ACLU

To: National Institute of Standards and Technology, Department of Commerce
From: American Civil Liberties Union (Alie Bornstein, Lindsay Dreyer, Susan Mizner, Casey
          Smith, Ihaab Syed, Samantha Westrum)
Re: Promoting Access to Voting (NIST-2021-0003); Request for Information regarding
          Executive Order 14019 § 7 (Ensuring Equal Access for Voters with Disabilities); Docket
          Number 210608-0123
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Submitted electronically through www.regulations.gov

Introduction

The American Civil Liberties Union (ACLU) greatly appreciates the opportunity to respond to this Request for Information from the National Institute of Standards and Technology. The list of twenty questions covers a lot of ground. Some barriers to voting for people with disabilities are well-known and long-standing. Other barriers are emerging as states change their standards for voting and especially their requirements for voting absentee. Finally, there are likely barriers we simply do not yet know about, because the available data only captures the experience of a subset of the disability community.

What we do know is that, despite data indicating that people with disabilities are invested in the political process,[1] they register to vote, and then turn out to vote at lower rates than the general population.[2] NIST and the federal government should make it a priority to identify and eliminate accessibility barriers.

Below, we have included information and recommendations organized around these goals. In Section I, we discuss voting accessibility barriers and proposed recommendations to address those barriers with respect to receiving information about voting and voter registration, in-person voting, and absentee voting.
- The Accessing Information about Elections and Voting subsection addresses questions 2-5, 7, 9-11;
- the In-person Voting subsection addresses questions 1, 2, 5, 11-12, and 15-20; and

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[1] *See, e.g.,* Douglas Kruse & Lisa Schur, Disability and Voting Accessibility in the 2020 Elections: Final Report on Survey Results Submitted to the Election Assistance Commission, at 13, https://smlr.rutgers.edu/sites/default/files/Documents/Centers/Program_Disability_Research/Disability_and_voting_accessibility_2020_election_Final_Report_survey_results.pdf ("People with disabilities expressed more political interest than did people without disabilities in 2020.")

[2] *Id.*; *see also* Lisa Schur & Meera Adya, Sidelined or Mainstreamed? Political Participation and Attitudes of People with Disabilities in the United States 94 Soc. Sci. Q. 811, 836 (2013).

- the Absentee Voting subsection addresses questions 1-5, 7, 8, 11, 13, 14, and 19-20.

In Section II, we address questions 5 and 7 as part of a discussion on how gaps in the current research have left us with an incomplete understanding of the voting experience of people with disabilities. We also propose several ways to help fill those gaps, so that we can better understand the full scope of problems that people with disabilities face in the voting process and take action to resolve these problems.

Throughout this memo, we have highlighted some key problems and barriers (which include known legal violations) before proposing potential remedies and recommendations.

I.   Barriers to Voting

A.   Accessing Information about Elections and Voting

The first step to participating in elections is getting access to information: information on the substance of elections (candidates, ballot measures, issues) and information on the process of voting (when and how to register to vote, as well as when, where, and how to cast a ballot).

In this day and age, most people turn to the internet for such information.[3] The internet has been a boon for election officials and people with disabilities alike. People with disabilities who have broadband can get information at the touch of a button, without having to leave their homes, and election officials can communicate information to an enormous number of people easily, quickly, and at low cost. The internet has also simplified the registration process; 40 states and the District of Columbia now make it possible to register to vote and update registrations online.[4]

For most people with disabilities, the internet has enabled them to participate in voting and civic life to a greater degree than ever. However, the internet also creates unique and significant barriers to portions of the disability community, often referred to as those who have 'print disabilities.' Voters with print disabilities tend to experience the greatest challenges to voting privately and independently, as they have historically needed to receive in-person assistance to read and/or mark their ballots. Print disabilities make it difficult or impossible to manipulate a paper ballot due to difficulty seeing, physically handling, or understanding standard printed text. These include blindness or visual impairments, physical impairments that limit

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[3] According to Pew Research Center, 86% of U.S. adults get their news from a smartphone, computer, or tablet. Elisa Shearer, *More than eight-in-ten Americans get news from digital devices,* PEW. RSCH. CTR. (Jan. 21, 2021), https://www.pewresearch.org/fact-tank/2021/01/12/more-than-eight-in-ten-americans-get-news-from-digital-devices/.

[4] *Online Voter Registration,* National Conference of State Legislatures (Apr. 6, 2021), https://www.ncsl.org/research/elections-and-campaigns/electronic-or-online-voter-registration.aspx.

manual dexterity (e.g., cerebral palsy, hand tremors, quadriplegia), and certain learning disabilities.

Section 508 of the Rehabilitation Act of 1973 provides that federally funded agencies must make their websites accessible and usable for people with disabilities.[5] Courts have upheld state and municipal entities' responsibility to maintain accessible web content.[6] Federal regulations require these agencies' electronic content to conform to Web Content Accessibility Guidelines (WCAG) 2.0 level A and level AA Success Criteria.[7] The Department of Justice has required many entities covered by Title II to comply with WCAG 2.0 level AA as part of consent decrees and settlement agreements.[8] Yet, far too many federal and state websites, including crucial election websites, remain inaccessible.

Problems & Barriers:

1. Inaccessible websites: If state and local governments have not properly designed their websites to be compliant with Section 508 of the Rehabilitation Act, and WCAG 2.0 AA standards, then people with disabilities who use assistive technology[9] can only access those websites with great difficulty, if at all. A 2015 study by the ACLU and Center for Accessible Technology[10] found that of the twenty states that provided online voter registration at the time, only one had made the process fully accessible for screen reader users.[11] ACLU's more recent analysis reveals that of the forty states that have adopted online voter registration systems, few have been optimized for use with screen readers.

2. Inaccessible online voter registration forms: The Election Assistance Commission (EAC) has the responsibility for maintaining and providing the national mail voter registration form. States must accept this form as voter registration. But even the EAC has been unable to post a fully screen reader accessible form, in violation of section 508 of the Rehabilitation Act. This issue is more fully addressed in

3. Complicated language: Many government communications are obtuse, complicated, and challenging to follow, even for people who are fluent in English. It may be difficult to

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[5] 29 U.S.C. § 794(d); 36 C.F.R. § 1194, App. A (2017) (defining "Information and Communication Technology" covered under Section 508 to include "Web sites").

