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Verified Voting



March 13, 2023

**Oppose Unless Amended:** A4746 and S3302: Requires availability of accessible mail-in ballots for voters with disabilities, and allows internet return of ballots.

Dear Legislators:

Thank you for your support for enhanced voting access for New Jersey voters.

We are committed to ensuring that all voters, including those with disabilities, can exercise their right to vote. However, we write to you with grave concerns about A4746 and S3302 as drafted.

While we would support a statutory requirement for an accessible system that allows voters to receive and mark their ballots remotely, this legislation's authorization of an "ability to return the ballot by electronic means" will put the security of New Jersey's election infrastructure at risk and undermine public confidence in election results.

Four federal government agencies have concluded in a recent [risk assessment](#) that "electronic ballot return" is "High" risk. The agencies warn that electronic ballot return "faces significant security risks to the confidentiality, integrity, and availability of voted ballots," and that these risks can "**ultimately affect the tabulation and results and can occur at scale.**"<sup>1</sup> The risk assessment was issued

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<sup>1</sup> U.S. Cybersecurity and Infrastructure Security Agency, Federal Bureau of Investigation, National Institute of Standards and Technology and the U.S. Election Assistance Commission, *Risk Management for Electronic Ballot Delivery, Marking, and Return 1* (2020), available at

by the Federal Bureau of Investigation (FBI), the Department of Homeland Security’s Cybersecurity Infrastructure Security Agency (CISA), the U.S. Elections Assistance Commission (EAC) and the National Institute for Standards and Technology (NIST).

This risk assessment was issued to address the fact that state policy makers like yourselves are facing pressure to allow internet voting for certain classes of voters and explicitly recommends the use of paper ballots.

At a time where the integrity and veracity of election results are continuously called into question, it would not be prudent to ignore the security warning issued by the four government agencies charged with protecting our nation’s election infrastructure.

Furthermore, there is broad consensus that electronic ballot return presents severe security risks to the integrity of our elections, because ballots cast over the internet can be intercepted, deleted and altered at scale—and can therefore change election results.

- NIST, the federal agency responsible for issuing cybersecurity standards, has also conducted research on ways to enhance accessibility for voters with disabilities. Its 2022 report, *Promoting Access to Voting*, did not recommend electronic ballot return, instead concluding, “there remain **significant security, privacy, and ballot secrecy challenges**.”<sup>2</sup>
- In 2019, the bipartisan **U.S. Senate Select Committee on Intelligence** reported on its findings that foreign governments were actively trying to attack American election systems. As part of that report, the Committee determined “**States should resist pushes for online voting**. . . While the Committee agrees states should take great pains to ensure members of the

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[https://s.wsj.net/public/resources/documents/Final\\_%20Risk\\_Management\\_for\\_Electronic-Ballot\\_05082020.pdf?mod=article\\_inline](https://s.wsj.net/public/resources/documents/Final_%20Risk_Management_for_Electronic-Ballot_05082020.pdf?mod=article_inline).

<sup>2</sup> National Institute of Standards and Technology, *Promoting Access to Voting: Recommendations for Addressing Barriers to Private and Independent Voting for People with Disabilities* 48 (Mar. 2022), available at <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.1273.pdf>.

military get to vote for their elected officials, no system of online voting has yet established itself as secure.”<sup>3</sup>

- Just weeks ago, experts convened by the University of California’s Berkeley Center for Security in Politics concluded that creating standards for online ballot return so that it can be done securely and privately *was not feasible*. “When internet ballot return is employed,” the Working Group wrote, “**it may be possible for a single attacker to alter thousands or even millions of votes**. And this lone individual could perpetrate an attack from a different continent from the one where the election is being held – perhaps even while under the protection of a rogue nation where there is no concern of repercussions.”<sup>4</sup>

If the bill is amended to delete the electronic ballot return provisions, A4746 could create a laudatory framework for accessible vote-by-mail. However, **in its current form, the legislation runs counter to the guidance of the government agencies charged with protecting our national election infrastructure**—i.e., DHS, CISA, the FBI, EAC and NIST. These agencies—especially the FBI and CISA—routinely track the escalating threats to our election infrastructure, both foreign and domestic, and advise election policy makers on how to address these threats. Their recommendations should not be casually disregarded.

