



The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth



New Mexico Secretary of State
Maggie Toulouse Oliver



June 27, 2025

633 3rd Street NW
Suite 200
Washington, DC 20001
Attn: TGDC
Submitted electronically

Comment in response to Notice of Public Meeting No. 2025-10679 (90 FR 24603), relating to the July 2, 2025 EAC Technical Guidelines Development Committee Virtual Meeting

We, Nevada Secretary of State Francisco V. Aguilar, Arizona Secretary of State Adrian P. Fontes, California Secretary of State Shirley N. Weber, Delaware State Election Commissioner Anthony Albence, Illinois Attorney General Kwame Raoul, Maine Secretary of State Shenna Bellows, Maryland State Administrator of Elections Jared DeMarinis, Secretary of the Commonwealth of Massachusetts William Francis Galvin, Michigan Secretary of State Jocelyn Benson, Minnesota Secretary of State Steve Simon, New Mexico Secretary of State Maggie Toulouse Oliver, New Jersey Attorney General Matthew J. Platkin, New York Attorney General Letitia James, Rhode Island Secretary of State Gregg M. Amore, and Vermont Secretary of State Sarah Copeland Hanzas, submit this comment in response to Notice of Public Meeting No. 2025-10679 (90 FR 24603), to voice our strong opposition to the implementation of Section 4(b) of Executive Order 14248 of March 25, 2025, entitled “Preserving And Protecting The Integrity Of American Elections” (the EO),¹ to be discussed at the U.S. Election Assistance

¹ Available at <https://www.federalregister.gov/documents/2025/03/28/2025-05523/preserving-and-protecting-the-integrity-of-american-elections>.

Commission (EAC)’s upcoming Technical Guidelines Development Committee (TGDC) meeting on July 2, 2025.² The meeting posting and draft version of Voluntary Voting System Guidelines (VVSG) 2.1 (the Draft)³ are concerning steps that appear to begin the unlawful implementation of the EO.⁴

The EAC’s attempt to force the TGDC to participate in this unlawful process should be rejected. The TGDC should not consider the published draft of VVSG 2.1 or implementation of the EO at the upcoming July 2, 2025 meeting for at least the following reasons:

- The President’s attempt to force the EAC to implement his preferences with regard to voting systems is unlawful. It is in turn unlawful for the EAC to make changes to the VVSG based on those commands. § II, *infra*.
- The Draft was not developed through the process required by the Help America Vote Act (HAVA) and EAC policies and is therefore unlawful. It was developed without the transparency and stakeholder input that is required by law and binding policy. § III.a, *infra*.
- The Draft is misleading and inaccurately suggests that it is a product of the TGDC. § III.b, *infra*.

In addition, we offer the following comments on the Draft and the policies contemplated by the EO:

- The TGDC and EAC should reject any changes to VVSG 2.0 flowing from the EO. However, if they do proceed with changes along the lines contemplated in the Draft, the Draft should be worded more clearly to avoid significant negative effects on voters with disabilities. § IV *infra*.
- Any requirement to eliminate the use of barcodes in the balloting process is factually unsupported and could impose significant injury and costs on election administration across the country. *Id*.

² Sunshine Act Meetings, 90 Fed. Reg. 24603, 24604 (June 11, 2025), <https://www.govinfo.gov/content/pkg/FR-2025-06-11/pdf/2025-10679.pdf>.

³ Available at https://www.eac.gov/sites/default/files/2025-06/DRAFT_Voluntary_Voting_System%20Guidelines_Version_2.1_TGDC_Member_Review.pdf.

⁴ Section 4(b)(i) of the EO commands the EAC to “initiate appropriate action to amend the [VVSG] 2.0” to “provide that voting systems should not use a ballot in which a vote is contained within a barcode or quick-response code in the vote counting process” except to accommodate individuals with disabilities, and “provide a voter-verifiable paper record to prevent fraud or mistake.” EO § 4(b)(i).

Section 4(b)(ii) of the EO requires that the EAC “take appropriate action to review and, if appropriate, recertify voting systems under the new standards established under subsection (b)(i) of this section, and to rescind all previous certifications of voting equipment based on prior standards.” *Id*. at § 4(b)(ii). The EO requires this action to be taken no more than 180 days after the EO was issued, which is September 21, 2025. *Id*

- There is no lawful path to decertifying voting systems as the EO commands. § V, *infra*.

I. The Draft purports to unlawfully implement Section 4(b) of the EO by the EAC.

The EO contains many provisions that federal courts have already determined to be unlawful, yet the July 2, 2025 meeting of the TGDC appears to be a step toward the EAC implementing EO Section 4(b)'s unlawful commands.

a. Background on EO provisions and ensuing litigation.

