



DAVID CRAIG

STATE SENATOR

Senate Committee on Elections, Ethics, and Rural Issues

7 May 2019

Senate Bill 48

Senator David Craig, 28th Senate District

Senator Bernier and Committee Members,

Thank you for hearing testimony on Senate Bill 48. Wisconsin currently prohibits voters from showing their marked ballot to any other person. It is time to restore this free speech right to allow citizens to share their participation in the democratic process.

In 2017, the Supreme Court of the United States declined to take up the case *Rideout v. Gardner*, keeping in place the First Circuit's decision declaring a similar law that restricted the showing of marked ballots in New Hampshire facially unconstitutional. The First Circuit notes that the New Hampshire law "affects voters who are engaged in core political speech, an area highly protected by the First Amendment." Additionally, the Court ruled that the provision did not pass the scrutiny necessary to curtail First Amendment rights. While the First Circuit's decision does not apply to Wisconsin, this legislation would eliminate the problem in our State before a Constitutional challenge is made.

This is a simple bill to clean up an outdated provision in our statutes that is archaic in the age of social media and not in keeping with our First Amendment right to free speech. Senate Amendment 1 to the bill is a technical fix that leaves in place the prohibition on stray marks made to ballots while still allowing voters to exercise their Constitutional rights to share a photo of their marked ballot.

Again, I appreciate your hearing of this bill today and I look forward to answering any questions you may have.



ROBERT BROOKS

STATE REPRESENTATIVE • 60TH ASSEMBLY DISTRICT

Hearing Testimony

Senate Committee on Elections, Ethics, and Rural Issues

May 7, 2019

Chairman Bernier and members of the Senate Committee on Elections, Ethics, and Rural Issues, thank you for affording me with the opportunity to testify on behalf of Senate Bill 48 relating to: allowing an elector to show his or her marked ballot.

Senate Bill 48 despite being just one sentence in length is consequential, as it affirms a core tenant of republic: personal freedom. In this, the freest country in human history, individuals should have the right to photograph their ballot and share that ballot photograph—a symbol of national pride—with friends, family members, etc. Sharing a photograph of a completed ballot is not election tampering or an attempt to persuade an individual to cast his or her ballot in a specific way; rather, it is a symbol of pride and civic duty.

Efforts to prevent individuals from photographing their completed ballots are illogical, and a violation of personal liberty and individual freedom.

Under current law, an elector is prohibited from showing his or her marked ballot to any person. This prohibition extends to the posting of ballot photographs to social media platforms. As social media has become an ubiquitous medium for many to voice their opinions and share life experiences, Wisconsin law interferes with First Amendment rights of state electors to shared photographs of their completed ballots.

In April 2017, the United States Supreme Court declined to hear *Rideout v. Gardner*, opting instead to stay the First Circuit's ruling that a New Hampshire ban on sharing ballot photographs was facially unconstitutional. Although the First Circuit's ruling affects only New Hampshire's ballot law, Senate Bill 48 seeks to eliminate any unconstitutional burden which currently restricts Wisconsin electors' First Amendment free speech rights before such a case may be instigated in our state.

Wisconsin is currently one of eighteen states that prohibits photographs of marked ballots being shown to other persons by an elector. Wisconsin must eliminate this



ROBERT BROOKS

STATE REPRESENTATIVE • 60TH ASSEMBLY DISTRICT

archaic law, as it was created to prevent vote buying at the turn of the twentieth century. This bill restores electors' First Amendment rights on Election Day.

Senator Craig and I authored an amendment to reinstate language regarding unique symbols on ballots. Symbols were often used by individuals attempting to fix an election, to identify which of their paid operatives actually cast votes on Election Day. This amendment is necessary for two reasons: modern ballot machines reject ballots containing unique symbols and it allows election officials to better identify vote buying or attempts to influence an election by outside parties,

I am happy to answer any questions you might have regarding Senate Bill 48.

Testimony of Meagan Wolfe
Interim Administrator
Wisconsin Elections Commission

Senate Committee on Elections, Ethics and Rural Issues
May 7, 2019

425 Southwest, State Capitol
Public Hearing

Chairperson Bernier and Honorable Members of the Committee:

Thank you for the opportunity to provide written testimony on behalf of the Wisconsin Elections Commission (WEC) regarding Senate Bill 48. The members of the Commission are aware of the proposed legislation but have not discussed it in any depth or taken a position on the bill, so our testimony is for information only.