[6] *E.g.*, *Sierra v. City of Hallandale Beach, Fla.*, 996 F.3d 1110, 1114 (11th Cir. 2021) (vacating the district court's order to dismiss a lawsuit brought by a deaf individual who alleged that the city violated the ADA when it published videos on its website without closed captions).

[7] *Id.*

[8] *E.g.,* DEPARTMENT OF JUSTICE, CIVIL RIGHTS DIVISION, SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND MCLENNAN COUNTY, TEXAS UNDER THE AMERICANS WITH DISABILITIES ACT (2015) https://www.ada.gov/mclennan_pca/mclennan_sa.html.

[9] The most-commonly used assistive technologies include screen readers, screen magnifiers, and voice recognition software.

[10] ACLU, *Access Denied: Barriers to Online Voter Registration for Citizens with Disabilities* (Feb. 2015), https://www.aclu.org/sites/default/files/field_document/021915-aclu-voterregonline_0.pdf.

[11] Many people with visual impairments use "screen readers" to navigate websites. Screen readers are a type of assistive technology that translate text and navigation features to speech.

impossible for people with intellectual disabilities, learning disabilities, and people for whom English is a second language.

4. Limited Access for People who are Deaf: People in the deaf community, whose primary language is sign language, cannot access critical voting information.

5. Limited Access to Broadband: Given poverty rates, a not-insignificant number of people with disabilities still do not have easy access to the internet.[12]

Recommendations & Remedies:

1. All government websites—federal, state, and local—have legal obligations to comply with WCAG 2.0 AA access standards. The federal government should enforce these obligations with carrots, sticks, or both. For example, the Accessible Voting Act offers funding to states to help them hire experts to ensure website compliance and accessibility.[13] The Federal government could also withhold election funds to any state or local government that has not made its website fully compliant with WCAG 2.0 AA standards.

2. Online information should include videos in ASL to convey the key election information, including how to register to vote, how to vote absentee, how to vote in person (and where to find a polling place) as well as information on ballot measures and key results.

3. Both physical and digital media providing election information or services should use plain (easy-to-understand) language and be made available in accessible formats. The federal government has issued Plain Language Guidelines[14] that can serve as a resource, and several online tools are available to check reading levels.

4. The federal government should initiate work to treat the internet like a public utility, with subsidies for low-income households.

5. Election departments should not abandon more traditional means of communication—radio, TV, print media—for the internet. Until we have universal broadband, people without internet access will still rely on other methods of communication.

Note: Candidates for political office can also do a better job of considering the needs of voters of disabilities, doing outreach to these constituencies, and making their campaigns accessible to them. A 2019 audit of then-current presidential campaign websites found that none were fully accessible.[15] Even by the month before the 2020 presidential election, neither major

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[12] When compared with those who do not have a disability, disabled adults are roughly 20 percentage points less likely to say they subscribe to home broadband and own a traditional computer, a smartphone or a tablet." Monica Anderson & Andrew Perrin, *Disabled Americans are less likely to use technology*, PEW. RSCH. CTR. (Apr. 7, 2017), https://www.pewresearch.org/fact-tank/2017/04/07/disabled-americans-are-less-likely-to-use-technology/.

[13] Accessible Voting Act, H.R. 7755, 116th Cong. § 224 (2020).

[14] *Federal plan language guidelines*, plainlanguage.gov, https://www.plainlanguage.gov/guidelines/.

[15] Abigail Abrams, *None of the 2020 Presidential Candidates' Websites Are Fully Accessible to Disabled Voters,* TIME (June 26, 2019), https://time.com/5613806/2020-presidential-candidates-ada-website-accessibility/.

party candidate had remediated all of the accessibility problems on their websites.[16] The
National Center for Independent Living has put together a guide campaign staff can use to make
their election offices and volunteering opportunities more accessible, with specific guidance on
how to accommodate volunteers with various disabilities.[17]

B. In-person Voting

Many people with disabilities prefer voting in person. In an EAC survey conducted after
the 2020 election, nearly half of all people with disabilities stated they would prefer to vote in-
person in the next election.[18] In-person voting is part of the community experience of exercising
one's civic duties. And, for people with print disabilities, it may actually be *more* accessible
than voting absentee. Accessible voting machines often provide the best option to vote privately
and independently for people who are blind, have dyslexia, or have mobility limitations in their
hands or arms. However, while many people with disabilities would like to vote in-person,
numerous barriers exist. Below we enumerate some of the primary barriers to in-person voting
for people with disabilities, along with potential solutions.

1. *Voter identification requirements*

Problems & Barriers:

While voter identification has become a common prerequisite to casting a ballot, NIST
should be aware that people with disabilities are less likely than the general population to have
the necessary ID. According to the Pew Charitable Foundation's Elections Performance Index,
7.2 percent of registered voters with disabilities do not have a photo ID, compared to 4.5 percent
of voters without disabilities.[19] People with disabilities are less likely to drive and therefore less
likely to have a drivers' license, the most common form of ID.[20] People with disabilities are also
among the poorest in the country[21] and therefore more likely to find fees associated with

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[16] Yelena Dzhanova, *Trump and Biden's campaign websites are not entirely accessible for voters with disabilities, potentially shutting out 61 million people,* BUS. INSIDER (Oct. 6, 2020), https://www.businessinsider.com/trump-and-biden-have-inaccessible-campaign-websites-report-2020-10.

[17] National Council for Independent Living, *Including People with Disabilities in your Political Campaign: A Guide for Campaign Staff*, https://ncil.org/campaign-guide/ (last visited July 16, 2021).

[18] *See supra* note 1, at 12.

[19] S.E. Smith, *Voting is already hard for people with disabilities. Voter ID laws make it even harder.*, VOX, (Apr. 1, 2016, 2:10 PM), https://www.vox.com/2016/4/1/11346714/voter-id-laws-disabilities.

