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Comment from National Coalition on Accessible Voting (NCAV)

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General Comment

Please see the attached comments of the National Coalition on Accessible Voting (NCAV).

Attachments

NCAV Comments on EAVS Survey Final

NCAV Comments on EAVS Survey Final



January 15, 2023

U.S. Election Assistance Commission
633 3rd Street NW, Suite 200
Washington, DC 20001
Attn: EAVS

National Coalition on Accessible Voting Comments on 2024 Election Administration and Voting Survey (EAVS)

The undersigned organizations, members of the National Coalition on Accessible Voting, appreciate the opportunity to comment on the Election Assistance Commission (EAC)'s 2024 EAVS.¹ The National Coalition on Accessible Voting works to maintain and expand voting access for people with disabilities. NCAV supports federal, state, and grassroots efforts to ensure accessibility in all methods and aspects of the voting process, from registration to casting a ballot.

The EAVS provides the EAC with information from election officials about the voting process in their jurisdictions. The EAVS covers many aspects of voting, including voter registration, mail-in voting, in-person voting, ballot curing, voting systems, and others. According to the EAC, the EAVS provides “critical information ... about how federal elections are conducted.”² It helps policymakers and election officials alike conduct issue analysis, develop laws and policies, and determine how best to address systemic voting disparities.³

¹ Our comments focus on the EAVS and not on the 2024 Election Administration Policy Survey, although we do note a place where the Policy Survey contains information the EAVS does not.

² U.S. Election Assistance Commission, Election Administration and Voting Survey 2020 Comprehensive Report: A Report from the U.S. Election Assistance Commission to the 117th Congress I (Jun. 29, 2023), *available at* https://www.eac.gov/sites/default/files/document_library/files/2020_EAVS_Report_Final_508c.pdf [hereinafter “EAVS Report 2020”].

³ See EAVS Report 2020 at I (describing the various functions of the EAVS, emphasizing its role in informing election officials and policymakers’ future actions).

It is vital that the EAVS provide clear, actionable data on the experiences of voters with disabilities. People with disabilities continue to face significant barriers to voting.⁴ EAVS data on disability and accessibility could help inform policymakers and election officials of the extent and forms of these barriers. The 2024 EAVS' coverage of disability issues is limited, however. The EAVS rarely asks for enough information to allow the survey to express the state of voting accessibility in a district.

The NCAV strongly recommends that the EAC expand the EAVS' coverage of disability. We encourage the EAC to consult with accessibility experts to revise the EAVS' questions or add additional questions that will enhance the survey's coverage. Disability rights advocacy organizations are known accessibility experts with respect to their constituents; many would be willing and interested in consulting with the EAC.

Additional comments address specific questions in the EAVS. On the eve of the 2024 election, clear and actionable data may pave the way for future innovations that increase access to voting for all.

Comments on 2024 EAVS Questions

We recommend that instructions be added to the options in Questions A11f-A12f which clarify that they refer to situations in which a voter was sent a confirmation notice or removed from the rolls because the voter was either specifically declared incompetent *to vote* under state law, or because state law does in fact deny the right to vote to people under guardianship or conservatorship.

In the majority of states, people with disabilities retain the right to vote even when under a plenary guardianship or conservatorship.⁵ The instructions we propose would therefore explain

⁴ Lisa Schur, Douglas Kruse, Mason Ameri & Meera Adya, Disability and Voting Accessibility in the 2022 Elections 5, 14 (Jul. 2023), available at https://www.eac.gov/sites/default/files/2023-07/EAC_2023_Rutgers_Report_FINAL.pdf (study by Rutgers and commissioned by the EAC finding that one in five voters with disabilities "needed assistance or had some difficulty in voting" in 2022, which is between twice and three times the rate of voters without disabilities).

