballot-drop was almost completely inaccessible to voters with mobility or visual impairments. Additionally, we asserted the position of the ballot-marking device did not offer sufficient privacy. In response, the county agreed to staff the office, offer curbside voting, and purchase a privacy screen for the ballot-marking device.

Finally, the DLC successfully advocated for the ability to ask for a reasonable accommodation to voting by mail during early voting and on election day during COVID-19. We also regularly train poll workers on issues such as signage, layout, accommodations for voters with disabilities, and assisting voters with ballot-marking devices. Additionally, we have helped local governments provide the election information in Braille and other alternative formats. Lastly, the DLC partnered with Utah County to make the sign-up process for their electronic remote voting pilot project more accessible.

Overall, the DLC 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. *After reviewing the draft report, the DLC 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. Although electronic return methods currently exist that would eliminate access barriers for remote voting, security concerns have been prioritized over accessibility preventing widespread use. For example, last year the Utah State Legislature removed language from an election cleanup bill calling for a study of the opportunities and challenges (including security) associated with various vote-from-home options after objections from the security community.

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. This is particularly troubling in a state, like Utah, where all registered voters receive a paper ballot by mail, and most vote by mail. 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.
- Even with a ballot-marking machine, making the text bigger may not make it big enough to read easily. Also, audio instructions for using the keypad to navigate a ballot on the screen are complex and hard to remember. Additionally, the keypad does not follow the standard layout to which many voters who have low vision or are blind are accustomed. If these are some of the challenges encountered by voters used to finding their way around obstacles like these every day, imagine the frustration felt by volunteer poll workers - with little or no training - who are asked to help. Sadly, the DLC has encountered each of these scenarios as we have monitored polling places on election day. This is why a system should be tested for accuracy in capturing voter intent and for ease-of-use, both in recording votes and verifying selections by the full range of voters and election workers, including those with disabilities.
- The DLC also shares the National Disability Rights Network's worry that VVSG 2.0 will lead to greater segregation of voters because of its failure to require more than one accessible station per polling place. The assumption that a majority of voters will hand mark their ballots could mean too few accessible machines. If so, poll workers might have trouble describing or activating the accessible features or may go so far as to discourage or prevent use of the machine. Sadly, the DLC has encountered each of these scenarios as we have monitored polling places on election
- 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

The Disability Law Center 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 questions or would like more information, please feel free to contact us.