

To: rule-comments@sec.gov
Subject: File # SR-NASDAQ-2020-081
Date: January 25th, 2021

We are writing with respect to the Nasdaq rule on board room diversity, which can be found at 85 FR 80472 published on December 11, 2020. Our organizations are particularly interested in this rule because we work with a variety of corporations, both nonprofit and profit, to enable the 1-in-5 people with disabilities to have a better future themselves and to create a better future for others as well.

Further, we fully embrace the finding by Nasdaq in the proposed rulemaking that “diversity in the boardroom is good corporate governance. The benefits to stakeholders of increased diversity are becoming more apparent and include an increased variety of fresh perspectives, improved decision making and oversight, and strengthened internal controls.” Our lengthy experience shows us that this is especially true regarding stakeholders with disabilities, and that therefore, a modification to the proposed rule to include people with disabilities would be beneficial both for our mission and for the stated aim of Nasdaq in making this rule.

In the proposed rulemaking, Nasdaq acknowledges that the primary categories of the rule are those covered by EEO-1, and justifies that decision in part by stating that “Nasdaq’s review of academic research on board diversity revealed a dearth of empirical analysis on the relationship between investor protection or company performance and broader diversity characteristics such as veteran status or individuals with disabilities.”

This academic review appears to have missed critical data, which we now bring to your attention in hopes of changing your decision.

In 2018 Accenture along with AAPD and Disability:IN, issued a report entitled, “Getting to Equal: The Disability Inclusion Advantage.” In that report, which can be found at <https://www.accenture.com/acnmedia/PDF-89/Accenture-Disability-Inclusion-Research-Report.pdf>, they found that champions of the disability equality index perform above average financially when compared to other companies. In particular, champions on average scored 28% higher in revenue, double the net income, and had 30% higher economic profit margins over the four-year period analyzed. Disability inclusion champions were also on average two times more likely to outperform their peers in terms of total shareholder returns compared with the rest of the companies analyzed. Finally, the research showed that companies improving their disability equality index were four times more likely to have total shareholder returns outperforming their peers compared to those that did not improve. On average, those improving in disability inclusion showed returns outperforming industry peers by 53% while other companies outperformed their peers by only 4%.

In June of 2020, Westat issued a [report entitled](#) “Survey of Employer Policy on the Employment of People with Disabilities.” This report was prepared for the Chief Evaluation Office and the Office of Disability Employment Policy of the U.S. Department of Labor’s Chief Evaluation Office and Office of Disability Employment Policy. It is a very comprehensive report with much relevant information to this rulemaking. A few in particular are worth noting. On pages 3-27 of

the full report, Westat refers to an academic study finding that one of the practices that increase the likelihood of hiring people with disabilities is senior management commitment. On that same page, Westat refers to a different academic study saying that one of the retention practices associated with retention effectiveness of persons with disabilities is assuring employees know how their work and performance support the mission of the organization. Of course, senior management commitment and the mission of the organization begins with those on the corporate board.

Readily available studies which supplement that which Nasdaq erroneously referred to as a dearth of information. In fact, the academic evidence for the benefit to shareholders and stakeholders is very clear.

Further, the worldwide market of consumers with disabilities is massive and continues to grow, year after year. According to [Nielsen Research](#), consumers with disabilities represent a \$1 billion market segment themselves. When you include their families, friends and associates, that total expands to more than \$1 trillion. Americans with disabilities represent the third largest market behind Baby Boomers and the mature market.

Nasdaq further states that this data does not exist for the LGBTQ+ community, but justifies the proposed expansion to the LGBTQ+ community, even though this community is not covered under the EEO-1 report, by stating, “While recognizing the diverse perspectives that different backgrounds can provide, most stakeholders supported a narrower definition of Diversity focused on gender, race and ethnicity, with several supporting broadening the definition to include the LGBTQ+ community.”

The undersigned would first like to note that we join with the aforementioned stakeholders in celebrating and supporting the addition of the LGBTQ+ community to its definition of Diversity, but that the justifications provided by Nasdaq that the inclusion of one category beyond that of the EEO-1 report while continuing to exclude other protected classes, such as disability, requires a rational basis beyond the preference of Nasdaq stakeholders.

This is especially the case in the decision to exclude the disability community, given the long history of protection for the 1 in 5 Americans that Congress recognizes as having a disability. Indeed, nondiscrimination statutory provisions against persons with disabilities go as far back as the Rehabilitation Act of 1973 (29 U.S.C. §794), and in passing the Americans with Disabilities Act of 1990 (ADA), subsequently, Congress felt it necessary to make the following findings regarding systemic and societal discrimination against people with disabilities, to wit:

Historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem; 42 U.S.C. §12101(a)(2)

Census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally; 42 U.S.C. §12101(a)(6)

The Nation’s proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; 42 U.S.C. §12101(a)(7)

The continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity. 42 U.S.C. §12101(a)(8)

This statutory history means that disability is a class tracked throughout the federal government. In fact, federal contractors are required to engage in affirmative action to hire and retain persons with disabilities. 29 U.S.C. §503. So, federal contractors, which would include many listed on the Nasdaq exchange, already are collecting information on how many employees they have with disabilities, which makes disability less burdensome to track than other categories additional to the EEO order.