The accessibility issues some voters, especially voters with print disabilities, face are real. Various programs that help address these challenges are already in use in other jurisdictions, like bringing poll workers and accessible systems to voters who need them. We urge the legislature to invest resources in examining alternative accessible absentee voting methods that will improve access for voters with disabilities, without returning ballots over the internet. Other technologies are being developed and piloted that may be able to help address these challenges—and their promise is very exciting, but today these technologies are in their infancy. No standards have yet been developed that these systems could be

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<sup>3</sup> S. Rep. No. 116-290, vol. 1, at 59–60 (2019), available at [https://www.intelligence.senate.gov/sites/default/files/documents/Report\\_Volume1.pdf](https://www.intelligence.senate.gov/sites/default/files/documents/Report_Volume1.pdf).

<sup>4</sup> R. Michael Alvarez et al., University of California, Berkeley Center for Security in Politics, *Working Group Statement on Developing Standards for Internet Ballot Return 10* (Dec. 14, 2022), available at <https://csp.berkeley.edu/wp-content/uploads/2022/12/Working-Group-Statement-on-Internet-Ballot-Return.pdf>.

certified to meet. Any new voting system deployed by the State of New Jersey should undergo the rigorous testing and certification that New Jersey requires for all its voting equipment. Effectively, what this means is that if the electronic ballot return system contemplated by this legislation were a stand-alone voting system for general voter use, it would violate N.J.S.A. § 19:48-1.a subsections (a) and (h), because it has not been “thoroughly tested” nor proven “reliable.” It would be unable to “secure to the voter secrecy in the act of voting” and cannot ensure it would “correctly register or record and accurately count all votes cast.”<sup>5</sup>

Subjecting voters with disabilities to a voting system that is less secure defies every norm of ensuring that all voters have the right to a safe and secure system in which they can justifiably be confident.<sup>6</sup>

There are other steps New Jersey should take to improve voting accessibility that do not create security risks. As noted above, NIST produced a detailed report<sup>7</sup> of recommendations that we urge you to consider, such as

- ensuring that county elections websites are accessible;
- providing election-related information in accessible formats, through a variety of channels including social media, radio, text and phone;
- providing physical descriptions of each polling place, indicating accessible entrances, exits, public transit, and parking;
- providing voting education classes for voters with disabilities in collaboration with local disability support agencies;
- implementing alternative verification methods for voters who cannot sign their mail-in ballot envelopes, or whose signatures are not consistent, that are less burdensome than the current notification-and-cure process;
- including tactile marks, such as punched holes, to guide blind voters where to sign; and
- establishing a workgroup or task force made up of representatives from voting and disability rights communities to explore and recommend additional accessibility improvements that are secure.

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<sup>5</sup> N.J.S.A. § 19:48-1.a(a), (h).

<sup>6</sup> Cf. 52 U.S.C. § 21081(a)(3)(A) (granting voters disabilities the “same opportunity” for “privacy” as nondisabled voters).

<sup>7</sup> National Institute of Standards and Technology, *supra* note 2.

Other jurisdictions are innovating solutions to ensure access to all voters. San Francisco County; Multnomah County, OR; the State of Arizona; and the State of Vermont offer in-person accessibility assistance in voters' homes—and we would be happy to provide you with more information about those programs.

**We are very interested in working collaboratively and creatively with you to improve voting accessibility in ways that do not create risk to our elections.**

We would welcome the opportunity to provide you—or other lawmakers—further information about the technical aspects and unavoidable and severe inherent risks of electronic ballot return. We would also welcome the opportunity to collaborate with you on implementing accessibility improvements that do not present security risks.

Respectfully submitted,

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