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VIA ELECTRONIC SUBMISSION

U.S. Election Assistance Commission
1335 East-West Highway, Suite 4300
Silver Spring, MD 20910

Public Comments on Voluntary Voting System Guidelines 2.0 Requirements

The National Disability Rights Network (NDRN) appreciates the opportunity to comment on the draft Voluntary Voting System Guidelines (VVSG) 2.0 Requirements. Voting is a fundamental right, and ensuring that the vote is accessible for all voters with disabilities through these new guidelines is of critical importance.

NDRN is the non-profit membership organization for the federally mandated Protection and Advocacy (P&A) and Client Assistance Program (CAP) systems for individuals with disabilities. The P&As and CAPs were established by the United States Congress to protect the rights of people with disabilities and their families through legal support, advocacy, referral, and education. P&As and CAPs are in all 50 states, the District of Columbia, Puerto Rico, and the US territories (American Samoa, Guam, Northern Mariana Islands, and the US Virgin Islands), and there is a P&A and CAP affiliated with the American Indian Consortium which includes the Hopi, Navajo, and San Juan Southern Paiute Nations in the Four Corners region of the Southwest. Collectively, the P&A and CAP Network is the largest provider of legally based advocacy services to people with disabilities in the United States. Through the Protection and Advocacy for Voter Access (PAVA) program, created by the Help America Vote Act (HAVA), the P&As have a 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”¹ and are the leading experts on access to the vote for people with disabilities in the United States.

Although NDRN continues to support the US Election Assistance Commission (EAC) in navigating a complex and necessary balance between election accessibility with election security in VVSG 2.0, it must be stressed that HAVA is not, and was never intended to be, election security legislation. HAVA created the EAC and the VVSG to ensure that all voters

¹ <https://www.congress.gov/107/plaws/publ252/PLAW-107publ252.pdf>

would be able to privately and independently vote and have a clear mandate regarding federally enforceable election accessibility. Unfortunately, VVSG 2.0, in its current form, falls far short of ensuring access for voters with disabilities and a private, independent vote for all. VVSG 2.0's requirements represent a slight improvement over the requirements included in VVSG 1.1. However, the requirements' focus on increased election security will result in decreased accessibility when implemented. Significant changes **must be made** to VVSG 2.0 to prevent irreparable harm to access to the vote for all eligible Americans.

VVSG 2.0 Favors Security Over Accessibility

VVSG 2.0's accessibility standards that require voters, regardless of disability, to be able to mark, verify, and cast a ballot privately and independently are meaningless given that fully accessible voting using a paper ballot standard has yet to be achieved in practice, and VVSG 2.0's new security requirements amount to a federal requirement for paper ballots. Paper is intrinsically inaccessible to people with many types of disabilities, including blindness, low vision, limited manual dexterity, and print disabilities.² Widespread implementation of market-ready, fully accessible paper ballot voting systems that truly deliver non-discriminatory, accessible voting is simply not achievable within the foreseeable future. Essentially, the extensive security requirements in VVSG 2.0 that mandate a printed paper ballot as the only accepted ballot of record and the bans on Internet and wireless connectivity within a complete voting system create a noticeable imbalance in VVSG 2.0's priorities regarding security and accessibility.

Recommendation: VVSG 2.0 must be refocused around HAVA's explicit mandate for accessible voting and avoid security recommendations preventing private and independent voting. To do so, VVSG 2.0 must adopt the following recommendations, including a rollback of mandatory paper ballots and blanket bans on Internet and wireless connectivity.

Discriminatory Impact & Segregated Voting Systems

The phrase "without discrimination" was removed from Principle 5 in VVSG 2.0, in essence eliminating any attempt to prevent discriminatory impact on voters with disabilities. This shift, coupled with VVSG 2.0's new emphasis on election security, allows for voting systems in which all voters will be expected to hand-mark a paper ballot, with the mere exception of one accessible voting device available per precinct. Voting systems that assume the majority of voters will hand-mark their ballots and provide a bare minimum solution for citizens with disabilities are an irrefutable form of segregation, which is unequal and discriminatory. In practice, segregated voting systems are plagued with barriers for voters with disabilities. Examples of these barriers include voting stations that are less likely to be set up to ensure voter privacy, voting stations that are inaccessible for wheelchair users, voting stations that have no headphones readily apparent for audio balloting, or voting stations that are not even turned on for voters to use.³

² Print disabilities is a term that encompasses disabilities that make it difficult or impossible to access standard printed text. These include blindness or visual impairments, physical disabilities that limit manual dexterity (e.g., cerebral palsy, hand tremors, quadriplegia), and certain learning disabilities.