Should stakeholders seeking board members seek further information in this regard, the following simple question is likely to yield the desired data:

[Stakeholder] seeks to maximize shareholder return by fostering a diverse presence on its Board of Directors, including individuals with disabilities. A disability can be a physical, cognitive, sensory, mental health, chronic pain or another condition that is a barrier to everyday living. Do you have a disability?

Yes,

Don’t know

No

The principal basis offered by Nasdaq, beyond the preference of its users, for excluding the protected classes not covered by the EEO–1 report is that it could result in boards lacking in diversity in race and gender. While this argument is facially plausible, it could first of all be remedied by structural changes to the rule. More importantly, there is no rational basis provided as to why this concern applies any differently to the LGBTQ+ community than those other protected classes not covered by the EEO–1 report.

The partially attempted differentiation, i.e., that the recent Supreme Court finding that LGBTQ+ discrimination was inextricably tied up with sex discrimination, and thus represents a facet of gender diversity, appears completely capricious in light of the structure of the proposed rule, which offers that including someone as a member of the LGBTQ+ community would be an alternative to the requirement of a member who was diverse in terms of race and national origin. If the proposed rule were in fact treating this as a subset of gender, the enumeration of LGBTQ+ would have been included by the drafters in the gender diversity requirement.

In conclusion, we encourage Nasdaq to add people with disabilities to the proposed rule because of the clearly identified benefits that this diversity presents for shareholders. We further note that Nasdaq has failed to articulate a rational basis to include one protected class beyond those articulated in the EEO-1 Report while excluding other protected classes.

Should this recommendation be accepted, we further recommend that Nasdaq use the definition of disability offered within the ADA and the Rehabilitation Act, to wit, a person who (A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) is regarded as having such an impairment. 29 U.S.C. §794; 42 U.S.C. §12102(1).

We do hope that our comments here inform the SEC of the situation, and that the SEC will correct the unintentional and lacking in rational basis oversight of excluding persons with disabilities from the diversity rule.

We are also including with these comments a short slide deck that contains further details and data relevant to these critical discussions.

Respectfully submitted on January 25, 2020 by:

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respect
ability

FIGHTING STIGMAS. ADVANCING OPPORTUNITIES.

RespectAbility Public Comments
File # SR-NASDAQ-2020-081
www.RespectAbility.org

January 25th, 2021

1 in 4

adults have a
disability

61 Million

people in the US
have a
disability.*



Disabilities Are....



**Temporary and
Permanent**



**Visible and
Invisible**



**Born with it or
Acquired**

Anyone can join the disability community at any point.

The disability community is cutting edge and innovative.

People with disabilities are diverse and part of all communities.



Americans with Disabilities are Connected to Communities



48% have a family member with a disability

42% have a close friend with a disability



Untapped Potential

- People with disabilities have problem-solving experience, as well as loyalty to their employers.
- Companies that recruited and supported employees with disabilities have a 30% greater profit margin.

* Study completed by [Accenture](#), [Disability:IN](#) and the [American Association of People with Disabilities](#)

Learn from the Trailblazers – Benefits of Inclusion



Inclusion Works

- Increased talent pool
- **90% perform on par or better**
- **48% greater tenure**
- **40% less absenteeism**
- **\$225B Market Opportunity**



- **Managers report no difference in working with those with disabilities**
- Managers report improved culture
- Policy changes or work adjustments are good for everyone



Obstacles and Frameworks

Obstacles

Companies

- Low demand for hiring people with disabilities
- Few case studies of hiring at volume
- Little knowledge of how to find, recruit, hire or retain
- Few disability inclusion consultants

Disability/Workforce Agencies

- Little understanding of business needs
- Little benefit to jobseekers from large-scale workforce development programs

Funders

- Low interest from foundations on disability employment

Framework

Become a catalyst for the employment of people with disabilities by creating a high volume of jobs in a relatively short period of time by using a variety of models

National: Company readiness through one-to-one or cohort

Local: Networks of businesses, government, nonprofit agencies

Field-Building: Increased numbers of consultants and funders

Connecting National/Local Strategies

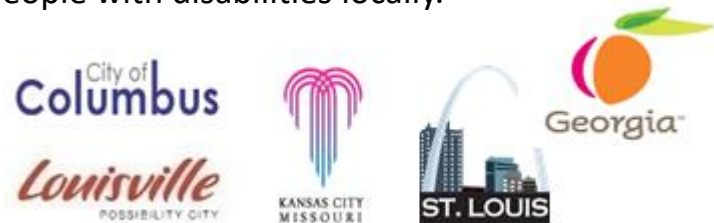
National Strategy

We support major corporations to implement largescale disability hiring programs.



Local Strategy

We support local communities to collaborate and employ people with disabilities locally.



Field-Building

We collaborate across the field to share knowledge, increase resources, and amplify impact. We build capacity and expertise in the field to activate a new generation of leaders in disability inclusion.



