

Testimony of  
Lillie Coney,  
EPIC Associate Director and  
NCVI Coordinator  
Before the  
U.S. Election Assistance Commission  
Election Integrity Advocates Roundtable Discussion  
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The Electronic Privacy Information Center (EPIC) and its project the National Committee for Voting Integrity (NCVI) would like to thank the U.S. Election Assistance Commission (EAC) for the opportunity to participate in this Advocates Roundtable Discussion on next iteration of the Voluntary Voting System Guidelines (VVSG).

I am the Associate Director of the Electronic Privacy Information Center (EPIC) located in Washington, DC. EPIC is a public interest research center established in 1994 to focus public attention on emerging civil liberties issues as they relate to information technology and to protect privacy, the First Amendment, and constitutional values. EPIC coordinates a voting project—the National Committee for Voting Integrity (NCVI). The voting project brings together experts on voting issues from across the country to promote constructive dialogue among computer scientists, elections administrators, voting rights advocates, policymakers, the media and the public on the best methods for achieving in practice: fair, reliable, secure, accessible, transparent, accurate, accountable, and auditable public elections. In keeping with the goal of public election administration we are working to ensure that election systems preserve the secret ballot, accuracy, privacy, integrity, and the proper tabulation of the voter's intent regardless of his or her physical condition, language of origin, or literacy ability.

The bar for voting technology and election administration should not be set artificially low by the final guidance produced by the Commission. Voters need an advocate for their interests before, during, and after public elections. They need voting systems and procedures that reflect the best that human factors, computer science, cryptography, data protection, security, computer architecture, and informatics can produce. If the best resources of these disciplines are brought together to create the perfect voting system, but poll workers still lack training, then the effort would be meaningless.

Dr. Peter Neumann, the chair of NCVI, and Principle Scientist at SRI's Computer Science Lab. He is an internationally recognized expert in computer systems and networks, security, reliability, survivability, safety, and many risks-related issues such as voting-system integrity, crypto policy, social implications, and human needs including privacy. He moderates the ACM Risks Forum. Dr. Neumann expressed it best when he said, "Elections require an end-to-end concern for a wide variety of integrity

requirements, beginning with the registration process and ballot construction, and continuing through vote tabulation and reporting.”<sup>1</sup>

The EAC is limited to providing voluntary guidance to states on statewide-centralized voter registration databases, and voting systems.<sup>2</sup> This guidance may be used by some states as if they have the force of federal law. For this reason, it is important to offer clear and effective guidance to states on issues of functional capability, hardware, software, telecommunication, security, quality assurance, and configuration of voting systems. One of many debates around the voting system standards development process is whether the document should be requirements or guidance to the states.

## **General Comments**

One of the underlying goals of the Help America Vote Act was to address disability and language minority access to independent voting. The universe of persons with disabilities is very broad and not clearly defined by voting technology policy or law. The population of voters can include anyone who has attained the age of 18. There are disability groups that are well defined and have legal recognition for the purpose of access under the general guideline of reasonable accommodation. For decades it has been a requirement of law that all public election locations be accessible, but no jurisdiction in this nation has met the requirements of the law. The effort to open up the world to those with disabilities is ongoing and the HAVA was another step in removing barriers to something that most of the voting public takes for granted.

Disability and language minority access issues are acknowledged with the expressed goal of “accessible” Voter-Verified Paper Records/Ballots. Systems that may allow independent interface with a voting system using modified direct recording electronic data input devices are available. There are differing opinions on the level of usability and accessibility of these voting systems in their current design. None of these systems are voter-verified accessible. In other words, once a ballot is marked in “English” there is no feature incorporated in current voting system designs to communicate “its text” back to users who employ accessibility technology to cast ballots. The definition of equal participation in the democratic process should be that verifiability is a necessity and a requirement for all voters to cast an effective and meaningful ballot.

Better voting systems should not be a matter of if, but when—moving from the current crop of electronic voting systems to better tested, fielded, and functioning systems is possible. Is it possible to have 100% accurate elections? Elections will never be 100% accurate, but we must strive to make them 100%. Testing and certification of technologies are meant to measure a system’s performance limits with the hopes of maximizing its reliability for the greatest number of participants. We will not get better

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<sup>1</sup> Peter Neumann, “Statement of Support for the LCCR/Brennan Center/Report,” available at [http://www.civilrights.org/issues/voting/lccr\\_brennan\\_support.pdf](http://www.civilrights.org/issues/voting/lccr_brennan_support.pdf), June 29, 2004

<sup>2</sup> Help America Vote Act of 2002, (HAVA) Public Law 107-252, October 29, 2002

voting systems unless we ensure that the means and methods deployed to test and certify voting technology foster trust, transparency, and accountability. When electronic voting systems fail, whether by human error or machine malfunction, the consequences to voters affect the very nature of popular democracies.

## **The Secret Ballot**

One of the core values of democratic elections is the secret ballot and voter privacy. Federal and state courts and legislatures have historically taken measures to protect the right of voters to vote freely without fear of retaliation. United States law requires that “All votes for Representatives in Congress must be by written or printed ballot, or voting machine, the use of which has been duly authorized by the State law; and all votes received or recorded contrary to this section shall be of no effect.” The statute defines “ballot” in election provisions to mean a “method which will insure, so far as possible, secrecy and integrity of popular vote,” and interprets the Congressional requirement that elections be conducted by written or printed ballots or by machine to include the notion that ballots must be secret.