On March 25, 2025, President Trump issued the EO, which unlawfully seeks to impose the President's policy agenda on election administration across the country. **The EO contains many provisions directing the EAC to take various actions—actions the President has no authority to dictate.**

The EO purports to require the EAC to take the following actions:

- *Documentary Proof of Citizenship*
 - Section 2(a) orders the EAC to amend the National Mail Voter Registration Form issued under 52 U.S.C. § 20508 (the “Federal Form”) to require “documentary proof of United States citizenship.”
 - Section 4(a) directs the EAC to “take all appropriate action to cease providing Federal funds to States that do not comply with the Federal laws set forth in 52 U.S.C. 21145,” including the requirement that states accept and use the national mail voter registration form that includes Section 2(a)'s documentary proof of citizenship requirement.
- *Voting System Guidelines and Certifications*
 - Section 4(b)(i) directs the EAC to “initiate appropriate action to amend” the VVSG to “provide that voting systems should not use a ballot in which a vote is contained within a barcode or quick-response code in the vote counting process except where necessary to accommodate individuals with disabilities, and should provide a voter-verifiable paper record to prevent fraud or mistake.”
 - Section 4(b)(ii) directs the EAC to “take appropriate action to review and, if appropriate, re-certify voting systems under the new standards established under [Section 4(b)(i)], and to rescind all previous certifications of voting equipment based on prior standards.” This review is to be conducted within 180 days of the EO's issuance – September 21, 2025.

- *Federal Funding to States*

- Section 7(b) requires the EAC to condition any available funding on the state's ballot receipt deadlines. According to the EO, with the exception of military and overseas ballots, states should set a "uniform and nondiscriminatory ballot receipt deadline of Election Day for all methods of voting . . . after which no additional votes may be cast."
- Section 4(c) requires the EAC to "report any discrepancies or issues with an audited State's certifications of compliance with Federal law to the Department of Justice for appropriate enforcement action" following an audit of HAVA expenditures.

The EO also purports to require other federal agencies to take various other unlawful actions related to election administration. *See, e.g.*, EO §§ 2(d), 3(d), and 7(a).

Since the EO was issued in late March, multiple lawsuits have been filed challenging its various provisions. In two of those lawsuits—including the lawsuit filed by our states—federal courts granted plaintiffs' motions for preliminary injunction. On various claims, these courts found plaintiffs were likely to succeed on the merits. As a result, **the EAC and other relevant agencies are enjoined from implementing Sections 2(a), 2(d), 3(d), 7(a), and 7(b) of the EO.** *See* Order, *LULAC v. Exec. Off. of the President*, No. 1:25-cv-00946 (D.D.C. Apr. 24, 2025), ECF No. 103 (enjoining Sections 2(a) and 2(d)); Order, *California v. Trump*, No. 1:25-cv-10810 (D. Mass. June 13, 2025), ECF No. 108 (enjoining Sections 2(a), 2(d), 3(d), 7(a), and 7(b)). **The principles of federal constitutional and statutory law expressed in those decisions apply equally here.**

Section 4(b) of the EO has already been challenged as unlawful in two lawsuits, by Washington and Oregon in *Washington v. Trump*, No. 2:25-cv-00602 (W.D. Wa.), and the Democratic Party plaintiffs in *Democratic National Committee v. Trump*, No. 1:25-cv-00952 (D.D.C.) (consolidated with other private plaintiffs in *LULAC*, No. 1:25-cv-00946 (D.D.C.)). Those challenges have yet to be fully litigated before a court.

b. The Draft purports to implement Section 4(b).

The Draft directly cites Section 4(b) of the EO, demonstrating that the Draft is an attempt by the EAC to implement the EO's provisions. Draft at 9. Further, the TGDC is meeting on July 2, 2025 to "discuss the draft of the Voluntary Voting System Guidelines (VVSG) 2.1 and the Executive Order to Protect the Integrity of American Elections."⁵ The public agenda for the meeting has only two substantive items listed for discussion: (1) "Discussion of the

⁵ Sunshine Act Meetings, 90 Fed. Reg. 24603, 24604 (June 11, 2025), <https://www.govinfo.gov/content/pkg/FR-2025-06-11/pdf/2025-10679.pdf>.

Implementation of the Executive Order to Protect the Integrity of American Elections” and (2) “Discussion of Issues, Resolution(s), Vote on VVSG 2.1 Draft.”⁶

Approximately one week before the deadline for public comment, the EAC posted the Draft of VVSG 2.1 with several amendments to VVSG 2.0. The updated meeting notice states that the Draft “is for feedback and comments from the TGDC members as part of the process outlined in the Help America Vote Act (HAVA)” and states that “[t]here will be an opportunity for public comment as feedback from the EAC’s Advisory Boards is compiled.”⁷

The Draft is a transparent attempt to implement the EO’s unlawful commands. Indeed, the Draft states that “[t]his version offers additional clarifications based on . . . the Preserving and Protecting the Integrity of American Elections Executive Order (EO) signed on March 25, 2025.” Draft at 9.