Poses Family Foundation – Workplace Initiative

- The Workplace Initiative was founded as a national network of foundations, companies, nonprofits and government agencies that worked to remove barriers to successful careers for people with disabilities. Started in 2012, the agency was spearheaded by a team of experts in disability inclusion at the [Poses Family Foundation \(PFF\)](https://www.posesfamilyfoundation.org/), a New York City–based philanthropic foundation founded by Nancy and Fred Poses.
- https://workplaceinitiative.org/wp-content/uploads/2017/02/Disability-Employment-and-Inclusion_Your-Guide-to-Success.pdf



DISABILITY EMPLOYMENT AND INCLUSION: YOUR GUIDE TO SUCCESS

Explore the success stories of other standout brands:



MCKESSON



Boston
Scientific



Walgreens

P&G

The National Organization on Disability (NOD)

- **Challenge:** Many employers are struggling to advance disability workplace inclusion and, at a time when talent attraction is a top business priority. It's imperative to develop a disability inclusion baseline to measure adoption of best practices.
- **Actions:** The [Disability Employment Tracker™](#), NOD's confidential, corporate self-assessment, allows employers to benchmark their disability inclusion practices against other leading companies.
- Employers receive a free Scorecard measuring six inclusion aspects: **Climate & Culture; Talent Sourcing; People Practices; Workplace & Technology; Strategy & Metrics; and Veterans Employment.**



Accenture and the Disability Inclusion Advantage

- New research from Accenture, in partnership with Disability:IN and the American Association of People with Disabilities (AAPD), reveals that companies that embrace best practices for employing...have outperformed their peers.
- **Would you like to know more?** https://www.accenture.com/_acnmedia/pdf-89/accenture-disability-inclusion-research-report.pdf



- Companies that embrace employees with disabilities clearly see the results in **their bottom line.**
- According to Accenture, disability-inclusive companies have **higher productivity levels** and **lower staff turnover rates**, are **twice as likely to outperform their peers in shareholder returns** and create larger returns on investment.

Identify and Change Process – Microsoft’s Lesson

- At Microsoft, managers realized that people with autism weren’t getting hired despite clearly having the required knowledge and intellect.
- As Jenny Lay-Flurrie, the company’s chief accessibility officer, told us, “We discovered that the problem was the interview process, so we did away with that process entirely for candidates with autism.” Microsoft instead began working with a local autism-support organization
- to bring in candidates for a different type of evaluation process. The assessment program involved a series of exercises designed to test teamwork and technical skills; it also provided real-time training.
- **This way of thinking also applies to people development and training processes. Even small changes in standard training programs can make a big difference**



Coca-Cola's Unlabeled Campaign

we live in a world full of labels.

some labels are earned. fought for. demanded. proudly owned. but then there are labels that are imposed upon us. weapons aimed to limit. box us in. make us feel lesser than. but imagine a world where we aren't limited by the way others label us.

we're removing our own labels to start a conversation about labels.



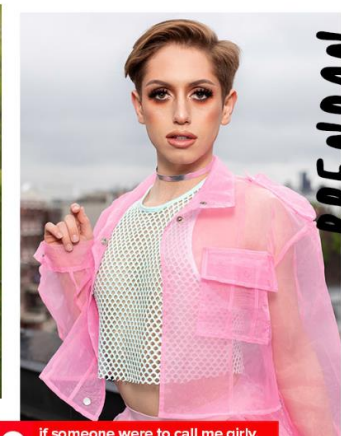
to hear people's stories. to see them shine. to remove the barriers placed in the way of one's true identity. to celebrate, not just individuality, but multidimensionality and self-expression.

by removing our labels, we're pledging to create more space.

more runway. more room. more opportunity for people to be themselves. express themselves. we pledge to use our reach. our relationships. our resources. to create a safe and open space for you to be you.



your labels did not break me. they empowered me.



if someone were to call me girly, I'd be like "yes, yes I am. and?"

Foster Dialogues about Labels

want to have your own conversation about labels?

our friends at civic dinners put together the below guide.



Feeling inspired? Help us keep the conversation going by sharing your [unlabeled][™] experience on social using [#unlabeled](#) [@dietcoke](#) [@civildinners](#) and continue to start new conversations with friends, family or colleagues.

- **question 1** – our minds are naturally geared towards the use of labels; labels and categories help us make sense of the world. however, when labels are applied to people they can be incredibly limiting and can prevent us from really seeing and understanding each other. jason described this when he said, ‘as a young black man you have 19 things that people know about you before you get to introduce yourself’. **share a moment where you have labeled someone and they surprised you.**
- **question 2** As Nauman says, ‘some labels are chains and some labels are wings’. **Share an example of labels being either ‘chains’ or ‘wings’.**
- **question 3** What is one action you can take to help create an environment at work, school, or in life where others can bring their whole selves?

Leading the Way at JP Morgan Chase

Office of Disability Inclusion

The global Office of Disability Inclusion (ODI) is dedicated to providing consistent standards and processes to better accommodate employees with disabilities, as well as better support employees who care for family members with disabilities. This includes ensuring we have the right tools, policies and procedures to promote an inclusive work environment.

Paying it Forward



JPMorgan Chase's Autism at Work program seeks to help people on the spectrum secure jobs that will allow them to grow.