[20] *Id.*

[21] Based on American Community Survey data, in 2018, "an estimated 26.0[%] of non-institutionalized [people] aged 21 to 64 years with a disability in the United States were living below the poverty line" compared to 10% of people without a disability. *Disability Statistics*, Cornell Uni., https://www.disabilitystatistics.org/reports/acs.cfm?statistic=7; https://www.disabilitystatistics.org/reports/acs.cfm?statistic=7. Based on the same data, in 2018, the "median annual household income of households that include any working age (ages 21-64) people with a disability in the

obtaining an alternate state ID to be burdensome. Some states have appropriately responded to these obstacles by offering free Voter ID cards. But, even here, people with disabilities may encounter barriers when obtaining a free ID requires traveling to a location that is inaccessible, or accessing a website that is not accessible to people who use assistive technology.[22]

Recommendations & Remedies:

1. States should eliminate the photo ID requirement, or allow for alternatives to photo ID requirements, to ensure equal access for people with disabilities.
2. States should expand free Voter ID services, including providing door-to-door services as a reasonable accommodation where necessary to provide access to individuals with disabilities.
3. The Federal government could offer assistance—both technical and financial—to help people obtain ID. The most common barriers are the cost of obtaining a birth certificate or naturalization papers, along with assistance with navigating the application process.

2.   *Transportation*

Problems & Barriers:

The lack of affordable, accessible transportation options for people with disabilities, makes it difficult to impossible for voters with disabilities to participate in many parts of civic life – from joining public informational and election events, to obtaining the identification forms necessary to register to vote, to getting to the polls to cast their ballots. "People with disabilities are less likely than those without disabilities to have a car they can drive (70% compared to 90%) or to use their own or a family vehicle (83% compared to 93%)."[23] Public transportation is not accessible to many people with disabilities. Even in New York City, often regarded as a public transportation mecca, only one quarter of the city's subway stations are wheelchair-accessible and elevator maintenance in stations that do have elevators is insufficient.[24] In rural parts of the country, voters with disabilities may have no access to public transportation at all, let alone paratransit options.[25] This means that people with disabilities must rely on paratransit, where available, taxis, rideshare, or the generosity of friends, family or neighbors to get to polling stations.

United States in 2018 was $ 46,900" and "median annual household income of households that do not include any working age (ages 21-64) people with a disability in the United States in 2018 was $ 74,400." *Id.*

[22] *See supra* note 19.

[23] *Supra* note 1, at 14.

[24] Caroline Lewis, *NYC Transit Accessibility is Abysmal—Here's How Other Cities Do It Better*, GOTHAMIST (Mar. 6, 2020, 11:43 AM), https://gothamist.com/news/nyc-transit-subway-accessibility-other-cities.

[25] Paratransit includes buses, vans, or trains that are designed for wheelchair users or people with other mobility impairments.

Recommendations & Remedies:

1. One method to address transportation barriers is to reduce the need for transportation to the polls. Increased polling place saturation—ideally so that no one has to travel more than a half a mile to reach their polling place—would do much to reduce this barrier for people with disabilities, as well as improve access for everyone.
   a. The federal government should develop standards for polling place locations and saturation to guide states and localities.
   b. To address the increased staffing that additional polling places would require, the federal government should encourage state and local governments to modify the grueling hours required of poll workers. Allowing half-day service (still often eight hours), instead of the dawn-to-dusk requirements, would enable many more people to serve as poll workers, including many people with disabilities who would otherwise be denied that opportunity.
2. The federal government can urge states to encourage rather than prohibit 'souls to the polls' events, rideshares, volunteer rides, and accessible buses for the purpose of voting.
3. The federal government should recognize, and advertise, that prohibitions or restrictions on rides to the polls are likely to suppress votes from people with disabilities. Such prohibitions would run afoul of non-discrimination requirements under Title II of the ADA and Section 504 of the Rehabilitation Act. Both federal disability rights laws require equal access for people with disabilities to all government services, programs, and activities, including all aspects of the voting process.[26]

3. *Architectural inaccessibility*

Problems & Barriers:

Thirty-one years after the ADA was passed, polling places are still situated in buildings that are not architecturally accessible.[27] People with mobility and vision disabilities may

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[26] *See, e.g.*, 28 CFR § 35.130 ("[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."); DEP'T OF JUSTICE, CIV. RIGHTS DIV., *The Americans with Disabilities Act and Other Federal Laws Protecting the Rights of Voters with Disabilities*, ADA.GOV (Sept. 2014), https://www.ada.gov/ada_voting/ada_voting_ta.htm ("Title II of the ADA requires state and local governments ('public entities') to ensure that people with disabilities have a full and equal opportunity to vote. The ADA's provisions apply to all aspects of voting, including voter registration, site selection, and the casting of ballots, whether on Election Day or during an early voting process."); 34 CFR § 104.4 ("No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance.").

[27] GAO, *Voters with Disabilities: Observations on Polling Place Accessibility and Related Federal Guidance*, (Dec. 4, 2017), https://www.gao.gov/products/gao-18-4; GAO, *Voters with Disabilities: Additional Monitoring of Polling Places Could Further Improve Accessibility* (Sept. 30, 2009), https://www.gao.gov/products/gao-09-941.

encounter barriers at any – and many – points in their route: from the parking lot without a designated accessible parking space, to the route leading to the entrance, the entrance itself, and the route to the polling station. Often, poll workers fail to clearly mark accessible routes, even where they are available. Additionally, many polling places are located in regions that have narrow or now sidewalks, broken pavements, and no curbcuts, making the route to a polling place hazardous. Where there is limited public transportation, voters may be unable to get near, let alone navigate into, their voting locations.