II. The President cannot order the EAC to modify the VVSG or decertify voting systems.

As multiple federal courts have recognized since the EO was issued, **the President does not have the power to dictate election rules.** See *LULAC v. Exec. Off. of the President*, No. 1:25-cv-00946, 2025 WL 1187730, at *36, *49 (D.D.C. Apr. 24, 2025); *California v. Trump*, No. 25-cv-10810, 2025 WL 1667949, at *7, *10, *14 (D. Mass. June 13, 2025). Section 4(b)’s commands are no different, as they too violate separation of powers principles and are therefore *ultra vires*.

When “the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb.” *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637 (1952) (Jackson, J., concurring). The Constitution does not confer authority to the President to change voting systems—the President is notably absent from the authorities empowered in the Elections Clause and elsewhere to run elections. See U.S. Const. art. I, § 4, cl. 1. The President also does not have any statutory authority either to alter VVSG or to federally certify voting systems.

Section 4(b) therefore contravenes the will of Congress, which gave the EAC authority to promulgate the VVSG, with input and advice from experts and stakeholders, and to certify and de-certify voting systems. Under HAVA, Congress created a system in which there are many stakeholders and elected officials that the EAC must include in its development of voting systems, including state and local election officials. See 52 U.S.C. §§ 20961(b)(2), 20943(a)(1), 20944. The President is conspicuously absent from that extensive list of stakeholders.

Likewise, under HAVA, Congress specifically provided *the EAC* with the responsibility “for the testing, certification, decertification, and recertification of voting system hardware and software by accredited laboratories.” 52 U.S.C. § 20971(a)(1). A three-vote majority of the EAC

⁶ Agenda, TGDC Virtual Meeting (July 2, 2025, 1:00pm ET), https://www.eac.gov/sites/default/files/2025-06/TGDC_2025_Annual_Meeting_Agenda.pdf.

⁷ EAC TGDC Virtual Meeting, EAC.gov (accessed Jun. 22, 2025), <https://www.eac.gov/events/2025/07/02/eac-technical-guidelines-development-committee-virtual-meeting>.

Commissioners is required to approve accreditation and revocation for labs that test whether voting systems comply with the VVSG. 52 U.S.C. §§ 20971(b)(2)(A), 20928. The policy preferences of the President are, by design, not given a role in the process. And it would contravene the EAC’s procedures, created pursuant to the statutory mandate in HAVA, as well as its longstanding practice, to decertify existing voting systems on that basis.⁸ As discussed further below, § V, *infra*, there is no lawful path under HAVA or the EAC’s procedures for decertification under these circumstances.

III. The EAC’s promulgation of the Draft violates HAVA and EAC policy requirements and lacks transparency.

Putting aside the legality of the EO, the EAC’s process violates HAVA and EAC policy. In the public meeting notice that was updated less than a week before the public comment deadline with the Draft, the EAC purports to be complying with “the process outlined in the Help America Vote Act (HAVA)” by providing the Draft to the TGDC, and notes that there will be an opportunity for public comment while feedback is compiled from the EAC’s various Advisory Boards.⁹

But the EAC is not following the procedures required by HAVA and EAC policy to update the VVSG. The TGDC cannot vote on the Draft, because the EAC must adhere to the processes required by HAVA and EAC policy.

- a. The Draft was not developed following the processes required by HAVA and EAC policy.

Both HAVA and EAC policy mandate specific procedures the EAC must follow to update the VVSG. TGDC Consideration of the Draft violates both HAVA and EAC policy.

Before the EAC may even present a draft VVSG revision to TGDC, HAVA requires that various stakeholders have input in developing and approving any proposed changes to the guidelines. *See* 52 U.S.C. § 20962(b); EAC, Voting System Testing and Certification, VVSG Lifecycle Policy (VVSG Lifecycle Policy)¹⁰ § 4.4–5.

This process of consultation and development takes place over a twelve-month period. VVSG Lifecycle Policy § 4.2. And it *starts*—not ends—with stakeholder engagement. At the beginning of the process each year, the Director of the EAC’s Testing and Certification Program Director (T&C Director) engages with the EAC’s TGDC. 52 U.S.C. § 20961(b)(2).¹¹ At the end

⁸ The EAC’s processes and standards for decertification are detailed in its Manual. *See* EAC, *EAC Voting System Testing and Certification Program Manual Version 3.0* at § 7, https://www.eac.gov/sites/default/files/TestingCertification/Testing_and_Certification_Program_Manual_Version_3_0.pdf; *see also* EAC, *Testing and Certification Program Manual Version 2.0* (effective May 31, 2015), <https://www.eac.gov/sites/default/files/TestingCertification/CertManual070815FINAL.pdf>.