This is Me: A Global Dialogue on Mental Health



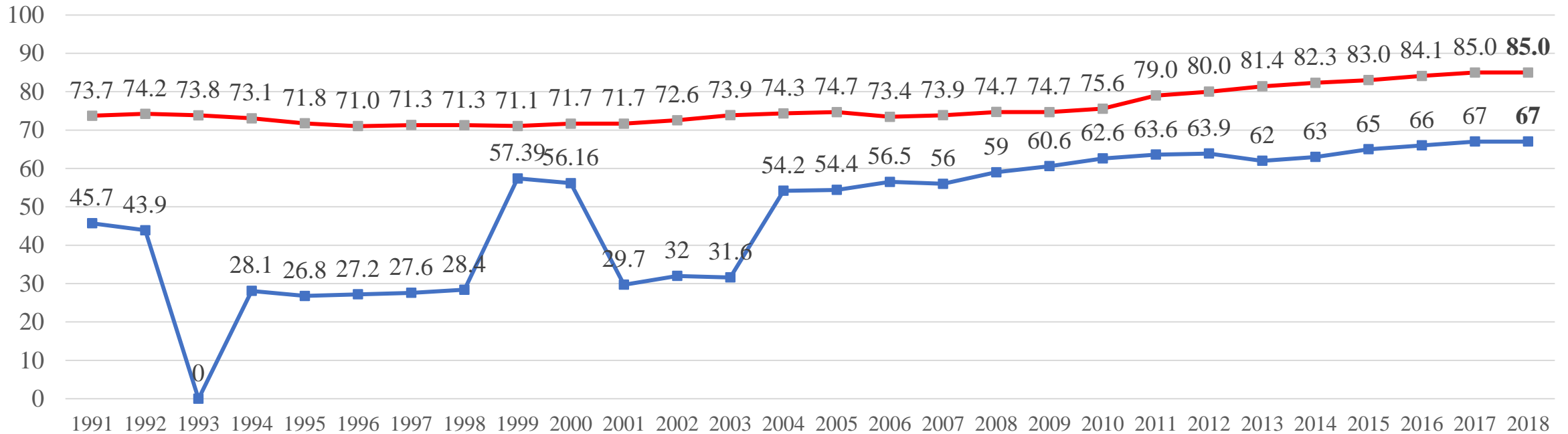
Our employees share their experiences to help reduce the stigma around mental illness.

Matching Talent and Opportunity



How diversity of thought is helping this company find the right tech talent.

High School Graduation Rates for Students w/ & w/o Disabilities – 1990 to 2020

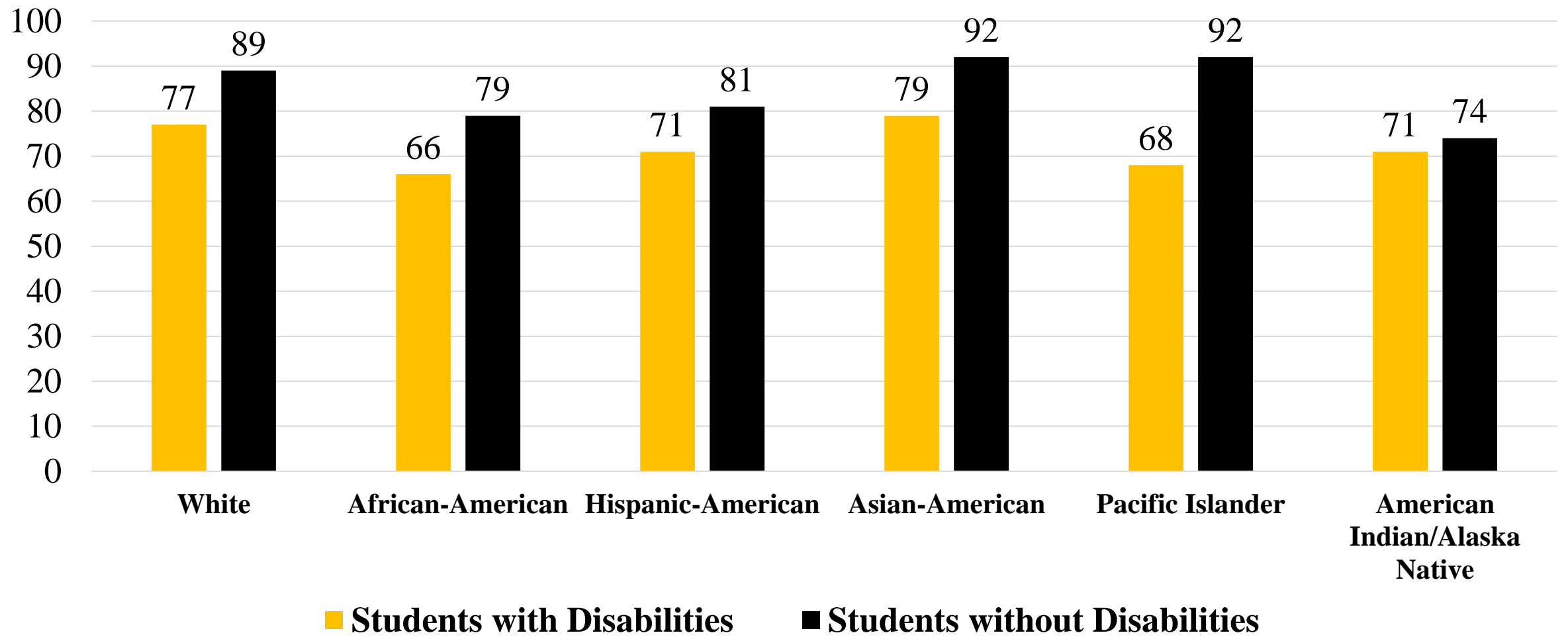


NOTE: PWD Data Unavailable for class of 1993.