³ <https://www.gao.gov/assets/690/687556.pdf>

Recommendation: VVSG 2.0 must clearly and unambiguously state a position that segregated voting systems are discriminatory and not acceptable for a VVSG 2.0 approved voting system. All voters using the same ballot marking interface ensures non-discrimination. Suggested edits and additions are as follows:

Page 134, lines 3553-3556

Principle 5 EQUIVALENT AND CONSISTENT VOTER ACCESS

All voters can **equitably** access and use the voting system regardless of their abilities, **without discrimination**.

Page 137, lines 3656-3672

5.1-F – Accessibility and non-discrimination documentation

As part of the overall system documentation the manufacturer must include descriptions and instructions for all accessibility features **and deployment procedures required to ensure non-discrimination** that describe:

- recommended procedures that fully implement accessibility for voters with disabilities, **including ensuring non-discrimination and accessible voting that is not segregated from the overall voting process**.
- how the voting system supports those procedures **and how many accessible systems need to be available to ensure equal access and non-discrimination**.

Discussion

The purpose of this requirement is for the manufacturer not simply to deliver system components, but also to describe the accessibility **and equal access** scenarios they are intended to support, so that election offices have the information they need to effectively make accessibility features **equitably** available to voters with disabilities **and to ensure non-discrimination in voting**.

External reference: WCAG 2.0 /Section 508/[Americans with Disabilities Act](#)

Prior VVSG source: VVSG 1.1 - 3.3.1.a.i

Related requirements: 7.3-N - Instructions for voters

7.3-O - Instruction for election workers

Threats to a Private Ballot

Segregated voting systems are also a threat to the secrecy of the ballot, a foundational concept in the design of American democracy. Many market-ready or currently deployed ballot marking devices print a ballot that is substantially different in appearance from a hand-marked ballot and may even be tallied and stored separately. In some cases, these differing ballots are even re-copied by election personnel onto a hand-marked ballot. It should be noted that every voter participating in in-person voting, in a given jurisdiction, voting by the same method is the best line of defense against threats to a secret ballot, including widespread use of accessible voting stations rather than segregating voters through the use of an inaccessible, non-universal hand-marked ballot. At the very least, ballot secrecy and voters' privacy cannot be ensured by a voting system unless all ballots produced are comparable or there is a sufficient number of all types of ballots produced. VVSG 2.0 currently has no technical standards to address ensuring ballot secrecy and voter privacy while allowing for segregated voting systems.

Recommendation: At a minimum, VVSG 2.0 should require ballots produced by all available method of ballot marking within a voting system to be substantially similar, including ballots that are hand-marked and produced by an accessible voting system. Otherwise, there should be a requirement for sufficient numbers of each ballot type to be produced to ensure voter privacy. Suggested standard:

Page 215, line 5899

**10.2.2-G – All voted ballots produced are comparable
All methods of voting within a voting system must produce voted ballots of comparable size, shape and layout or the manufacturer must provide procedures to be used to ensure sufficient numbers of distinguishable ballots of each type are cast to ensure ballots cannot be associated with individual voters.**

Need for Upgrade Requirements

VVSG 2.0 has no requirement for jurisdictions to ever upgrade to an accessible voting system that meets the standards for accessible ballot marking, verification, and casting that will ensure a private and independent vote. In voting systems that allow for hand-marked ballots with only one accessible voting station per precinct, there is currently no requirement to ever upgrade the accessible voting equipment, such as a ballot marking device, even when some or all other voting equipment is upgraded. Jurisdictions that allow for segregated voting will be able to use outdated, failing systems in perpetuity, even while upgrading all other aspects of the voting system. Further, jurisdictions that do update their accessible voting devices will not be obligated to acquire technology certified to the VVSG 2.0 access standards. Jurisdictions may still purchase a voting system previously certified to outdated standards and that does not ensure private and independent marking, verification, and casting of ballots. Voting systems will never become fully accessible without any sort of mechanism to ensure that they are upgraded to meet current VVSG 2.0 standards, whenever significant upgrades are made to other parts of the voting system. This oversight in the existing requirements essentially ensures upgrades and the most modern systems to all voters and election personnel, except people with disabilities who will live with technology that is already 15 years old at best in perpetuity. Levied directly at people with disabilities, this is an indisputable reminder that separate is never equal in the United States.