⁵ Autistic Self Advocacy Network, Your Vote Counts: What are the laws in my state? (2019), available at <https://autisticadvocacy.org/policy/toolkits/voting/> (listing the states where certain types of guardianship or guardianship/conservatorship itself removes the right to vote, and showing that the majority either allow voting or require a specific declaration from the court that a person cannot vote); Bazelon Center for Mental Health Law, Autistic Self Advocacy Network, National Disability Rights Network, Schulte Roth & Zabel LLP, and Akin Gump Strauss Hauer & Feld LLP, Vote. It's Your Right: A Guide to the Voting Rights of People with Mental Disabilities 13-14 (2020), available at <https://www.bazelon.org/wp-content/uploads/2020/10/Bazelon-2020-Voter-Guide-Full.pdf> (explaining in detail how state laws deal with mental incompetence, noting the approach used by a 22-state majority is that the right to vote is retained unless a court specifically declares that the person is incompetent to vote, with caveats, and 10 states have no restrictions at all).

to respondents how “declared mentally incompetent” is defined, and whether such a declaration impacts a person’s right to vote.

Many election officials may assume that people with disabilities under a guardianship or conservatorship are inherently unable to vote due to this even if it is not legally the case. Providing instructions in a mandatory survey that clarify these issues may minimize the likelihood of election officials misfiling or miscounting voters in the survey and in the future.

We recommend that Section C add questions which request data on: (1) how many voters (non-UOCAVA voters) opted to receive ballots electronically; (2) how many voters with disabilities (in the thirteen states that allow it) opted to return ballots electronically.

Although the term “mail voting” in EAVS Section C covers electronically transmitted ballots, there are no questions in the EAVS which ask respondents how many people received ballots electronically. There is also no question which asks respondents to provide information on the state’s method for delivering an electronic ballot (whether by email or via online portal or another method). EAVS data on the number of people who receive electronic ballots would aid election officials in designing future elections. Information on what method was used to transmit the ballot could provide valuable context for election officials looking to implement electronic ballot delivery. We therefore recommend that questions be added to Section C asking how many non-UOCAVA voters received their ballots electronically, as well as a question asking what method was used to deliver the ballots.

Thirteen states allow voters with disabilities to return their ballots via at least one electronic method.⁶ Nonetheless the EAVS only covers mail-in voting methods, and this is the primary survey used to create the EAVS’ reports and data. The Election Administration Policy Survey’s Question 32 concerns electronic ballot return, but unlike the EAVS it does not give the respondent the ability to show how many ballots have been returned this way. We therefore recommend, to avoid an undercount of voters with disabilities, that questions be added under Section C that account for the thirteen states that allow some non-UOCAVA voters to use this method.

We recommend that D7 include other demographic characteristics of poll workers other than age, such as for example race, ethnicity, language, and disability.

Question D7 asks for the ages of poll workers recruited to each respondent’s voting jurisdiction. We recommend that the EAC add questions which ask for the race, ethnicity, language, and disability status of poll workers. We recognize that adding additional data will increase the

⁶ National Conference of State Legislatures, Electronic Ballot Return (Jan. 19, 2023), <https://www.ncsl.org/elections-and-campaigns/electronic-ballot-return-internet-voting>.

collection burden on election officials. However, election officials could collect demographic information, if they do not do so already, in applications to become poll workers. EAVS data, to provide the EAC with a better picture of the 2024 voting landscape, should express not just the ages of poll workers but also their other characteristics. Additionally, collecting this data may allow election officials and the EAC to better advocate for increasing the diversity of poll workers. Diverse poll workers improve the quality and accessibility of elections and better reflect the communities they serve.⁷

We recommend that Questions F3-F8 be revised to specifically identify accessible voting equipment, across all types and purposes used by the jurisdiction to comply with federal law.

For questions F3-F8 respondents are asked to report the number and type of equipment used in the following categories:

- Direct-recording electronic (DRE) voting equipment, not equipped with a VVPAT;
- DRE voting equipment, equipped with a VVPAT;
- Electronic system that produces a paper record but does not tabulate votes (often referred to as ballot marking device);
- Scanner (optical/digital) that tabulates paper records that voters mark by hand or via a ballot marking device;
- Hand-counted paper ballots;
- E-pollbooks, a type of hardware, software, or combination of both, used in place of a traditional paper poll book that lists all registered voters.

The NCAV recommends that the list categories be clarified or separated to account for the purposes of these machines with respect to meeting accessibility requirements. The lists mix equipment used for voting itself (marking, verifying, and casting a ballot) tabulating ballots, and the non-voting function of checking in. The list does not do so in a way that provides helpful information about what equipment is used to meet which legal requirements for accessibility.