- HS Graduation Rate for Students with Disabilities 1990 to 2020
- HS Graduation Rate for Students without Disabilities 1990 to 2020

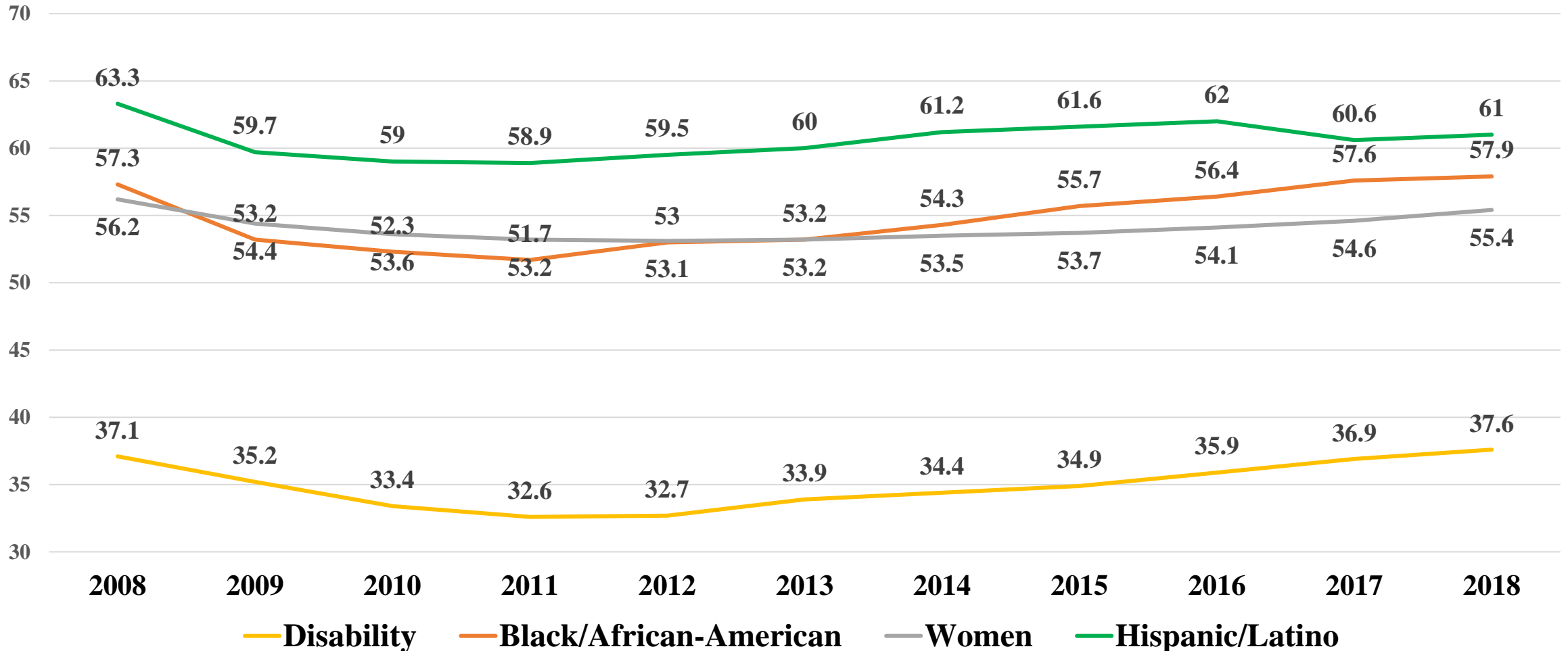
Source: Digest of Education Statistics 1991 to 2018 <https://nces.ed.gov/programs/digest/> / <https://nces.ed.gov/pubsearch/getpubcats.asp?sid=091#061>

National HS Graduation Rates for Students w/ & w/o Disabilities by Race – Class of 2018