⁹ EAC, *EAC Technical Guidelines Development Committee Virtual Meeting* (accessed June 21, 2025), <https://www.eac.gov/events/2025/07/02/eac-technical-guidelines-development-committee-virtual-meeting>.

¹⁰ Available at https://www.eac.gov/sites/default/files/2024-04/VVSG%20Lifecycle%20Policy%20version%2004.08.24_0.pdf.

¹¹ The membership of the TGDC as of June 16, 2025, is listed [here](#).

of the fiscal year, the T&C Director provides an annual report to the EAC’s Executive Director¹² detailing VVSG recommendations that have been collected from various stakeholders. *See* VVSG Lifecycle Policy § 4.4. The Executive Director may then develop guidelines to submit to the Standards Boards and Board of Advisors, taking into consideration the TGDC’s recommendations. 52 U.S.C. § 20962(b). The Standards Board and Board of Advisors then submit comments and recommendations to the EAC Commissioners. *Id.* § 20962(c); *see also* § 20945(a)(2)(A) (providing that the Board of Advisors and Standards Board must meet at least once per year to vote on the VVSG).

Only after that entire life cycle of development occurs can Commissioners vote on any amendment to the VVSG.¹³ To ensure that the relevant boards can comment before any VVSG is adopted, the Commissioners may not vote until 90 days after the Executive Director has submitted the proposal to the Board of Advisors and Standards Board. *Id.* § 20962(d)(2). The Commissioners also must consider public feedback obtained through the Administrative Procedure Act (APA) process, which occurs simultaneously. 52 U.S.C. § 20962(a).

To say the least, the Draft was not developed following this policy, and the EAC’s current plan for considering the Draft violates those policies. **The Draft reflects a pre-ordained outcome dictated by the President that does not substantively or procedurally comply with any of the required processes outlined above.** As a federal court considering one of the challenges to the EO recently held, “no statutory delegation of authority to the Executive Branch permits the President to short-circuit Congress’s deliberative process by executive order.” *LULAC*, 2025 WL 1187730, at *1.

In the Draft, the EAC did not start from recommendations or input from the TGDC or other stakeholders as required. While the draft seems to attempt to frame the VVSG 2.1 modifications as being made “at the direction” or “produced by” the TGDC, elsewhere the source of the changes is quite clear: the draft states that “[t]his version offers additional clarifications based on . . . the Preserving and Protecting the Integrity of American Elections Executive Order (EO) signed on March 25, 2025.” Draft at 9. **It is a draft constructed by the EAC to abide by the President’s unlawful commands—but it misleadingly attempts to attribute those demands to the TGDC.**

Because this procedure violates the HAVA-outlined process, the draft portions of VVSG 2.1 that merely seek to implement the President’s will are substantively deficient. The purpose of the VVSG process as outlined by HAVA, and the very existence of the TGDC, is to develop federal voting system guidelines that reflect the expertise and best practices of the many stakeholders in the field. **HAVA requires extensive input from election administration experts and stakeholders in the *development* of the VVSG, not merely in rubber-stamping the President’s preferred policy outcome.** *See* 52 U.S.C. §§ 20961(b)(2), 20943(a)(1), 20944.

¹² The EAC Executive Director is currently Brianna Schletz.

¹³ The VVSG (or its modification) “shall not be considered to be finally adopted” until a three-vote majority of the four Commissioners approves the VVSG after considering the Board of Advisors and Standards Board comments. 52 U.S.C. §§ 20962(d)(1), 20928.

State election officials and election administrators are among that important group of voices that must participate in the development of the VVSG. *See id.* § 20943(a)(1). Because elections look different in jurisdictions across the country, the EAC must obtain input from election administrators across the country.

These required opportunities for input underscore the substantive importance of the VVSG process that the TGDC must follow. The process is designed to facilitate input from the members of various boards who are appointed to serve the interests of specific, important constituencies and offer unique expertise from that vantage point, alongside the general public—and from stakeholders in communities across the nation, from election administrators to community groups. Without recommendations that derive from the well-informed input of both the public and these core constituencies, the process for amending the VVSG will be substantively deficient and unlawfully result in a pre-ordained outcome.

Furthermore, the EAC cannot satisfy the requirements of stakeholder input and public comment by going through the technical procedural steps while, all the while, they are committed to enacting the President’s pre-ordained outcome. The EAC asserts on its public meeting notice that “[t]here will be an opportunity for public comment as feedback from the EAC’s Advisory Boards is compiled.”¹⁴ But while the EAC may purport to engage in a meaningful public comment process, the administration has made very clear elsewhere that it believes the EAC is obligated to implement the commands of the EO, regardless of what feedback the EAC receives. In the administration’s flawed view, the EAC cannot vary or depart from its commands, even if public comment suggests that its commands are bad policy. *See LULAC*, 2025 WL 1187730, at *40 (noting that government counsel argued that the President, through the Elections EO, can predetermine the policy outcome of the EAC’s statutorily prescribed process for amending the federal National Mail Voter Registration Form). Thus, the process underway here is a charade meant to give the appearance of transparency and opportunity for feedback, but ultimately it falls far short. *Accord California*, 2025 WL 1667949, at *8 (“By purporting to preordain the outcome of these required procedures, the Executive Order renders them meaningless.”).

b. The process to date lacks transparency and is misleading.