Recommendation: VVSG 2.0 must require accessible ballot marking, verification, and casting be available by a date certain or when any significant voting system change is implemented, whichever is earlier.

Page 145, lines 3850-3871

6.2-A - Voter Independence

Voters must be able to mark, verify, and cast their ballot or other associated cast vote records independently and without assistance from others.

1. If a voting system includes any features voters might use after casting a ballot, they must be accessible.

2. When any substantive updates are made to any voting system, the component(s) that provide voting accessibility must meet this requirement. All accessible voting systems must meet this requirement if readily achievable or by July 1, 2025 whichever is earlier.

Discussion

This requirement ensures that voters can vote with their own interaction preferences and without risk of intimidation or influence.

HAVA Section 301 (a)(1)(C) mandates that the voting system be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters. This requirement directly addresses this mandate.

Examples of features for voters after casting their ballot include E2E system ballot tracking features, forms or notices to cure problems with a vote-by-mail ballot, and sites to learn whether a provisional ballot was accepted for counting.

External reference: HAVA/[ADA](#)

Prior VVSG source: 7.8.5.a, 3.2.3.1.b

Related requirements: 5.1-D – Accessibility features 3868 5.1-E – Reading paper ballots 3869 2.2-A – User-centered design process.

Remote Voting

Elections in the United States are no longer tied to one day in November at a local polling place. The past several years have seen rapid expansion of absentee voting, vote by mail, and broad reforms for remote voting. Given the COVID-19 global pandemic, remote voting's advance has accelerated exponentially. Consequently, VVSG 2.0 must clearly, unequivocally, and consistently address accessibility requirements for remote voting, as is legally required under the ADA. Attachment A provides an overview of the legal right to accessible absentee voting developed by the Washington Lawyers' Committee. Without VVSG's guidance on this issue, remote voting options will continue to be primarily based on mailed paper ballots for hand-marking, and state and local jurisdictions will continue to be vulnerable to litigation that will be necessary to determine if equal access and effective communication were provided, as required by the ADA.

Recommendation: VVSG 2.0's introduction must be revised and expanded to clearly describe how remote ballot marking must be provided to ensure accessibility of paper-based vote by mail systems. Attachment B provides specific recommendations for revisions to the Introduction section (pages 12-13) designed to address the myriad of issues related to accessible absentee, vote by mail, and remote voting.

Summary

NDRN understands that the EAC has faced intense pressure from cybersecurity advocates to adopt voting system standards that ensure a maximum level of security. However, election security cannot and must not be allowed to supersede the critical importance of election accessibility, as mandated and protected by existing federal law. For this reason, NDRN adamantly opposes VVSG 2.0 in its current form. These requirements will be used widely by manufacturers of voting technology in the development of their product offerings for the foreseeable future and will be used in the majority of states to guide purchase and implementation of voting systems. Unless VVSG 2.0 can be re-focused to provide security to the greatest extent possible while actually meeting HAVA's mandate for access, privacy, and independence, this new set of requirements will effectively create new barriers in equal access to the vote and pave the way for segregation and discrimination against Americans with disabilities.

Stated simply, the current 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 supports the need to ensure America's elections are accurate, fair, and represent the will of the people. However, we cannot ensure that America's elections are accurate, fair, and represent the will of the people, if we fail to let all eligible Americans exercise their fundamental right to vote.

Thank you for the opportunity to comment on this important set of requirements. If you have any questions please contact Michelle Bishop at 202-408-9514 x130 or michelle.bishop@ndrn.org.

Sincerely,



Curtis L. Decker
Executive Director