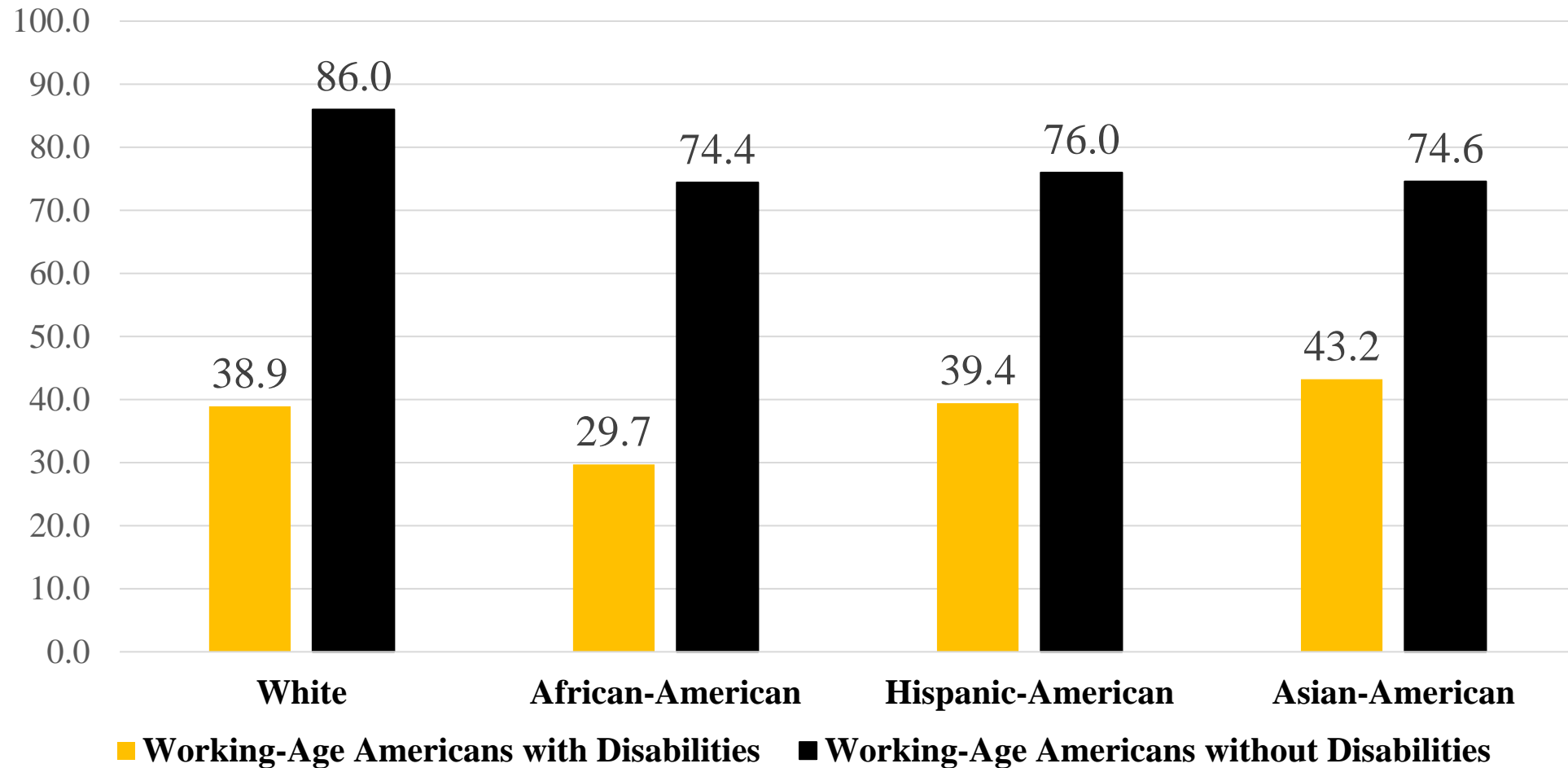
SOURCE: U.S. Department of Education, Office of Special Education Programs, Individuals with Disabilities Education Act (IDEA) Section 618 Data Products https://nces.ed.gov/programs/coe/indicator_cgg.asp

Employment Rates of Minority Populations (Percentage of population) – 2008 to 2018



SOURCES: <https://www.statista.com/statistics/793961/employment-among-disabled-us-adults/>
<https://www.bls.gov/charts/employment-situation/employment-population-ratio.htm>