Apart from stakeholder engagement and input, the EAC process so far lacks transparency and is inaccurate. The EAC first published notice of the July 2, 2025 TGDC meeting on June 11, 2025, noting that the TGDC will consider and vote on the Draft and implementation of the EO. But the meeting notice and call for comment was not accompanied by the Draft, nor any detail on what the TGDC is to consider in connection with implementation of the EO. Then, approximately one week before the deadline for public comment, the EAC updated the online event page to include the Draft. No information on what the TGDC will consider is otherwise available, despite the call for comments. **The delay in publishing the Draft and the short timeline to develop meaningful feedback, paired with the total lack of transparency in connection with other measures that may be considered in implementing the EO**

¹⁴ EAC, *EAC Technical Guidelines Development Committee Virtual Meeting* (accessed June 21, 2025), <https://www.eac.gov/events/2025/07/02/eac-technical-guidelines-development-committee-virtual-meeting>.

undermine stakeholders’ and the general public’s ability to provide feedback and engage in a transparent process.

Furthermore, it appears that the Draft does not even accurately reflect the proposed changes to VVSG 2.0. The Draft does not use VVSG 2.0, as adopted by the Commission, as its baseline. It shows redlined text that *does not exist* in VVSG 2.0. It seems some intermediary version was at some point created and then used as the baseline document upon which proposed changes were marked in redline. This intermediary draft was never adopted by the Commission, nor was it ever reviewed or recommended by the TGDC.

For example, the screenshots below show the words “~~for accessibility purposes~~” in redline, replaced with “to support accessibility for voters with disabilities,” as if to demonstrate that VVSG 2.0 contains the words “for accessibility purposes.” But “for accessibility purposes” does not appear *at all* in the VVSG 2.0 that was adopted by the Commission.¹⁵

VVSG 2.1 Draft of 9.1.5-C

9.1.5-C – Paper record intelligibility

The recorded ballot selections must be presented in a human-readable format that is understandable by the voter.

Discussion

The requirement ensures that a human-readable version of the data is also printed whenever a barcode is used to encode ballot selections to support accessibility for voters with disabilities~~for accessibility purposes~~.

Applies to: Paper-based system architectures

Commented [A16]: Updated discussion as per the EO regarding barcodes.

Formatted: Font: (Default) +Body (Calibri), Complex Script
Font: +Body (Calibri), Not Bold

VVSG 2.0 9.1.5-C

9.1.5-C – Paper record intelligibility

The recorded ballot selections must be presented in a human-readable format that is understandable by the voter.

Discussion

The requirement ensures that a human-readable version of the data is also printed whenever a barcode is used to encode ballot selections.

Applies to:

Paper-based system architectures

¹⁵ EAC, VVSG 2.0 (February 10, 2021), https://www.eac.gov/sites/default/files/TestingCertification/Voluntary_Voting_System_Guidelines_Version_2_0.pdf.

Similar examples appear throughout the Draft.¹⁶ It is unclear if this erroneous redline was accidental, but it is at best misleading—and it threatens to lead the TGDC and the public to believe that some of the modifications were solely clarifications. They are not.

- c. Due to current vacancies on the TGDC, important stakeholders—including U.S. Access Board representatives—are omitted from review of this Draft.

There are currently six vacancies on this TGDC’s 15-member group – that means *forty percent* of the designated appointments for this Committee are not filled. Forty percent of the TGDC’s intended representation and expertise will not be part of the Committee’s upcoming discussion, nor be able to vote on recommendations.

In fact, if the upcoming meeting proceeds as scheduled, the TGDC will be holding the meeting without *any* representation from the U.S. Access Board, as both of the designated positions on the TGDC for the Access Board are currently vacant.

This absence is particularly significant for two reasons. First, a fundamental aspect of HAVA is to ensure that voters with disabilities have the right to vote privately and independently. *See* 52 U.S.C. § 21081(a)(3); EAC, *EAC Empowers Voters with Disabilities*, EAC.gov (Mar. 31, 2023), <https://www.eac.gov/voters/eac-empowers-voters-disabilities>. During the development of VVSG 2.0, the TGDC took this responsibility to ensure accessibility and security seriously, which the Board of Advisors recognized, even passing a resolution noting that the “VVSG 2.0 development process was committed to ensuring that both accessibility and security were at the forefront of each principle and guideline.”¹⁷ Second, as discussed below in § IV.a, *infra*, voters with disabilities may be uniquely harmed should VVSG 2.1 go into effect. But here, the TGDC seems to be disregarding its prior commitments by proceeding with a meeting and possible determination or vote without representation of the U.S. Access Board.