Recommendations & Remedies:

1. The federal government should play a more active role in elevating the legal requirements for polling place accessibility. It should remind states and localities that placing a voting location for early voting or Election Day voting in an inaccessible site is a violation of the ADA, the Rehabilitation Act, and the Voting Accessibility for the Elderly and Handicapped Act of 1984 (VAEHA).[28]
2. While the ADA.gov website has extensive, and easily followed, information on how to ensure accessible voting locations, the Federal government could increase technical assistance and supports to states and localities, with access experts supporting polling place locators.
3. The federal government should increase monitoring and enforcement. NIST could 'crowd source' enforcement, by establishing a centralized hub for voters to report polling place barriers. Voters, particularly those with disabilities, could submit photos of and/or written or video reports describing the barriers they encounter with basic details of the location and date. After redacting personally-identifying details, this information could be made publicly available as part of a searchable complaints database, and could serve as the basis for federal and state enforcement.

4. *Long lines to vote*

Problems & Barriers:

Throughout the country, media has reported on long lines and huge wait times for people to be able to vote in person. Voters have seen wait times of over 10 hours, often late into the night. [29] In November 2020, approximately 16 million voters waited in line for more than 30

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[28] *See* note 26; *see also* DEP'T OF JUSTICE, CIV. RIGHTS DIV., *The Americans with Disabilities Act and Other Federal Laws Protecting the Rights of Voters with Disabilities*, ADA.GOV (Sept. 2014), https://www.ada.gov/ada_voting/ada_voting_ta.htm ("[The VAEHA] requires accessible polling places in federal elections for [] people with disabilities. Where no accessible location is available to serve as a polling place, voters must be provided an alternate means of voting on Election Day.").

[29] In November 2020, some Atlanta, GA voters had to wait 10+ hours to cast their ballots. Sam Levine, *More than 10-hour wait and long lines as early voting starts in Georgia,* THE GUARDIAN (Oct. 12, 2020), https://www.theguardian.com/us-news/2020/oct/13/more-than-10-hour-wait-and-long-lines-as-early-voting-starts-in-georgia.

minutes – the benchmark set by the Presidential Commission on election Administration.[30] Polling place closures, particularly in minority communities, and lack of appropriate resource allocation contribute to these long waits.   Long lines and long waits are challenging for any voter, but they pose a particular hardship for many people with disabilities.

People with chronic illnesses, in particular, may face significant barriers, because their disability is 'hidden,' so even at polling places that allow seniors and people with disabilities to jump the line, people with chronic illnesses will be overlooked. Chronic diseases affect approximately 133 million Americans, 40 million of whom are limited in their usual activities due to one or more chronic health conditions.[31] Limitations in "usual activities" include limitations in "work, school, play, or other activities such as needing the help of another person with personal care needs (e.g., eating, bathing, and dressing) or help in handling routine needs (e.g., shopping and household chores)."[32] Long lines and wait times of greater than 30 minutes are likely to dissuade, or prohibit altogether voting by people who have strength limitations due to disabilities. Long lines can be as great, or greater, a barrier to voting as any architectural barrier.

Recommendations & Remedies:

1. The federal government should be vocal about the fact that long lines will tend to screen out people with disabilities—including people with chronic illnesses, such as diabetes, multiple sclerosis, immune disorders, lung disorders, heart problems, and orthostatic disorders, in violation of the ADA and the Rehabilitation Act. Both federal laws require equal access for people with disabilities to all government services, programs, and activities and all programs and activities receiving federal funding, including all aspects of the voting process.[33]
2. State and local jurisdictions can reduce lines and wait times with
    a. increased saturation of polling stations,

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[30] *Voting in America: The Potential for Polling Place Quality and Restrictions on Opportunities to Vote to Interfere with Free and Fair Access to the Ballot*, *Before the H. Subcomm. On Elections of the H. Comm. On House Admin.* (June 11, 2021) (written testimony of Dr. Stephen Pettigrew), *available at* https://www.congress.gov/117/meeting/house/112747/witnesses/HHRG-117-HA08-Wstate-PettigrewS-20210611.pdf.

[31] Nat'l Health Council, *About Chronic Diseases* (2014), https://nationalhealthcouncil.org/wp-content/uploads/2019/12/AboutChronicDisease.pdf (based on the CDC's 2012 National Health Interview Survey data).

[32] CDC, *Summary Health Statistics for the U.S. Population: National Health Interview Survey*, 13 (2012), https://www.cdc.gov/nchs/data/series/sr_10/sr10_259.pdf.

[33] 42 U.S.C. § 12132; 28 CFR § 35.130 ("[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."); 29 U.S.C. § 794; *see also* DEP'T OF JUSTICE, CIV. RIGHTS DIV., *The Americans with Disabilities Act and Other Federal Laws Protecting the Rights of Voters with Disabilities*, ADA.GOV (Sept. 2014), https://www.ada.gov/ada_voting/ada_voting_ta.htm ("Title II of the ADA requires state and local governments ('public entities') to ensure that people with disabilities have a full and equal opportunity to vote. The ADA's provisions apply to all aspects of voting, including voter registration, site selection, and the casting of ballots, whether on Election Day or during an early voting process.").

b. increased opportunities for early voting, and

c. easy access to voting by mail.

3. The federal government could formalize the 30 minutes maximum wait time set by the Presidential Commission on Election Administration, and, again, offer both carrots and sticks to states and localities: offering more resources to jurisdictions that had long wait times, and assessing penalties for jurisdictions that have not taken remedial steps to reduce wait times.

4. The federal government should also remind state and local election departments that they have an obligation to provide reasonable modifications in their policies, practices and procedures to ensure that people with disabilities have equal access to their programs[34] – including voting.[35] One of the most straightforward modification would simply be to provide seating (especially seating indoors), for people who need or request it.

5. *Lack of poll worker training*

Problems & Barriers:

Voters with disabilities consistently report problems with poll workers. Poll worker training seldom includes sufficient disability access training. Poll workers often have so many other responsibilities that they are unable to pay sufficient attention to potential barriers. For example, poll workers may not be given the time, resources, or information on how to set up the voting location so that it has an accessible path of travel, privacy at the accessible voting machine, or wheelchair access at regular voting booths. Among the most common complaints is that poll workers do not know how to operate the accessible voting machines.