2019 Senate Bill 48 would repeal language in Wisconsin Statute § 12.13(1)(f) which criminalizes an elector showing his or her marked ballot, but the bill continues to prohibit a voter marking a ballot so that it identifiable as their ballot. The logic behind prohibitions on displaying a marked ballot is to discourage a means of being compensated for a vote, which constitutes election bribery and is a Class I felony.

This bill would be consistent with federal court rulings in other states which invalidated statutes that prohibit voters from showing their marked ballots. In those decisions, federal courts held that “ballot selfie” statutes are overbroad because there may be many innocent reasons for a voter to show their marked ballot unrelated to election bribery. Wis. Stat. § 12.11 would continue to prohibit election bribery whether or not it involved a ballot selfie, and any cases involving that conduct could be prosecuted by a district attorney.

Monitoring and enforcing compliance with the prohibition on displaying a marked ballot, especially by photographing it, can be difficult. Chief inspectors in charge of each polling place are authorized to maintain order and to order a voter to cease any behavior which causes a disruption or distraction to voters. SB 48 would still permit chief inspectors to prohibit displaying a marked ballot or taking a photograph of it if that conduct created a disturbance. However, because of the federal court decisions, the WEC no longer advises that there is a blanket prohibition against a voter taking a photo of their marked ballot or showing it to any other person.

Thank you for the opportunity to provide testimony. If I can provide any additional information or clarification, please feel free to contact me.

Respectfully submitted,

COUNTY CLERK

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**Public Hearing
Committee on Elections, Ethics and Rural Issues
Tuesday, May 7, 2019
9 am
425 Southwest**

Regarding Senate Bill 48

Relating to: allowing an elector to show his or her marked ballot.

The County Clerk's Association does not support bills to allow electors to show their voted ballot. This legislative change would open all kinds of possibilities for political mischief and election violations. Everyone today is concerned with election security, and our efforts to ensure secure and credible elections need to prevent possibilities for people, organizations, and groups to encourage adverse influences on elector voting practices. Casting a secret ballot curtails these negative influences.

In 1890, states adopted the "Australian ballot" as a voting method in which electors choices are anonymous, forestalling attempts to influence the elector by intimidation, blackmailing, and potential vote buying. This voting method achieves electors' political privacy.

Although, society has the World Wide Web and there are many benefits to instance access to information, caution is necessary regarding release of elector voting practices. We are familiar with attempted data breeches in the last presidential election. Government has invested heavily in security to prevent further attempts.

Have you thought about the effects of unions, political parties, and organizations having access to how electors are voting? Imagine, an elector posting a selfie online and the ramifications that could result.

- Incorrect voting instructions could go public and misinform other electors; we know that everything on the web is true, right?
- Bad actors could compensate or punish electors based on how they voted. A bad actor has the ability to use how an elector voted to either help or hinder the elector in all aspects of life. An elector who innocently posts a selfie showing his/her voted ballot most likely would not know how bad actors are using that information. A selfie or any other image of a voted ballot removes privacy, affects election credibility, and creates bias when a "secret" ballot is no longer secret.

Electors probably have not thought about the effect that placing an identifiable mark on their ballot could have on their lives because we have a secret ballot method in place today that protects them. Before you vote on SB 48, reflect on why we have a secret ballot method in place today. It will help to identify possible consequences and outcomes of removing secret ballot protections.

Sandy Juno
Brown County Clerk

Testimony from Lisa Tollefson, Rock County Clerk at the Senate Public Hearing-Committee on Elections, Ethics and Rural Issues on May 7, 2019.

SB48 Relating to allowing an elector to show his or her marked ballot.

- **WCCA opposes this legislation.**
- Our first concern for this bill is electors taking a picture of their ballot and then showing that picture for compensation. It is understood that receiving compensation for still covered under the statutes, but voters hearing that one penalty has been removed may think that they are clear of other penalties.

Let's consider speeding. We all know that car crashes at higher speeds cause more fatalities. We also know the penalties for speeding: getting a ticket, paying a fine, adding points on our driving record, and increases in our insurance costs. If there were no penalties for speeding, how closely do you think any of us would follow the speed limit even though it is safer?

- Now let's consider how allowing an elector to show their marked ballot affects the polling location. To show your marked ballot you basically need to take a picture of it and the majority of us carry a camera with us everywhere we go. It would be very easy to have a voter take a picture of their ballot.

What if someone takes a picture of their ballot, not realizing they have capture someone else in their photo? As a voter I would find that intimidating. What if the person in the booth next to me also get a picture of my ballot. What if that voter is a confidential voter? A confidential voter does not state their name or address at the polling location. A confidential voters are victims of domestic abuse, sexual assault or stalking. Is their safety at risk because they were caught in the background of a ballot photo?

