

# LWW LEAGUE OF WOMEN VOTERS' OF WISCONSIN

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February 21, 2022

To: Assembly Committee on State Affairs

From: Debra Cronmiller, Executive Director, [dcronmiller@lwwwi.org](mailto:dcronmiller@lwwwi.org)

Re: OPPOSE AJR 133, AJR 134, AB 996, AB 998, AB 999, AB 1000, AB 1004, AB 1006

The League of Women Voters of Wisconsin opposes several of the bills you are considering in today's hearing.

The League believes that good government depends on the informed and active participation of its citizens, and that voting is a fundamental citizen right which must be guaranteed. Wisconsin election laws should provide citizens with maximum opportunity for registration, voting at the polls and absentee voting. Further, election administration should be adequately coordinated and funded to achieve statewide standards uniformly applied, verifiable results and local municipal effectiveness.

Since its founding in 1920 the League has studied many of the issues addressed in the bills before you in today's public hearing. Our members have agreed and affirmed the positions and principles stated above.

**We oppose AJR 133.** This legislation would write into the state constitution the current requirement to present a voter photo ID in order to cast a regular ballot and have it counted. Such a requirement has been shown to place a heavier burden on certain groups of citizens, including those who are disabled, elderly or low-income.

**We oppose AJR 134.** While it would be reasonable to have some regulation for the use of private funds, the practice should not be banned. A constitutional amendment to ban private resources is uncalled for and utterly inappropriate.

**We oppose AB 996.** This bill imposes requirements on the Wisconsin Elections Commission (WEC) that are not required for any other state agency. It would allow inappropriate legislative

oversight of an agency tasked with overseeing the electoral activities that impact all Wisconsin voters. Voters have the right to expect electoral agency functions to be monitored and not micromanaged.

**We oppose AB 998.** While it is appropriate to maintain an accurate list of electors, this bill is deeply flawed. It would disenfranchise many of the same groups of electors who are already burdened by voter photo ID and restrictive proof of residence requirements. It requires that WEC's voter registration database be coordinated with databases in various federal and state agencies. In particular, the Systematic Alien Verification for Entitlements (SAVE) database is limited to a select group of non-citizens and is not a comprehensive list. Updates are not frequent. The result would be false positives that could disenfranchise qualified citizens.

**We oppose AB 999.** Rather than improve the voter experience this bill complicates it for no apparent reason. Absentee voters should not have to provide ID for every election, when the Clerk can keep a copy of the ID on file. This bill requires voters to submit an application (with ID) in addition to completing the certificate envelope.

**We oppose AB 1000.** This very punitive bill singles out the Wisconsin Elections Commission for an unreasonable level of legislative control. Threatening to reduce staff in a key state agency does not consider what is best for voters, and it certainly will not improve elections.

**We oppose AB 1004.** This bill would compel the rejection of an absentee ballot where the voter or witness fails to fill in any of twelve separate fields on the certificate envelope. These are new and needless requirements for the absentee ballot certificate envelope. They would make it much more difficult for voters, especially those who are elderly or have disabilities, to cast a ballot. There are other restrictive measures which overlap with other bills in today's hearing.

**We oppose AB 1006.** This bill singles out the WEC for an unreasonable level of legislative control over elections. This potentially harmful oversight would only add confusion for local election officials and certainly will not improve elections.

**STATE SENATOR KATHY BERNIER**  
TWENTY-THIRD SENATE DISTRICT



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**From: Senator Kathy Bernier**  
**To: The Assembly Committee on State Affairs**  
**Re: Testimony on Assembly Bills 1003, 1004, 1005**

**Relating to:** legislation responding to the issues raised by the Legislative Audit Bureau's review of the November 2020 election.

**Date: February 21, 2022**

Thank you, Chairman Swearingen and committee members for allowing me to provide testimony on Assembly Bills 1003, 1004, and 1005 today. I am grateful for the opportunity to work with several of my colleagues in the Senate and Representatives Dittrich and Macco on this important legislation.

To provide a basic overview of the three, Assembly Bill 1005 looks primarily at pre-election issues, such as clerk training and data sharing. Electronic equipment must be pre-tested before the public test and data from Electronic Registration Information Center (ERIC) must be regularly requested and implemented by the Election Commission.

Assembly Bill 1004 deals with Election Day topics. It clarifies the role of a Special Voting Deputy to ensure there can be no repeat of the confusion caused by the COVID-19 pandemic in nursing homes. The bill also bans the use of private resources for election administration. It prohibits "ballot curing" but brings statewide fairness and transparency by stating directly in statute what specific information must be included on an absentee ballot certificate and requires that clerks notify the voter if their envelope must be corrected.

Assembly Bill 1003 handles post-election issues. Formal complaints must be resolved within 60 days unless extended by a vote of a majority of Election Commissioners. The post-election audit practice will become more robust and the Legislative Audit Bureau will have a standing review of the audit already done by WEC.