Poll workers may have an incomplete understanding of voters' rights and may infringe those rights, by, for example, requiring that voters declare that they have a disability before receiving assistance to read, mark, review, or cast their ballots[36] or by challenging people's ability to vote based on mental or intellectual disability.[37]

Recommendations & Remedies: The EAC could collect best practices from states and localities on poll worker training, and create an online library of training materials and videos.

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[34] *See, e.g.*, 28 CFR § 35.130(b)(7).

[35] *See supra* note 26.

[36] Voters with disabilities have a right to receive assistance from the person of their choice, as long as that person is not an agent of their employer or union. 52 U.S.C. § 10508. These voters are not required to disclose their disability or declare that they have one in order to receive such assistance.

[37] A number of states specify the limited grounds that can serve as bases for voter challenges. *See* Bazelon Center for Mental Health Law, et al., *Vote. It's your right.* (2020), http://www.bazelon.org/wp-content/uploads/2020/10/Bazelon-2020-Voter-Guide-Full.pdf. Moreover, challenged voters have the right to cast a provisional ballot under HAVA. EAC, *Quick Start Management Guide: Provisional Ballots* (Oct. 2008), https://www.eac.gov/sites/default/files/document_library/files/Quick_Start-Provisional_Ballots.pdf.

C.   Absentee Voting

Options to vote from home offer perhaps the greatest access to the ballot for the greatest number of people with disabilities than any other current approach. Because people do not have to leave their homes to vote, they also do not have to find transportation to and from a polling station, they do not have to navigate inaccessible polling locations, or wait in long lines, or deal with poorly trained poll workers. In short, they can bypass virtually all of the most common barriers that in-person voting creates. In addition, these voting options provide more flexibility for when people can vote, both in terms of which day and what time of day. Voters are not constrained by the time limits inherent in in-person voting. Finally, it is also easier to schedule a time to get trusted assistance, should a person need it. A trusted family member or friend may not be available to provide that assistance on election day, and voters who need assistance, may have to seek help from poll workers or others unknown to them. Unsurprisingly, in the most recent EAC survey after the 2020 election, under half of respondents with disabilities stated that their preference would be to vote in-person in the next election.[38]

But, even absentee voting can present obstacles. Because absentee voting has traditionally been done with paper-only ballots, it poses unique barriers for the subset of the disability community with print disabilities.

And, perhaps because of the ease that voting absentee provides, several states have passed, or proposed, legislation that imposes additional restrictions and requirements on whom can apply to vote absentee, how to qualify, and how to cast an absentee ballot. Most of these new requirements will make it harder to vote absentee, and their burdens will fall disproportionately on people with disabilities. To the extent that these hurdles impinge on access to the ballot for people with disabilities, they may also be violations of federal disability rights laws.

1.   *Information on how to request an absentee ballot*

Problems & Barriers:

As detailed above in Section I.A, most information on elections, including how to request an absentee ballot, is provided online. Voters who do not have internet access, or who encounter inaccessible websites, may not be able to obtain this information. Additionally, the process for requesting an absentee ballot may have multiple steps, and may have to be repeated for each election. Given that special elections, primary elections, and run-off elections are often

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[38] *Supra* note 1, at 12.

scheduled at odd times, it can be hard for any voter, but especially voters with cognitive disabilities, to remember to apply for an absentee ballot each time.

Recommendations & Remedies:

1. As detailed above, accessible websites, and information in multiple formats, will go far to address barriers to information.
2. States should provide voters the option to apply for a permanent absentee ballot. This will avoid inadvertently disenfranchising people with cognitive disabilities, or people who just have a lot on their plates.

2. *'Excuse' requirements*

Five states currently conduct elections entirely by mail, which means that all registered voters automatically receive an absentee ballot without an application.[39] Twenty-nine states and the District of Columbia offer "no-excuse" absentee voting, which means a voter can request an absentee ballot without needing a reason to do so.[40] The sixteen remaining states, about one third of all states, require voters to provide "an excuse" for why they cannot vote in person and need an absentee ballot.[41] Each state requiring an excuse permits absentee voting for people with an illness or disability.[42]

Problems & Barriers:

Requiring an excuse to vote absentee reduces voter turnout among people with disabilities. The voter turnout rate among individuals with disabilities is *19 percent lower* in states that require an excuse to vote absentee, than in states with mail-in voting systems.[43] One explanation for this disparity is that, among people reporting vision, hearing, cognitive, or mobility impairments, only 58 percent stated that they identified as a person with a disability.[44] Others may have disabilities, but may be reluctant to report it on a public form.[45] Individuals

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[39] Nat'l Conference of State Legislatures, *VOPP: Table 1: States with No-Excuse Absentee Voting* (May 1, 2020), https://www.ncsl.org/research/elections-and-campaigns/vopp-table-1-states-with-no-excuse-absentee-voting.aspx.
[40] *Id.*
[41] *Id.*
[42] Nat'l Conference of State Legislatures, *Voting Outside the Polling Place: Absentee, All-mail and Other Voting at Home Options*, (Sept. 24, 2020), https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx#excuses.
[43] Lisa Schur & Douglas Kruse, *Disability and Election Policies and Practices*, THE MEASURE OF AM. ELECTIONS 214 (Barry C. Burden & Charles Stewart eds., 2014).
[44] Lisa Schur, Mason Ameri, & Meera Adya, *Disability, Voter Turnout, and Polling Place Accessibility*, SOC. SCI. QUARTERLY 1385 n.4, *available at* https://smlr.rutgers.edu/sites/default/files/Documents/Centers/Program_Disability_Research/Disability%20Voter%20Turnout%20Polling%20Place%20Accessibility.pdf.
[45] *Id.* at 1385.

with disabilities are least likely to vote in states where they are required to report a disability in every election in which they wanted to vote absentee.[46]

Recommendations & Remedies:

1. States with absentee voting systems should eliminate excuse requirements. These screen out people who are eligible to vote absentee, and reduce voter participation, especially among people with disabilities.
2. As recommended above, states should allow individuals to apply for a permanent absentee ballot.