IV. The Draft is not sufficiently protective of voters with disabilities.

For all the reasons set out above, the TGDC (and ultimately the EAC) should reject the Draft or any other attempt to amend VVSG 2.0 to implement the EO as both unnecessary and contrary to the required processes. To the extent the TGDC, the Standards Board, the Board of Advisors, and the EAC do consider the Draft, however, they should take care to ensure the protections for voters with disabilities achieved in VVSG 2.0 are not lessened or obscured by new language.

VVSG 2.0 was developed to encourage the development of technologies that could be universally used by all voters. Historically, voting systems had separate devices used by voters with disabilities, and that has been a concern for many people in the accessibility community.

¹⁶ For example, compare Principle 9 on page 22 of the Draft, with Principle 9 on page 16 of VVSG 2.0.

¹⁷ *See* Resolution 2018-02, EAC Board of Advisors (adopted Apr. 24, 2025), https://www.eac.gov/sites/default/files/event_document/files/Resolution_2018-02_accessibility_and_security_%28Passed_20-1-1%29.pdf.

Systems that produce ballots or other records unique to disabled voters create ballot secrecy issues for those voters.¹⁸

VVSG 2.0 was developed to address these concerns and encourage universal voting technologies—especially with the use of barcodes. The TGDC unanimously adopted a resolution prior to the development of VVSG 2.0 regarding accessibility and security of ballots.¹⁹ The contents of VVSG 2.0 reflect this overriding purpose of developing universal technologies. VVSG 2.0 states that “[t]here is substantial experience showing that having one accessible voting machine per polling place used only for voters with disabilities has worked poorly for voters with disabilities and may not be sufficient to provide equal access as required by law.”²⁰ VVSG 2.0 accordingly adopted standards requiring that “[a]ccessibility features must be integrated into the manufacturer’s voting system”²¹ and emphasizing that “voting systems must meet federal standards for accessibility.”²² As the EAC has explained in interpretive guidance, “[w]ith VVSG 2.0, accessibility is implemented at the overall voting system level, rather than the individual device level.”²³ VVSG 2.0 also encourages states “[t]o support best practices” by “consider[ing] legislation and additional resources to ensure balanced access to accessible voting machines wherever voting technology is deployed and used for elections.”²⁴

Any alterations to VVSG must maintain this vital commitment. The Draft risks muddying the water by suggesting that barcodes containing voter selections are only permitted to “support[] accessible voting” for voters with disabilities. Draft at 9. To avoid confusion, the language on page 9 of the Draft should be edited to clearly convey that all voting systems must be ADA and Section 508 compliant. Any elimination of barcodes in ballots would be unnecessary, disruptive, and poor policy.

To the extent the EO or any public comments suggest that using barcodes or quick-response codes in the balloting process should be eliminated, the undersigned strongly disagree. The undersigned urge the rejection of amendments that would eliminate this common technological tool. Many voting systems used by jurisdictions across the country—in both rural *and* urban areas, with reliably Democratic *and* Republican voters—use barcodes or quick-response codes in the vote counting process.

¹⁸ See remarks from Diane Golden at the TGDC meeting on September 12, 2019, https://www.eac.gov/sites/default/files/event_document/files/EAC.TDGC.9.12.17verbatim.pdf at 9 (“And the big concern from our perspective is that . . . at the end of the day what that will translate into the disability community is [having] one segregated, isolated ballot marking device in a corner . . .”)

¹⁹ Resolution 2017-01, EAC.gov (accessed June 22, 2025), https://www.eac.gov/sites/default/files/event_document/files/2017-01_Resolution_Ensuring_Accessibility_and_Security1.pdf.

²⁰ VVSG 2.0 at 11.

²¹ *Id.* at 123.

²² *Id.* at 174.

²³ EAC, *EAC Decision on Request for Interpretation 2025-02 Accessibility Features*, <https://www.eac.gov/sites/default/files/2025-05/EAC%20Decision%20on%20RFI%202025-02%205.1%20D%20Accessibility%20Features.pdf#:~:text=Requirement%205.1-D%20Accessibility%20features%2C%20itself%20and%20its%20discussion%2C,changing%20any%20selections%2C%20and%20finally%20casting%20the%20ballot.>

²⁴ *Id.* at 11.

Eliminating or limiting the use of barcodes would not substantively advance election security. Fully 98% of jurisdictions nationwide have a paper ballot trail.²⁵ Systems with barcode-utilizing functions can still be, and are, audited to ensure accuracy. Given the reliability and auditability of current voting systems, banning barcodes would neither advance the purpose animating the VVSG mission nor election security in jurisdictions across the country.