Employment Rates for Working-Age Americans w/ & w/o Disabilities, by Race – 2018

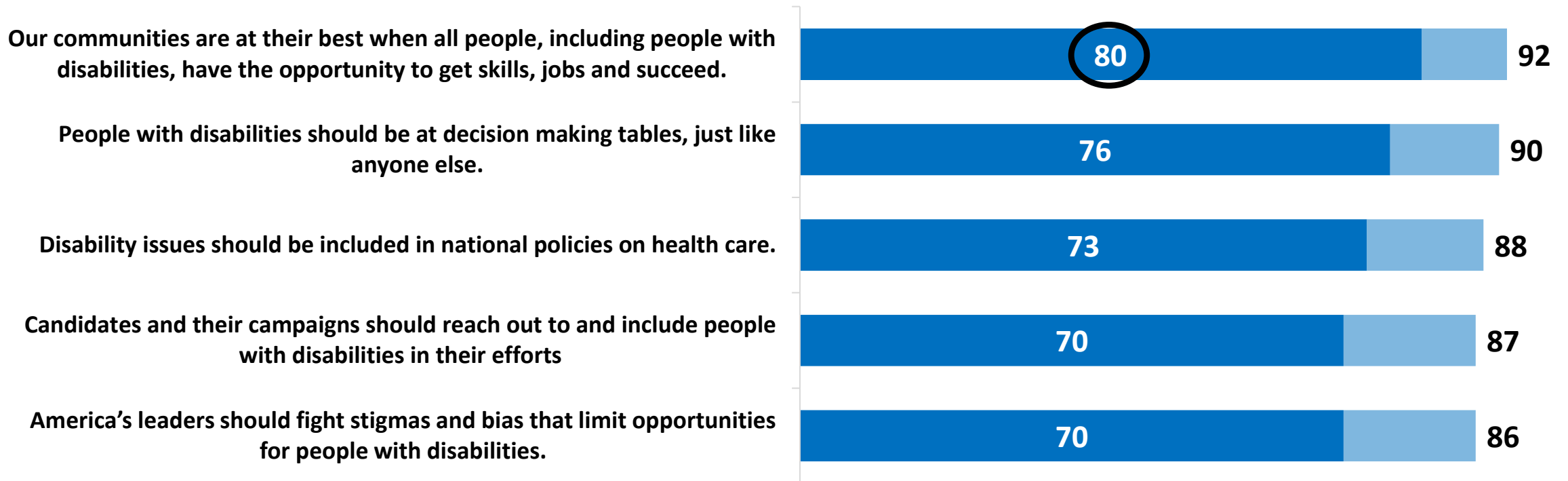


SOURCE: Annual Disability Statistics Supplement: 2019. Univ. of New Hampshire, Institute on Disability.
https://disabilitycompendium.org/sites/default/files/iod/reports/2019-annual-disability-statistics-supplement-pdfs/2019_Annual_Disability_Statistics_Supplement_ALL.pdf?ts=1580831674

At least 9 in 10 voters agree that our communities are at their best when all people, including people with disabilities, have opportunities, and that people with disabilities should be at decision making tables just like everyone else. Voters also strongly agree with statements that call for disability issues to be included in national policies and for candidates and their campaigns to include this constituency in their efforts and fight against stigmas and bias.

Now let me read you some statements and please tell me if you agree or disagree with each statement. [TIER ONE]

All Voters

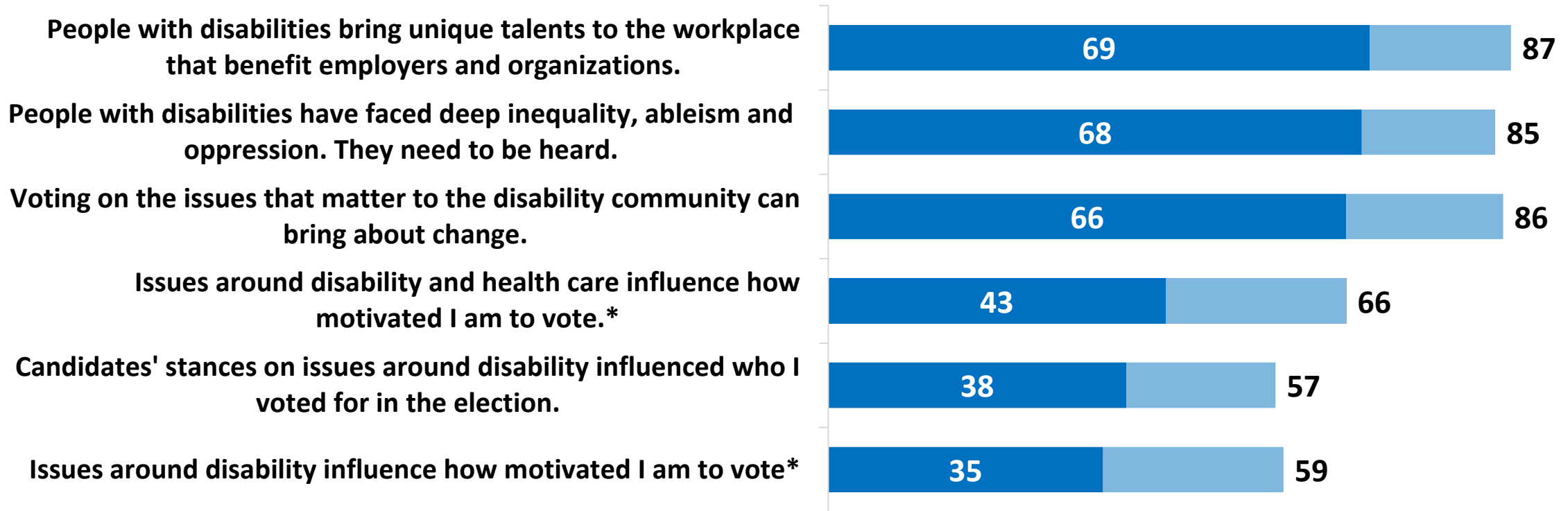


Not so strongly agree
Strongly agree

At least two-thirds of voters also strongly agree with statements that center people with disabilities and highlight their contributions to the workplace, underscore the historical biases they have faced, and talk about how voting on issues important to this community can bring about change. Statements focused on the individual around the issues and motivation to vote fall into a second tier. Voters are more likely to strongly agree that issues around disability and healthcare influence their motivation to vote rather than disability issues alone.

Now let me read you some statements and please tell me if you agree or disagree with each statement. [TIER TWO]

All Voters



Not so strongly agree
Strongly agree

*split sampled question

THE TARRANCE GROUP



The top tier of statements is strong across gender, age, educational attainment, race, and party identification. African Americans, Democrats, and Biden voters are especially likely to strongly agree.