3. *Voter Identification requirements*

Like in-person voting, online ballot request portals often require that voters possess a state-issued identification, such as a driver's license. As discussed above, such requirements disproportionately burden people with disabilities. We would propose the same recommendations and remedies discussed above.

4. *Signature matching*

The majority of states conduct signature matching in order to verify voters' identities.[47] When states participate in signature matching, election officials receive mail-in ballots and examine signatures on both the ballot and other documents, comparing the voter's signature to that on file.

Problems & Barriers:

Signature requirements impose challenges for voters whose signature may have changed due to age or disability, whose legal names have changed or who have hyphenated or long names, and for voters with vision or dexterity disabilities.[48] Furthermore, 25 states currently do not have statutes in place allowing voters to make corrections when their signature is missing or mismatched.[49] Some voters may only hear about the signature discrepancy after their vote has been rejected.[50]

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[46] *Id.*
[47] Nat'l Conference of State Legislatures, *VOPP: Table 14: How States Verify Voted Absentee Ballots* (Apr. 17, 2020), https://www.ncsl.org/research/elections-and-campaigns/vopp-table-14-how-states-verify-voted-absentee.aspx.
[48] Lila Carpenter, *Signature Match Laws Disproportionately Impact Voters Already on the Margins*, ACLU (Nov. 2, 2018 2:45 PM), https://www.aclu.org/blog/voting-rights/signature-match-laws-disproportionately-impact-voters-already-margins.
[49] *Supra* note 49.
[50] *Id.*

Recommendations & Remedies:

1. States should allow voters to use physical or virtual signature stamps,[51] or waive the signature requirement for them altogether.
2. States should provide any voter whose signature is challenged with notice and an opportunity to cure. The opportunity to cure the problem should be a simple, straightforward process. For voters with disabilities, election departments have a legal obligation to inform them of their right to reasonable modifications in the curing process, including assistance from election department staff in verifying their identity and that they cast the ballot in question.

5. *Inaccessible paper ballots*

Traditionally, all absentee voting has been done by a paper ballot. The election department mails the ballot to the voter, the voter fills it out with pen and ink, and either mails the ballot back or drops it off at a secure site.

Problems & Barriers:

People with print disabilities may not be able to vote privately or independently using a paper absentee ballot because they cannot see or mark it by themselves. This problem is further detailed in the ACLU's recommendations for improving access to voting by mail.[52]

Recommendations & Remedies:

Several states have implemented Remote Access Vote-By-Mail (RAVBM) systems in their elections.[53] The federal government should encourage more states to adopt RAVBM systems. RAVBM allows voters with disabilities to download a ballot, read and mark it using their own assistive technology, and print it out. The voter can then mail the ballot to their County Elections Office or drop it off in person.

RAVBM is not the same as internet voting. Internet voting entails voters receiving, filling out, and returning their ballots online. RAVBM sends voters a ballot via the internet, but only allows voters to download and mark their ballot using assistive technology if they are

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[51] Colorado Secretary of State, *Signature Verification Guide* (Sept. 13, 2018), https://www.sos.state.co.us/pubs/elections/docs/SignatureVerificationGuide.pdf.
[52] ACLU, *Let People with Disabilities Vote: Recommendations to Improve Access to Voting by Mail*, https://www.aclu.org/other/let-people-disabilities-vote.
[53] *See, e.g.,* Elaine Kamarck et al., *Voting by Mail in a Pandemic: A State-by-State Scorecard* (Oct. 2020), https://www.brookings.edu/research/voting-by-mail-in-a-pandemic-a-state-by-state-scorecard/.

disconnected from the internet.[54] This approach not only protects voters' personally identifiable information, but also prevents tampering with election results. Voters using RAVBM complete their ballot on their own computer, but submit a paper copy either by mail or by delivery to a ballot box. In states that have initiated pilot programs for internet voting, the only groups permitted to vote online include overseas military and people with disabilities.[55] In counties where RAVBM is available, all absentee voters may use the program.[56]

A Note on Internet Voting and Cyber Security

Voting via the internet would, of course, provide the greatest ease and access for people with disabilities, as well as for virtually everyone who has internet access. We recognize that internet voting comes with security risks. Votes cast via the internet have given rise to several security threats during previous election cycles.[57] We do not currently have a safe and secure way to vote by the internet. But the controversies and tensions between security and access need not stop communication between the cyber security and disability communities. The disability community wants access to a private and independent vote. We also want our votes to count.

The ACLU has two reminders as these discussions occur:

1. The disability community expects, and federal law would require, that the security standards that apply to accessible voting be equal to those that apply to the general population. Accessible methods of voting should not require greater levels of security, nor should our votes be subjected to lesser levels of protection.
2. Federal disability rights law requires disability access in all federal and state contracts for voting systems and cyber security systems. Section 508 of the Rehabilitation Act of 1973 provides that any information and communication technology (ICT) "procured, developed, maintained, or used by [federally funded] agencies" must conform to accessibility standards.[58] Covered ICT encompasses "[i]nformation technology and other equipment, systems, technologies, or processes, for which the principal function is the creation, manipulation, storage, display, receipt, or transmission of electronic data and information."[59] In short, any new voting software or voting systems that provide updated

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[54] Common Cause and Verified Voting, *Election Security and an Accessible Vote By Mail Option*, 1-2 (May 21, 2020), https://verifiedvoting.org/wp-content/uploads/2020/06/Election-Security-and-Accessible-VBM.5.20-1.pdf.
[55] Miles Parks, *States Expand Internet Voting Experiments Amid Pandemic, Raising Security Fears*, NPR, (Apr. 28, 2020) https://www.npr.org/2020/04/28/844581667/states-expand-internet-voting-experiments-amid-pandemic-raising-security-fears.
[56] *See, e.g.,* County of Santa Clara Registrar of Voters, *Accessible Voting/RAVBM*: *Accessible Voting for Citizens with Disabilities* (last accessed July 16, 2021), https://sccvote.sccgov.org/vote-mail/accessible-voting-ravbm.
[57] Darren Samuelsohn, *Military, overseas votes raise risk of hacked election*, POLITICO, (Nov. 1, 2016, 05:06 AM), https://www.politico.com/story/2016/10/elections-hacked-military-overseas-vote-230567.
[58] 29 U.S.C. § 794d; 36 C.F.R. § 1194, App. A (2017).
[59] 36 C.F.R. § 1194, App. A (2017).

or greater security also have the obligation to meet the most current standards for voting, internet, and software accessibility.