- We don't allow observers to take photos in the polling location? Electors are observers also.
- What about social media? Can you see social media sites asking voters to upload a picture of their ballot, 100 random voters will win a prize? Has anyone ever had their social media account hacked? What a hacker posts a ballot on your account? What kind a backlash might you receive from that post? Even though you can deny it. The damage is done.
- What if a teacher asks to see a picture of a student's ballot to receive extra credit? How many people know that asking to see a person ballot for compensation violates state statute and could result in a fine up to \$1000 and/or up to 6 months in jail.
- We have no problem with someone telling everyone how they voted. We just do not want to open door to vote selling and infringe on the right of other voters.



State of Wisconsin
2019 - 2020 LEGISLATURE

LRBa0190/1
JK:amn

**SENATE AMENDMENT 1,
TO SENATE BILL 48**

May 2, 2019 - Offered by Senator CRAIG.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 1, line 3: delete that line and substitute:

3 “SECTION 1m. 12.13 (1) (f) of the statutes is amended to read:

4 12.13 (1) (f) ~~Shows his or her marked ballot to any person or places~~ Places a
5 mark upon the ballot so it is identifiable as his or her ballot.”

6 (END)



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-1817/1
JK:cdc

2019 SENATE BILL 48

February 25, 2019 - Introduced by Senators CRAIG, BERNIER, CARPENTER, STROEBEL, WANGGAARD and NASS, cosponsored by Representatives BROOKS, FELZKOWSKI, KNODL, KRUG, KULP, QUINN, RAMTHUN, ROHRKASTE, STEFFEN, SUBECK, THIESFELDT and WICHGERS. Referred to Committee on Elections, Ethics and Rural Issues.

1 **AN ACT to repeal** 12.13 (1) (f) of the statutes; **relating to:** allowing an elector
2 to show his or her marked ballot.

Analysis by the Legislative Reference Bureau

Under current law, an elector who shows his or her marked ballot to any person or places a mark upon the ballot so it is identifiable as his or her ballot is guilty of a Class I felony. This bill eliminates that prohibition.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 12.13 (1) (f) of the statutes is repealed.

4 (END)



State of Wisconsin
2019 - 2020 LEGISLATURE

LRBa0147/1
JK:amn

ASSEMBLY AMENDMENT 1,
TO ASSEMBLY BILL 43

May 2, 2019 - Offered by Representative BROOKS.

1 At the locations indicated, amend the bill as follows:

2 1. Page 1, line 3: delete that line and substitute:

3 "SECTION 1m. 12.13 (1) (f) of the statutes is amended to read:

4 12.13 (1) (f) ~~Shows his or her marked ballot to any person or places~~ Places a
5 mark upon the ballot so it is identifiable as his or her ballot."

6 (END)

Menu » 2019 » Related Documents » Proposal Text » AB43: Bill Text

LRB-1641/1

JK:cdc

2019 - 2020 LEGISLATURE

2019 ASSEMBLY BILL 43

February 28, 2019 - Introduced by Representatives BROOKS, FELZKOWSKI, KNODL, KRUG, KULP, QUINN, RAMTHUN, ROHRKASTE, STEFFEN, SUBECK, THIESFELDT, WICHGERS and SCHRAA, cosponsored by Senators CRAIG, BERNIER, CARPENTER, STROEBEL, WANGGAARD and KAPENGA. Referred to Committee on Campaigns and Elections.

1 **AN ACT** *to repeal* 12.13 (1) (f) of the statutes; **relating to:** allowing an
2 elector
to show his or her marked ballot.

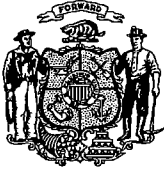
Analysis by the Legislative Reference Bureau

Under current law, an elector who shows his or her marked ballot to any person or places a mark upon the ballot so it is identifiable as his or her ballot is guilty of a Class I felony. This bill eliminates that prohibition.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 12.13 (1) (f) of the statutes is repealed.
4 (END)

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State of Wisconsin
2019 - 2020 LEGISLATURE

LRBa0163/1
JK:amn

SENATE AMENDMENT 1,
TO SENATE BILL 108

April 25, 2019 - Offered by Senator STROEBEL.

- 1 At the locations indicated, amend the bill as follows:
- 2 **1.** Page 3, line 3: delete "June" and substitute "June May".
- 3 **2.** Page 4, line 3: after "~~or~~" insert "June".
- 4 **3.** Page 4, line 5: delete "June" and substitute "May".
- 5 **4.** Page 4, line 8: after "~~or~~" insert "June".
- 6 **5.** Page 4, line 11: delete "June" and substitute "May".
- 7 **6.** Page 6, line 8: delete "June" and substitute "June May".