⁷ See Bridgett King, *Descriptive Representation in Election Administration: Poll Workers and Voter Confidence*, MIT Election Data Science Lab (May 17, 2018), <https://electionlab.mit.edu/articles/descriptive-representation-election-administration> (article describing results of paywalled study by same author, which found that black voters who interacted with a black poll worker were more confident that their ballot had been counted accurately); *UnidosUS and Power the Polls Partner to Recruit More Poll Workers Before Midterm Elections*, UnidosUs (Aug. 4, 2022), <https://unidosus.org/press-releases/unidosus-and-power-the-polls-partner-to-recruit-more-poll-workers-before-midterm-elections/> (“In its partnership with Power the Polls, UnidosUS will focus on recruiting more poll workers – particularly those who speak Spanish – all across the country, to ensure that voting is accessible to all eligible voters, including to those who may require assistance in Spanish”); *National Disability Rights Network and Power the Polls Partner to Recruit More Poll Workers Before Midterm Elections*, National Disability Rights Network (Oct. 4, 2022), <https://www.ndrn.org/resource/powerpollspr/> (“People with disabilities need to be represented in all parts of the voting process, including as poll workers ... They bring a unique knowledge of the accessibility needs many in the community face ...”).

DRE devices and ballot marking devices (BMD) may or may not meet current Voluntary Voting System Guidelines (VVSG 2.0) accessibility requirements for accessible ballot marking, verification, and casting.

Typically, for example, scanners do not support accessible ballot marking, verification, or casting; instead, they only provide ballot tabulation. However, in some cases, there are scanners with a BMD attached which might be used to provide accessible ballot marking verification and casting. It is not clear how election officials are supposed to report these hybrid devices. The list also includes equipment used to hand count paper ballots. Hand counting does not seem to involve “equipment” that can be identified by number, make and model.

The NCAV is also concerned that the EAVS questions do not lead to a report that accurately reflects the equipment and accessibility status of each state. In the current EAVS, voting equipment categories are aggregated to provide a national report of equipment used by state and territory. The equipment tables in the most recent report⁸ indicate that several states and territories only have scanners which would be used for ballot tabulation. Thus, it appears those states/territories provide no accessible voting systems as required by law. Other data sources suggest those jurisdictions do have equipment they identify as providing accessibility, but the EAVS does not reflect this.

There is an additional option on F3-F8 that asks respondents to report if each category of equipment noted above is used for “in-precinct accessible voting for voters with disabilities.” This is a bit different from the checkbox used in past surveys but will still not provide needed accessibility data unless it is aggregated and revised. “In-precinct” may or may not account for all accessible voting options a jurisdiction provides to meet legal requirements.

Without revision, we are concerned the EAVS report will not provide helpful information about what equipment is being used to meet legal accessibility requirements across the country. We recommend the EAVS collection of voting equipment data be revised to ensure the EAVS report can provide information on the number and type of accessible voting systems deployed by each jurisdiction.

This could be accomplished by adding separate or sub-categories for “accessible” options for each appropriate category. For example, one category could be “All BMDs,” and that category could include “Accessible BMDs” as another category or subcategory. The same could be done for both “DREs without VVPAT” and “DREs with VVPAT.” The Scanner category could have an additional sub-category of “Scanner with attached accessible ballot marking, verification, and casting.” Another option would be to add one new category for accessible ballot marking,

⁸ EAVS Report 2020 at 51-54.

verification and casting and request respondents to report the number of those devices. For all options, the issue of duplicated counts will need to be addressed.

The undersigned members of the NCAV appreciate the EAC's commitment to revising and improving the EAVS survey and its data. For more information on the NCAV and these comments please contact Kelly Israel, the NCAV's Coordinator, at kelly.israel_contractor@ndrn.org.

Sincerely,

Undersigned National Coalition on Accessible Voting (NCAV) Members:

American Association of People with Disabilities (AAPD)

The Arc of the United States

National Association of State Councils on Developmental Disabilities (NACDD)

National Disability Rights Network (NDRN)

New Disabled South

Paralyzed Veterans of America (PVA)

RespectAbility