II.   Gaps in Current Research Identifying Barriers to Accessible Voting

Although we are aware of many barriers to voting for people with disabilities, the data that is the basis for this knowledge is still under-inclusive and limited. The definition for disability in federally-administered surveys is narrow, and fails to capture large portions of the disability population. In addition, few voting surveys fully capture disabled voters' experiences. Without better and more data, we are only capturing a portion of the barriers that voters with disabilities face. With appropriate data, researchers, advocates, and election officials would be able to make more informed, data-driven decisions aimed at improving electoral access for all voters with disabilities.

A.   Limitations of Existing Federal Surveys and Reports

Current surveys of people with disabilities. The federal government collects demographic data on people with disabilities in several large surveys, including the Census Bureau's American Community Survey (ACS). It also collects voting information in several surveys, including the voting supplement to the Current Population Survey (CPS), the Election Assistance *Commission (EAC) post-election surveys, and American National Election Survey (ANES).* Yet, each of these surveys has limitations in identifying barriers to voting for people with disabilities, and none use as an expansive a definition of disability as the one that is included in the Americans with Disabilities Act.[60]

- *American Community Survey (ACS).* Although the ACS does not collect voting-specific information, it has a very large sample size and collects likely the most comprehensive demographic information relevant to voting, including age, location, sex, race, education level, marital status, income, and occupation, for people with disabilities of any federal survey. In 2006, it began surveying individuals in institutional settings, such as nursing homes, in-patient hospice facilities, psychiatric hospitals, juvenile groups homes, and residential treatment centers, in which people with disabilities disproportionately reside. As such, the ACS has served as a critical tool for estimating the total population of eligible voters with disabilities, and describing relevant demographic characteristics of that population.[61] Unfortunately,

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[60] The ADA defines disability as "a physical or mental impairments that substantially limits one or more major life activities."

[61] *See, e.g.*, Lisa Schur & Douglas Kruse, *Projecting the Number of Eligible Voters with Disabilities in the November 2016 Election* (Aug. 11, 2016),

the ACS relies on a limited definition of disability, based on six questions identifying hearing, visual, cognitive, ambulatory, self-care, and independent living disabilities.[62] This definition excludes a broad swath of people with disabilities, such as the 40 million people with chronic illnesses who are limited in everyday activities, such as work, school, play, and household chores.[63]

- ***Current Population Survey (CPS) Voting and Registration Supplement.*** The CPS Supplement, which also has a large sample size and much relevant demographic information, does collect information regarding voter turnout and registration. The CPS Supplement gathers information about whether or not an individual voted or registered to vote and by what means they voted or registered. But, the CPS uses the same limited disability definition as the ACS does, and, unlike the ACS, does not survey individuals in institutional settings, who are disproportionately people with disabilities. Additionally, the CPS Supplement does not include an income measure. It has an earnings measure for those who are employed, but only applies to a fourth of the sample. Extensive income measures are asked about in the main CPS survey, in March of each year, but there is no overlap between the CPS Supplement and main survey samples.

- ***Election Assistance Commission (EAC) Surveys.*** The EAC contracted with Professors Lisa Schur and Douglas Kruse to conduct smaller-scale surveys specifically related to voter accessibility in 2012 and 2020. The 2012 survey examined polling place access, mail and absentee voting accessibility, and challenges in election administration, and was specifically geared toward helping officials adopt new voting technologies and address the needs of voters with disabilities. The 2020 survey collected information about voting difficulties, need for assistance in voting, voting independently, treatment by election officials, and access to voting information. The survey used the same six ACS questions but added a seventh question: "Do you have a long-term health problem or impairment that limits the kind or amount of work, housework, or other activities you can do?" Unfortunately, due to

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https://smlr.rutgers.edu/sites/default/files/Documents/Centers/Program_Disability_Research/Disability%20Electorate%20Projections%202016%20Elections.pdf (relying on ACS data combined with Census Bureau population projections to estimate the total number of people with disabilities who would be eligible to vote in the 2016 election and relevant demographic characteristics of that population).

[62] The ACS asks the following questions related to disabilities: (1) Is this person deaf or does he/she have serious difficulty hearing; (2) Is this person blind or does he/she have serious difficulty even when wearing glasses?; (3) Because of a physical, mental, or emotional condition, does this person have serious difficulty concentrating, remembering, or making decisions?; (4) Does this person have difficulty walking or climbing stairs?; (5) Does this person have difficulty dressing or bathing?; and (6) Because of a physical, mental, or emotional condition, does this person have difficulty doing errands alone such as visiting a doctor's office or shopping? *Data Sources: American Community Survey (ACS),* Disability Statistics, https://www.disabilitystatistics.org/sources-DS.cfm.

[63] Nat'l Health Council, *About Chronic Diseases* (2014), https://nationalhealthcouncil.org/wp-content/uploads/2019/12/AboutChronicDisease.pdf.

the survey's small sample size, state-by-state comparisons are not available, and the survey did not include institutionalized individuals.

- ***American National Election Survey (ANES)***. The ANES, sponsored by the National Science Foundation, includes a wealth of data on voting and predictors of voting, but captures very limited, non-representative information on disability. There are no general questions about disability – the survey only asks about disability in the context of not being employed. If a person is not employed, they are asked why they are not employed, and one option to respond to this question, is the person has a disability. As such the survey only collects disability information for the population of respondents who are not employed, and even then, respondents can self-select whether to provide this information.