As further support for the requirement of secret ballots, the statute cites *Johnson v. Clark*. In *Johnson*, the District Court for the Northern District of Texas emphasized the “secrecy and integrity” of votes. “The word ‘ballot,’ in an election provision, means a method which will insure, so far as is possible, the secrecy and integrity of the popular vote.” Other courts have also found that the concept of secrecy and privacy is inherent in the meaning of ballots. In *Brisbin v. Cleary*, the Supreme Court of Minnesota interpreted voting by ballot to mean:

a mode of designating an elector’s choice of a person for an office by the deposit of a ticket, bearing the name of such person, in a receptacle provided for the purpose, in such a way as to secure to the elector the privilege of complete and inviolable secrecy in regard to the person voted for. This privilege of secrecy may properly be regarded as the distinguishing feature of ballot voting, as compared with open voting, as, for instance, voting viva voce. The object of the privilege is the independence of the voter.

The U.S. Supreme Court has also recognized in dicta that the right to vote privately via secret ballots is an essential component of meaningful participation in the democratic process. In *Buckley v. Valeo*, the Court argued that, “Secrecy, like privacy, is not per se criminal. On the contrary, secrecy and privacy as to political preferences and convictions are fundamental in a free society. For example, one of the great political reforms was the advent of the secret ballot as a universal practice.” In *Burson v. Freeman*, the Court found that “the very purpose of the secret ballot is to protect the individual’s right to cast a vote without explaining to anyone for whom, or for what reason, the vote is cast.”

In *McIntyre v. Ohio*, the U.S. Supreme Court outlined the importance of the development of the secret ballot as a means of ensuring the integrity of elections.

After unsuccessfully experimenting with unofficial ballot systems, all 50 States, together with numerous other Western democracies, settled on the same solution: a secret ballot secured in part by a restricted zone around the voting compartments. We find that this widespread and time-tested consensus demonstrates that some restricted zone is necessary in order to serve the States' compelling interests in preventing voter intimidation and election fraud.

Thus, the concept of voting cannot be separated from the concept of privacy. If steps are taken to undermine the secret ballot, i.e., by linking a voter's identity to his vote, the integrity of the election itself is compromised, because this opens the door to the potential for coercive tactics to influence how individuals vote.

### **Electronic Voting Technology and Privacy**

Technology that facilitates the right to vote may threaten privacy, especially when it is associated with the administration of elections and, under certain conditions, the very act of voting. The use of technology in the online and offline voting process remains in transition around the world. The criticisms of electronic voting systems focus on the accuracy, reliability, and security of votes once cast. The Charter of Fundamental Rights of the European Union and the United Nations Universal Declaration of Human Rights support the right of citizens to both privacy and self-governance. In 1983, the first definition of democracy in Europe, which included an affirmation of the right to a secret ballot, was expressed at the conclusion of the first Strasbourg Conference on Parliamentary Democracy.

E-voting technology allows, for the first time, independent voting in public elections for millions of disabled and language minority voters through the benefit of a secret ballot.

### **Direct Recording Electronic (DRE) Voting Machines**

DRE voting machines produce no tangible evidence of the ballot, but instead save the voters choice to a memory card or disk stored in the voting device. However, a hybrid DRE voting machine that uses the technology as a paper ballot-marking device is now available for use in public elections. These hybrid DRE paper and paperless voting machines are applicable to online and offline voting systems. They each may use one of two dominant forms of voter interface: push buttons or a touch-screen display. Hybrid DRE voting machines provide privacy to voters through the application of cryptography and assistive technology. The use of smart cards, tokens or the registration of the order in which voters use the machines could all compromise users' privacy.

The draft Voluntary Voting System Guidelines is an improvement in some respects over the standards under the Federal Election Commission process for 1990 and 2002. The increased attention to accessibility and usability for voters is a step forward over previous voting technology standards. There are benefits that also flow to those who

may not self define themselves as disabled but may have mobility, dexterity or cognitive conditions that require assistive technology in voting.

The challenge is providing truly assistive technologies that facilitate voting, while at the same time advancing the field of knowledge to be deployed in successive generations of voting systems.

## **Conclusion**

The drive for perfecting the election process and voting technology is grounded in a fundamental promise of our form of democracy—one vote for each person. The bar for voting technology and election administration should not be set artificially low by the final guidance produced by the Commission. Voters need an advocate for their interests before, during, and after public elections. They need voting systems and procedures that reflect the best that human factors, computer science, cryptography, data protection, security, computer architecture, and informatics can produce. If the best resources of these disciplines were brought together to create the perfect voting system for voters, but the needs of poll workers in these areas are ignored then the benefit of the effort would be nullified.

Our thanks to the Election Assistance Commission for extending an invitation to advocacy organizations to contribute to the deliberation of the agency in the drafting of the 2007 Voluntary Voting System Guidelines.

Lillie Coney

EPIC

<http://www.epic.org>

NCVI

<http://votingintegrity.org>