Replacing and re-certifying voting systems is an incredibly time-intensive and expensive undertaking. Federal testing and certification to the VVSG is just one step of many outlined in various state statutes and regulations. Purchasing new voting machines would be incredibly costly for election officials, whose resources are limited by state budget appropriations and limited federal funding as it stands. These costs weigh strongly against any amendments to VVSG 2.0 disallowing a commonly used technology.

V. There is no lawful path for the decertification of voting machines that the EO commands.

We have no indication of exactly what the TGDC will discuss during its “Discussion of the Implementation of the Executive Order to Protect the Integrity of American Elections.”²⁶ But to the extent that it intends to discuss implementation of EO Section 4(b)(ii), the TGDC and the EAC should refrain from discussion or implementation of that provision. **Putting aside the EAC’s ability to promulgate the VVSG 2.1, EO Section 4(b)(ii)’s command that the EAC decertify voting machines is simply not lawfully permitted.**

EO Section 4(b)(ii) contemplates that, by September 21, 2025, the EAC must “take appropriate action” to “rescind all previous certifications of voting equipment based on prior standards.”

HAVA requires the EAC to “provide for the certification, decertification and recertification of voting system hardware and software by accredited laboratories.”²⁷ 52 U.S.C. § 20971(a)(1). The EAC has done so in its Manual. *See* EAC Voting System Testing and Certification Program Manual (the Manual)²⁸ § 7.²⁹ “Systems may only be decertified upon a

²⁵ See Press Release, EAC, *EAC Commissioners Issue Policy in Support of Paper-Based and Auditable Voting Systems* (May 28, 2025), <https://www.eac.gov/news/2025/05/28/eac-commissioners-issue-policy-support-paper-based-and-auditable-voting-systems>.

²⁶ Agenda, TCDG Virtual Meeting, EAC.gov (July 2, 2025, 1:00pm ET), https://www.eac.gov/sites/default/files/2025-06/TGDC_2025_Annual_Meeting_Agenda.pdf.

²⁷ HAVA also provides that a three-vote majority of the EAC Commissioners is required to approve accreditation and revocation to labs that test whether voting systems comply with the VVSG. 52 U.S.C. §§ 20971(b)(2)(A), 20928.

²⁸ Available at [https://www.eac.gov/sites/default/files/TestingCertification/Testing%20and%20Certification%20Program%20Manual%20Version%203.0%20\(2\).pdf](https://www.eac.gov/sites/default/files/TestingCertification/Testing%20and%20Certification%20Program%20Manual%20Version%203.0%20(2).pdf).

²⁹ The EAC considers version 3.0 of the Manual as the operative one, and thus that is the version we reference throughout. *See* EAC, *Manuals and Forms* (Sept. 12, 2024), <https://www.eac.gov/voting-equipment/manuals-and-forms>. However, note that the EAC recently published minor edits to that version for notice and comment—which will be version 3.1 once adopted—but there is no record of public notice and comment for version 3.0. *See* 89 FR 76105 (Sept. 17, 2024) (notice for Manual version 3.1). The Manual version 2.0 also went through notice and comment procedures. *See* 80 FR 19972 (Apr. 14, 2015) (notice for Manual version 2.0). The 3.0

vote of the Commissioners and following the process detailed in the [Manual].” VVSG Lifecycle Policy § 3.2.

The Manual and the VVSG Lifecycle Policy are abundantly clear that machines certified to prior VVSG versions do not lose their certification when a new VVSG version is issued. Voting systems are not decertified as the result of a new VVSG version; VVSG migration only affects the standards manufacturers may use to obtain *future* EAC certification.³⁰ So, for example, VVSG 1.0 certified machines today remain certified even though the EAC has promulgated VVSG 2.0.³¹ Systems certified to prior standards “maintain their status and jurisdictions may continue to acquire these as EAC certified systems.” VVSG Lifecycle Policy § 3.2.

The EAC’s policy only permits decertification of whatever version the machine was certified under. Decertification is proper if the system does not meet applicable VVSG (*i.e.*, the VVSG the machine had previously been certified under), has been modified or changed without following the procedural requirements of the Manual, or the manufacturer has failed to follow the Manual’s procedures and the quality, configuration, or compliance of the system is in question. Manual at § 7. The decertification process is initiated when “a source that has used, tested, or observed that a voting system may not be in compliance with the VVSG or the procedural requirements of this [M]anual,” submits information to this effect. *Id.* This prompts an informal inquiry by the T&C Program Director. *Id.* If the information is accurate and suggests non-compliance, the T&C Program Director initiates a formal investigation. *Id.* If the formal investigation also determines noncompliance, the manufacturer will be notified and, before a final decision on decertification is made, will have 30 days to remedy any defects identified in the voting system and present information to the EAC Decision Authority for consideration. *Id.* at § 7.6.1. A final decision on decertification may be appealed within 20 days of receipt. *Id.* at § 7.1.