8

(END)

Menu » 2019 » Related Documents » Proposal Text » SB108: Bill Text

LRB-2397/1

JK:ahe

2019 - 2020 LEGISLATURE

2019 SENATE BILL 108

March 15, 2019 - Introduced by Senators STROEBEL, NASS and BERNIER, cosponsored by Representatives BROOKS, KNODL, WICHGERS, MURPHY and SUBECK. Referred to Committee on Elections, Ethics and Rural Issues.

1 **AN ACT** *to renumber and amend* 17.23 (1) (a), 17.23 (1) (b), 17.23 (1) (c)
2 and
3 17.24 (2); *to amend* 17.23 (1) (intro.); and *to create* 17.23 (1) (e) and 17.24
 (3)
 of the statutes; **relating to:** vacancies in elective offices in cities and
 villages.

Analysis by the Legislative Reference Bureau

This bill reorganizes the statutes prescribing the methods for filling vacancies

in elective offices in cities and villages. Under current law and under the bill, a special election to fill a vacancy in a city or village office may be held as follows:

1. If the vacancy occurs no later than December 1, the municipality holds the special election concurrently with the spring election.

2. If the vacancy occurs after December 1, the municipality holds the special election concurrently with the spring election in the following year.

3. If the vacancy occurs no later than June 1, the municipality holds the special election concurrently with the general election.

4. If the vacancy occurs after June 1, the municipality holds the special election concurrently with the general election in the following year.

The bill also clarifies that a vacancy in an elective office in a city and village may be filled by appointing a successor to serve for the residue of the unexpired term or until a special election is held or the office may remain vacant until an election is held.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 17.23 (1) (intro.) of the statutes is amended to read:

17.23 (1) GENERAL AND SPECIAL CHARTER CITIES. (intro.) ~~Vacancies~~

Except as

provided in s. 9.10, vacancies in offices of cities operating under the general law or special charter shall be filled as follows:

SECTION 2. 17.23 (1) (a) of the statutes is renumbered 17.23 (1) (a) 1. and amended to read:

17.23 (1) (a) 1. In cities of the 2nd, 3rd, or 4th class, in the office of mayor, ~~except~~

~~as provided in s. 9.10, by appointment by the common council~~ may appoint a successor. The successor shall serve for the residue of the unexpired term unless the

common council orders a special election is ordered by the common council, in which

case. If the common council orders a special election, the person appointed shall serve until his or her successor is elected and qualified.

2. In cities of the 2nd, 3rd, or 4th class, in the office of alderperson, by the common council, except as provided in s. 9.10. A person so appointed shall may appoint a person to hold office until a successor is elected and qualified.

3. Unless otherwise ordered by the common council, a successor shall may be elected for the residue of the unexpired term on the first Tuesday of April next after

as follows:

a. If the vacancy happens, in case it happens no later than December 1 preceding the first Tuesday in April, but if spring election, the city shall hold the special election concurrently with the spring election.

b. If the vacancy happens after December 1 preceding the first Tuesday in April and before that day, then the successor shall be elected on the first Tuesday in April of the next ensuing year. The common council may, if spring election, the city shall

hold the special election concurrently with the spring election of the next ensuing year.

c. If a vacancy occurs before June 1 in the year preceding expiration of the term of office, order a the city may hold the special election to fill a vacancy to be hold on the Tuesday after the first Monday in November concurrently with the general election following the date of the order. A person so elected shall serve for the residue of the unexpired term.

8 SECTION 3. 17.23 (1) (b) of the statutes is renumbered 17.23 (1) (b) 1. and
9 amended to read:

10 17.23 (1) (b) 1. In 1st class cities, in the office of mayor, ~~except as provided~~
11 ~~in~~
12 ~~s. 9.10, the vacancy shall be filled by the president of the common council as is the~~
13 ~~acting mayor until a successor is elected at a special election can be held under this~~
14 ~~paragraph.~~ In such case, the acting mayor may continue to serve as president of the
15 common council, in addition to exercising the powers and responsibilities of the
16 office
17 of mayor, until such time as a new mayor is elected and qualified, but the acting
18 mayor may not take part in any vote of the common council during that period. The
19 common council shall order a special election for the office of mayor as promptly as
20 possible, unless the vacancy occurs within 120 days of the expiration of the mayor's
21 term of office.