Tell me if you agree or disagree with each statement. [TOP TIER]

% Strongly Agree	All	Men	Women	<30	30-39	40-49	50-64	65+	Non-College	College	White	AA	Latinx	API	Dem	Ind	Rep	Voted Trump	Voted Biden
Our communities are at their best when all people, including people with disabilities, have the opportunity ...	80	78	82	76	80	77	83	82	81	79	81	82	74	71	85	80	75	75	85
People with disabilities should be at decision making tables, just like anyone else	76	76	76	69	75	78	77	79	78	74	78	82	67	63	82	78	69	69	83
Disability issues should be included in national policies on health care	73	71	75	72	71	71	72	79	75	70	74	81	64	59	83	72	63	63	84
Candidates and their campaigns should reach out to and include people with disabilities ...	70	68	73	65	64	73	72	75	71	70	70	81	70	59	80	69	61	62	79
America's leaders should fight stigmas and bias that limit opportunities for people with disabilities	70	68	71	70	68	71	69	71	70	70	69	81	69	66	78	73	60	60	79

The top tier of statements is also strong in the disability community, especially among voters with disabilities. More than 9 in 10 older voters with disabilities and voters with disabilities in battleground states strongly agree our communities are at their best when all people, including people with disabilities, have the opportunity to get skills, jobs, and succeed.

Tell me if you agree or disagree with each statement. [TOP TIER]

% Strongly Agree	All Voters	PWD	Fam	Friend	All Dis. Comm.	PWD Men	PWD Women	PWD <50	PWD 50+	Heard Issues Biden	Heard Issues Trump	Didn't Hear Biden	Didn't Hear Trump	PWD BG States	Dis. Com. BG States
Our communities are at their best when all people, including people with disabilities, have the opportunity ...	80	91	85	84	87	91	91	86	95	88	81	83	73	92	87
People with disabilities should be at decision making tables, just like anyone else	76	85	78	77	80	87	83	83	86	85	69	82	70	85	80
Disability issues should be included in national policies on health care	73	84	80	77	81	86	82	84	84	86	66	83	61	88	84
Candidates and their campaigns should reach out to and include people with disabilities ...	70	81	77	63	76	83	79	76	85	83	66	77	61	79	75
America's leaders should fight stigmas and bias that limit opportunities for people with disabilities	70	79	75	68	75	79	78	78	80	82	70	77	57	80	75

A majority of older, African American, Latinx, Democratic, and Biden voters say issues around disability and health care influence how motivated they are to vote. Democrats and Biden voters say candidates' stances on issues around disability influence how motivated they are to vote, too.

Tell me if you agree or disagree with each statement. [SECOND TIER]

% Strongly Agree	All	Men	Women	<30	30-39	40-49	50-64	65+	Non-College	College	White	AA	Latinx	API	Dem	Ind	Rep	Voted Trump	Voted Biden
People with disabilities bring unique talents to the workplace that benefit employers and organizations	69	67	71	62	63	68	70	77	71	66	68	77	70	58	75	68	63	63	75
People with disabilities have faced deep inequality, ableism and oppression. They need to be heard	68	66	69	60	67	68	70	71	71	64	66	82	63	70	82	62	57	56	79
Voting on the issues that matter to the disability community can bring about change	66	68	64	67	64	65	65	68	67	65	65	76	64	56	73	66	58	58	75
Issues around disability and health care influence how motivated I am to vote*	43	41	45	34	46	42	41	50	44	42	37	62	50	41	55	41	32	33	53
Candidates' stances on issues around disability influenced who I voted for in the election	38	36	39	38	33	33	38	43	39	35	36	50	39	33	49	34	29	29	48
Issues around disability influence how motivated I am to vote*	35	36	35	37	30	37	36	37	42	28	33	52	42	31	45	43	21	25	44

*split sampled question

Voters with disabilities strongly agree with all statements at higher rates than the disability community overall, as do Biden voters who heard about issues around disabilities from campaigns. Younger voters with disabilities are more likely than older voters with disabilities to strongly agree that candidates' stances on issues around disability influence who they voted for and how motivated they were to vote this election.

Tell me if you agree or disagree with each statement. [SECOND TIER]

% Strongly Agree	All Voters	PWD	Fam	Friend	All Dis. Comm.	PWD Men	PWD Women	PWD <50	PWD 50+	Heard Issues Biden	Heard Issues Trump	Didn't Hear Biden	Didn't Hear Trump	PWD BG States	Dis. Com. BG States
People with disabilities bring unique talents to the workplace that benefit employers and organizations	69	83	75	60	76	81	85	78	87	80	66	72	62	82	75
People with disabilities have faced deep inequality, ableism and oppression. They need to be heard	68	84	70	65	73	81	86	83	85	84	54	77	59	84	72
Voting on the issues that matter to the disability community can bring about change	66	79	71	59	72	81	77	78	80	81	61	72	59	79	69
Issues around disability and health care influence how motivated I am to vote*	43	53	49	42	50	51	55	50	55	65	40	47	31	49	48
Candidates' stances on issues around disability influenced who I voted for in the election	38	54	40	36	43	57	51	57	52	59	39	42	25	56	47
Issues around disability influence how motivated I am to vote*	35	50	35	49	41	52	47	57	44	49	26	42	24	48	40

*split sampled question



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respect ability

FIGHTING STIGMAS. ADVANCING OPPORTUNITIES.

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