

COMMENTS OF THE ELECTRONIC PRIVACY INFORMATION CENTER

to the

ELECTION ASSISTANCE COMMISSION

Request for Comment:

Proposed Voluntary Voting System Guidelines Version 2.0 (VVSG 2.0) Requirements

June 22, 2020

By notice published March 24, 2020, the Election Assistance Commission (“EAC”) requested public comment on the proposed Voluntary Voting System Guidelines 2.0 (“VVSG 2.0”).¹

EPIC is a public interest research center in Washington, D.C. EPIC was established in 1994 to focus public attention on emerging privacy issues.² EPIC previously commented on the Voluntary Voting System Guidelines in 2009, stating:

Ballot secrecy and voter privacy must be core values within the context of voting technology standards and testing and certification of voting systems.³

EPIC’s comments will focus on the most critical issue for protecting voter privacy: a prohibition on recallable ballots. EPIC urges the Commission to delete Principle 1.1.15-O (Recallable Ballots). EPIC generally supports the proposed VVSG 2.0 and appreciates the work that has gone into their development. We specifically support the provisions that address ballot secrecy, voter privacy, algorithmic transparency, and the ban on internet connectivity. We urge the EAC to adopt the VVSG 2.0 with improvements, especially a ban on recallable ballots, as soon as possible.

EPIC also supports the comments of the State Audit Working Group submitted in response to this notice and encourages the EAC to adopt the group’s recommendations.

The Secret Ballot is Vital for Democracy

The secrecy of the ballot is a foundation of our democracy. In 2016, EPIC, Verified Voting, and Common Cause released a report and fifty state survey on the issue of ballot secrecy. We found that a vast majority of states (44) have a constitutional provision guaranteeing secrecy in voting, while the six remaining states have statutory provisions referencing secrecy in voting.⁴ “The secret

¹ *Notice of Proposed Voluntary Voting System Guidelines 2.0 Requirements; request for public comment*, 85 FR 16621 (Mar. 24, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-03-24/pdf/2020-06086.pdf>.

² EPIC, *About EPIC* (2018), <https://epic.org/epic/about.html>.

³ EPIC, *Comments Regarding the 2009 Voluntary Voting System Guidelines Version 1.1*, Election Assistance Commission, 6 (Sept. 28, 2009), https://epic.org/privacy/voting/epic_eac_comments_10-09.pdf.

⁴ Caitriona Fitzgerald, Pamela Smith, Susannah Goodman, *Secret Ballot at Risk: Recommendations for Protecting Democracy*, 1 (Aug. 18, 2016), <http://secretballotatrisk.org/Secret-Ballot-At-Risk.pdf>.

ballot reduces the threat of coercion, vote buying and selling, and tampering. For individual voters, it provides the ability to exercise their right to vote without intimidation or retaliation.”⁵ As the National Academy of Sciences recently found, “If anonymity is compromised, voters may not express their true preferences.”⁶

Ballot secrecy is so essential to the free exercise of the right to vote that the United States, by law, will not recognize foreign states as democracies unless they vote “by secret ballot.”⁷

The Commission Should Strike Provisions Allowing Recallable Ballots

We strongly support the VVSG 2.0’s robust principles on voter privacy and ballot secrecy. Principle 10, which requires that “ballot secrecy is maintained throughout the voting process,” (10.1) and “The voting system does not contain nor produce records, notifications, information about the voter or other election artifacts that can be used to associate the voter’s identity with the voter’s intent, choices, or selections” (10.2) must be maintained. Principle 10 sets an appropriately high standard for maintaining the secrecy of the ballot.

Unfortunately, Principle 1.1.15-O (Recallable Ballots) makes Principle 10 impossible to uphold. By their very definition, recallable ballots require linking the voter’s identity with the voter’s cast ballot. As defined in the VVSG glossary, a “recallable ballot” is a “recorded ballot that can be individually retrieved and included or excluded from further processing.”⁸ You cannot retrieve a specific voter’s recorded ballot without some form of identification on the cast ballot that traces it back to the individual voter.

This is too great a risk to our democracy and violates the VVSG 2.0 Principles themselves, as well as many state laws and constitutional provisions. Recallable ballots, and any association that links a voted ballot to a voter’s identity, must be prohibited. EPIC urges the Commission to delete Principle 1.1.15-O (Recallable Ballots) and the related references to that Principle.

The VVSG 2.0 are vital to protecting our democratic institutions. The guidelines must protect ballot secrecy.

Respectfully submitted,

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⁵ *Id.* at 5.

⁶ National Academies of Sciences, Engineering, and Medicine, *Securing the Vote: Protecting American Democracy* 87 (2018), <https://doi.org/10.17226/25120>.

⁷ 22 U.S.C. § 8203(6)(B). (In determining whether a country is democratic, the Secretary shall “conduct assessments of such conditions in countries and whether the country exhibits the following characteristics” including whether the “national legislative body of such country . . . are chosen by free, fair, open, and periodic elections, by universal and equal suffrage, and by secret ballot.”)

⁸ Proposed Voluntary Voting System Guidelines 2.0 Requirements, Appendix A, line 8357, <https://www.regulations.gov/contentStreamer?documentId=EAC-2020-0002-0001&contentType=pdf>.