22 2. In 1st class cities, in the office of alderperson, by special election, except
23 as
24 provided in s. 9.10. When a mayor is temporarily appointed, the common council
25 shall order a special election for the office of mayor under s. 8.50 as promptly as
possible, unless the vacancy occurs within 120 days of the expiration of the mayor's
term of office. When, Except as provided in subd. 3. or 4., when an aldermanic seat
becomes vacant, a successor shall may be elected for the residue of the unexpired

1 term on the first Tuesday of April or the Tuesday after the first Monday in
2 November

3 next after the vacancy happens, in case it as follows:

4 a. If the vacancy happens no later than December 1 or preceding the
5 spring
6 election, the city shall hold the special election concurrently with the spring
7 election.

8 b. If the vacancy happens no later than June 1 preceding that day, but if
9 the
10 general election, the city shall hold the special election concurrently with the
11 general
12 election.

13 c. If the vacancy happens after December 1 or preceding the spring
14 election, the
15 city shall hold the special election concurrently with the spring election of the next
16 ensuing year.

17 d. If the vacancy happens after June 1 preceding that day, then the
18 successor
19 shall be elected on the following first Tuesday in April or Tuesday after the first
20 Monday in November; but no the general election, the city shall hold the special
21 election concurrently with the next general election.

22 3. No special election to fill a vacancy in such the office of alderperson may
23 be

24 held at the time of holding the regular election for that office. In addition, the

25 4. The president of the common council of any 1st class city may order a
special

election to be held, as provided under s. 8.50, to fill a the vacant aldermanic seat of

19 an alderperson prior to the time when that seat is required to be filled under this
20 paragraph.

21 5. If a special election to fill the vacant seat of an alderperson is held under
22 this
23 paragraph after a redistricting plan is adopted, the election city shall be held hold
24 the election in the aldermanic district as it existed when the office was filled at the
last preceding election.

1 SECTION 4. 17.23 (1) (c) of the statutes is renumbered 17.23 (1) (c) 1. and
2 amended to read:

3 17.23 (1) (c) 1. In Except as provided in subd. 2., in the office of any other
4 elective officer, and except as provided in s. 9.10, by appointment by the mayor
5 subject to confirmation by the common council, for the residue of the unexpired
6 term
7 unless a special election is ordered by the common council, except that in. A person
8 appointed and confirmed under this subdivision shall hold office until a successor is
9 elected, as provided under par. (a), and qualified.

10 2. In case of vacancies in the office of any such other officer of a 1st class
11 city
12 who is authorized by law to have a deputy, such the deputy shall perform the
13 duties
14 of such the office, and shall be entitled to the emoluments of such the office during
15 the remainder of the term. A person so appointed and confirmed shall hold office
16 until a successor is elected and qualifies. The successor shall be elected as provided
17 in par. (a).

18 SECTION 5. 17.23 (1) (e) of the statutes is created to read:

19 17.23 (1) (e) For purposes of pars. (a) and (b), a vacancy may be filled by
20 appointing a successor to serve for the residue of the unexpired term or until a
21 special
22 election is held or an office may remain vacant until an election is held.

23 SECTION 6. 17.24 (2) of the statutes is renumbered 17.24 (2) (intro.) and
24 amended to read:

1 17.24 (2) (intro.) Except as provided in s. 8.50 ~~(4) (fm)~~, a vacancy in any
2 elective
3 office in a village may be filled by special election of a successor for the residue of
4 the
5 unexpired term ~~on the first Tuesday of April next after the vacancy happens, if it as~~
6 follows:

1 (a) If the vacancy happens no later than December 1 preceding the first
2 Tuesday in April, but if spring election, the village shall hold the special election
3 concurrently with the spring election.

4 (b) If the vacancy happens after December 1 preceding the first Tuesday of
5 April, then the successor shall be elected on the first Tuesday of April of the next
6 ensuing year, and if spring election, the village shall hold the special election
7 concurrently with the spring election of the next ensuing year.

8 (c) If the vacancy occurs before June 1 of the year preceding the expiration
9 of
10 the term of office, the village board of trustees may order a special election to fill
11 the
12 vacancy to be held ~~on the Tuesday after the first Monday in November~~ concurrently
13 with the general election following the date of the order. ~~A person so elected shall~~
14 ~~serve for the remainder of the unexpired term.~~

15 SECTION 7. 17.24 (3) of the statutes is created to read:

16 17.24 (3) For purposes of subs. (1) and (2), a vacancy may be filled by
17 appointing
18 a successor to serve for the residue of the unexpired term or until a special election
19 is held or an office may remain vacant until an election is held.

(END)

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