None of the circumstances described above are present here. The EO calls for *retroactive* decertification that would violate HAVA and the EAC’s own procedures. **To implement the EO Section 4(b)(ii), the TGDC and EAC would have to violate statute and procedure. But the EAC’s Manual and VVSG Lifecycle Policy are binding.** Both a prior version of the VVSG Lifecycle Policy and a prior version of the EAC’s Manual have gone through notice and comment, *see* 86 FR 62156 (Nov. 9, 2021) (VVSG Lifecycle Policy); 80 FR 19972 (Apr. 14, 2015) (Manual Version 2.0), and thus are legislative rules with the force of law, *Kisor v. Wilkie*, 588 U.S. 558, 584 (2019). In such cases, courts have held that an agency is “bound by its own rules until it changes them” and, failing to do so, will be found to have acted arbitrarily and capriciously under the APA. *Miami Nation of Indians of Ind., Inc. v. U.S. Dep’t of the Interior*, 255 F.3d 342, 348 (7th Cir. 2001); *see also Tenn. Hosp. Ass’n v. Azar*, 908 F.3d 1029, 1042 (6th

version is thus arguably invalid. Regardless of which version of the Manual applies, the process and standards for decertification are very similar. *See* Testing and Certification Program Manual Version 2.0, U.S. Election Assistance Commission (effective May 31, 2015), <https://www.eac.gov/sites/default/files/TestingCertification/CertManual070815FINAL.pdf>.

³⁰ *See* EAC, *Voluntary Voting System Guidelines* (Jan. 31, 2025), <https://tinyurl.com/3asn9b>.

³¹ Indeed, no systems have been certified to the latest VVSG standards. *See* EAC, *Certified Voting Systems* (accessed June 8, 2025), <https://tinyurl.com/43xck5fy>.

Cir. 2018) (noting that a rule adopting a new position inconsistent with the agency’s existing regulations is “necessarily legislative”); *but see Perez v. Mortg. Bankers Ass’n*, 575 U.S. 92, 95 (2015) (holding that agencies may change their interpretive rules without notice and comment).

VI. Conclusion

The EAC should not implement the President’s unlawful commands. Accordingly, the TGDC should not participate in this unlawful process, should not consider the published draft of VVSG 2.1, and should not contemplate further steps toward implementation of the EO at the upcoming July 2, 2025 meeting.

/s/ Francisco V. Aguilar

Francisco V. Aguilar
Nevada Secretary of State
101 N. Carson Street, Ste. 3
Carson City, NV 89701

/s/ Adrian P. Fontes

Adrian Fontes
Arizona Secretary of State
1700 W. Washington Street, Fl. 7
Phoenix, AZ 85007

/s/ Shirley N. Weber, Ph.D.

Shirley N. Weber
California Secretary of State

/s/ Anthony Albence

Anthony Albence
State Election Commissioner
Delaware Department of Elections
905 S. Governors Ave., Ste. 170
Dover, DE 19904

/s/ Kwame Raoul

Kwame Raoul
Illinois Attorney General
115 S. LaSalle St.
Chicago, IL 60603

/s/ Shenna Bellows

Shenna Bellows
Secretary of State
Department of the Maine Secretary of State
148 State House Station
Augusta, ME 04333

/s/ Jared DeMarinis

Jared DeMarinis
State Administrator of Elections
Maryland State Board of Elections
151 West Street
Annapolis, MD 21401

/s/ William Francis Galvin

William Francis Galvin
Secretary of the Commonwealth
1 Ashburton Place
Boston, MA 02108

/s/ Jocelyn Benson

Jocelyn Benson
Michigan Secretary of State
430 W. Allegan St.
Richard H. Austin Building – 4th Fl.
Lansing, MI 48918

/s/ Steve Simon

Steve Simon
Minnesota Secretary of State
Veterans Service Building, Ste. 210
20 W 12th Street
Saint Paul, MN 55155

/s/ Maggie Toulouse Oliver
Maggie Toulouse Oliver
New Mexico Secretary of State
325 Don Gaspar, Ste. 300
Santa Fe, NM 87501

/s/ Letitia James
Letitia James
New York Attorney General
The Capitol
Albany, NY 12224

/s/ Sarah Copeland Hanzas
Sarah Copeland Hanzas
Vermont Secretary of State
128 State Street
Montpelier, VT 05602

/s/ Matthew J. Platkin
Matthew J. Platkin
New Jersey Attorney General
25 Richard J. Hughes Justice Complex
25 Market St.
Trenton, NJ 08611

/s/ Gregg M. Amore
Gregg M. Amore
Secretary of State
Rhode Island Department of State
State House – 82 Smith St., Room 218
Providence, RI 02903