Gaps in existing federal reports. A few additional federal studies have tried to assess voting accessibility for people with disabilities, but they have been limited in scale and scope. For example, the Election Assistance Commission (EAC) publishes an Election Administration and Voting Survey after every federal election, but does not make in-depth findings about accessibility. The Government Accountability Office (GAO) examined the accessibility of polling places in 2008 and 2016, but the sample sizes were small – and could not be used for state by state comparisons or in-depth analysis.[64]

In sum, there are no large-scale, federal surveys or reports that capture comprehensive voting and demographic information for the entire population of people with disabilities protected by the ADA. Without this information, we cannot understand the full scope of the barriers people with disabilities face in the voting process.

B.   Proposed Solutions to Address Existing Limitations in Research

The federal government could address these gaps in data is by (1) modifying current surveys; (2) creating a new national survey after every federal election; and (3) expanding objective assessments of voting accessibility after every national election.

1.   *Modify Existing Surveys*

- *Expand CPS Voting and Registration Supplement questions.* The Census Bureau should expand the Voting and Registration Supplement to include questions, posed to all voting-eligible respondents, about accessibility and barriers to voting. Specifically the Supplement should ask: whether the voter experienced any difficulties voting and, if so,

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[64] *Supra* note 28.

what type of difficulties the voter faced. In addition, the Supplement should add an income measure, since this information is highly relevant to voting behavior.

- *Include institutional group settings.* The CPS Supplement and EAC surveys should be expanded to include institutionalized persons or the federal government should create an independent survey of these institutions that includes questions about voter registration and turnout. Without such data, the current surveys miss critical information about a significant portion of the disability population, including the 1.3 million people living in nursing homes.[65]

- *Add a seventh disability question to the ACS and CPS to more accurately identify people with disabilities.* The suggested seventh question comes from the Election Assistance Commission's Election Administration and Voting Survey from 2012 and 2020, conducted by Professors Doug and Lisa Schur. These surveys used the six questions on disability included in the ACS and CPS, but also included a seventh question: "Do you have a long-term health problem or impairment that limits the kind or amount of work, housework, or other activities you can do?" This additional question captures people with disabilities associated with chronic illnesses and functional limitations, which may include as many as 40 million people.

- *Add comprehensive disability questions to the ANES.* The ANES definition of disability should conform with the definition used by the ACS and CPS, with the addition of the seventh question discussed above.

2.   *Conduct a Household Survey After Every National Election*

National elections every four years provide a clear moment for assessment and re-assessment. A nationwide household survey to evaluate voting experiences from the perspective of voters with and without disabilities, could be a key tool to improving voter access. Such a survey would allow states to improve their voting systems and would allow advocates, researchers, and election officials to better understand and address voting barriers. Surveying voter experiences after *each* federal election would allow states to measure progress of any new accessibility measures as well as track problems that may arise from changes in election administration.

To capture the most useful information on the types and severity of barriers to voting that people with disabilities face, such surveys should:

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[65] CDC, *Nursing Home Care* (March 1, 2021), *available at* https://www.cdc.gov/nchs/fastats/nursing-home-care.htm.

Survey a large enough sample size: Capturing statistically significant sample sizes in each state, ideally around 1000 respondents per state, allow elections officials to use survey findings to implement changes and track effects of state voting policies. And large sample sizes allow the results to be analyzed by race, income, and type of disability.

Use an expansive definition of disability: Survey questions should capture the broad swath of the public included in the definition of "disability" in the Americans with Disabilities Act, while also capturing enough detail about specific disabilities to account for the wide diversity of disabilities covered within that definition. A survey should reach enough individuals with each type of disability surveyed to come to statistically significant conclusions about voting accessibility for people with different types of disabilities.

Employ a mix of survey methods: Because people with disabilities are among the most isolated and hard to reach, using a mix of survey methods (phone, in-person, paper, and e-mail) will be key to obtaining an accurate reflection of the population

Include institutional settings: Because a large number of people with disabilities live in institutional settings, the survey should target such settings.

Focus questions on the functional requirements for voting: Survey questions should assess functional limitations related to voting in-person (e.g. waiting in line, finding transportation, communicating with a poll worker), voting absentee (e.g. manipulating a paper ballot, reading printed materials), registering to vote (e.g. accessing online information, using technology).

3. *Expand Objective Inspections of Polling Place Accessibility After Every National Election*

The Government Accountability Office (GAO) and the EAC have served critical roles in providing objective inspections of voting locations and voting administration. But they have had limited staffing and resources, and correspondingly limited data.[66] Leveraging crowd-sourced information, as well as increasing funding, frequency and breadth of these objective inspections would better identify – and thereby resolve – access violations and barriers.

- *Increase the frequency and breadth of existing GAO surveys.* The GAO should make an assessment of disability access in voting after *every* national election. Combining the objective data on polling place accessibility with voters' perspectives would provide a

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[66] For example, of the more than 230,000 polling places, the GAO was only able to survey a few hundred. U.S. Election Assistance Commission, *Election Administration and Voting Survey: 2018 Comprehensive Report* (June 2019), https://www.eac.gov/sites/default/files/eac_assets/1/6/2018_EAVS_Report.pdf.

powerful account of voting accessibility issues. Also, the GAO's findings could be expanded by surveying enough polling places to make statistically significant state-by-state findings. Such findings would allow election officials to make improvements to their voting systems.

- *Use GAO and EAC surveys to address other gaps in research.* Future EAC and GAO studies could also address several major gaps in existing research. For example, the GAO and the EAC did not examine the accessibility of vote-by-mail systems. The GAO and other federal entities could address this gap in research by examining each state's absentee ballot systems. Similarly, no federal research study has examined the accessibility of voter registration systems. Many states make information about voter registration available online, but because research shows that people with disabilities tend to use the Internet and technology at lower rates than the general population, it would be particularly useful to understand to what extent people with disabilities face barriers when registering to vote. Finally, the federal government does not compile information about what assistive voter technologies for voters with disabilities are available and effective, or about which technologies are used in which jurisdictions. That gap in existing information makes it more difficult for election officials, researchers, and advocates to implement and recommend improvements in technology. Moreover, the federal government could play a more active role in improving state election systems by centralizing information and best practices about assistive technologies in one place and making it widely available to state election officials.