Together, these three bills address nearly all of the legislative considerations presented by the Legislative Audit Bureau following their review of the November 2020 General Election. Several of the recommendations from the Wisconsin Institute for Law and Liberty's similar report are also included. Addressing these issues is why I ask you to please support the passage of these bills. Thank you again for considering these bills to strengthen our elections system.



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# JOHN J. MACCO

STATE REPRESENTATIVE • 88<sup>TH</sup> ASSEMBLY DISTRICT

**To:** Assembly Committee on State Affairs

**From:** Representative John Macco

**Date:** February 21, 2022

**In Favor of: AB 1003/AB 1004**

Chairman Swearingen and Committee Members,

As Vice-Chair of the Joint Audit Committee, in February 2021 we directed the nonpartisan Legislative Audit Bureau (LAB) to perform an audit on the Election Administration with the goal of ensuring our elections are secure and lawful. LAB has conducted numerous audits under the current and previous administrations, regardless of party or circumstance, and have delivered helpful results. Audits are a great tool to make sure state entities are functioning to the best of their ability for the people of Wisconsin. LAB's report on the Election Administration provided an excellent roadmap of what we need to improve in our election system with 18 detailed legislative recommendations.

- AB 1004 deals with Election Day concerns recommended in the findings of the audit. This includes solutions to absentee "ballot curing", the influence of private interest groups, and special voting deputies. Under current law many of these areas are gray and need clarification.
- AB 1003 addresses solutions to post-election concerns such as electronic voting equipment, filing complaints to the Wisconsin Election Commission (WEC), and recount regulations. Almost as important as Election Day, post-election proceedings need correction to ensure confidence in the final result.

The people of Wisconsin deserve to have confidence in our election system. These commonsense adjustments will give Wisconsinites more faith in our election process. The goal has always been to make it easy to vote, but hard to cheat. I am committed to making sure that every vote counts and our laws are followed. Thank you for hearing my testimony, I urge you to support this legislation.



February 21<sup>st</sup>, 2022

Assembly Committee on State Affairs  
Rep. Swearingen, Chair  
State Capitol, Rm 123 W  
Madison, WI 53708

Dear Representative Swearingen and members of the Committee:

The Wisconsin Board for People with Developmental Disabilities appreciates the opportunity to provide testimony on the numerous proposals related to elections and voters. Our comments focus on AB 1005, AB 1004, AB 1002, AB 999, and AB 996.

While some bills contain positive changes, which we specifically note in our testimony, other proposed changes will make it harder for people with disabilities to vote and will disproportionately disenfranchise this part of the electorate.

## Common problems many voters with disabilities face when trying to vote

- Many people experience unpredictable disabilities, meaning they do not know from one day to the next if they will be able to leave the house for activities such as voting.
- Many have no way to get there. Many voters with disabilities are non-drivers and have few or no transportation options. Rides may need to be scheduled in advance and may not show up at all or on time.
- Many people with disabilities live in a group home or place with many other people where ability to independently leave, get information, or get online is limited or restricted.
- Many voters with disabilities rely on friends, neighbors, extended family, care workers and the community for help. Voters with sensory or physical disabilities may need help marking a ballot, dropping off or mailing an absentee ballot, and getting information about when and how to register and vote.
- Many have no reliable access to the internet because of a lack of broadband infrastructure, no internet subscription, and/or no devices that connect to the internet.
- Polling places and voting documents are not always accessible.

## Assembly Bill 1005 (SB 934) voter registration list

Under the bill, the Wisconsin Elections Commission would be required to mark the voter as ineligible and change their voter registration status if they change addresses and move within a municipality. The bill would insert an unnecessary administrative burden upon the voter to register again. Many voters may not understand they are no longer registered to vote after moving, leading to confusion and potential disenfranchisement the next time they attempt to vote. Registering to vote requires voters to have proof of residence documentation which voters may not have with them if they discover they are

unregistered at the polls or may not have at all if their move has been recent. People with disabilities are often non-drivers and most have a hard time getting where they need to go routinely. An extra trip to the polls or to a government agency to get documentation of proof of residency may not be able to be accomplished, especially in a short time-frame.

Additionally, many people with disabilities have insecure housing and move frequently. Especially for people with I/DD living in congregate settings, people may be moved on short notice, may move multiple times in a short period, and may not have options on where they move. This is becoming more common as staffing shortages are resulting in facility closures or less bed capacity. The bill makes it more likely for people with disabilities to lose their existing voter registration because of unstable housing.

BPDD notes three positive changes the bill makes to reduce the time voters wait in line to vote, and improve election forms for accessibility, usability, clarity, and readability and improve training for clerks.

## Assembly Bill 1004 (SB 935)—Absentee ballots

The creation of personal care voting assistants in the event of public health emergency or infectious disease outbreak and the moved-up date by which Special Voting Deputies (SVD) must arrange to visit are positive.

The timing of SVD visits is an improvement on current law and provides at least a chance for absentee ballots to be sent and returned for those unable to participate in SVD visits. BPDD urges SVD visits be completed no less than 10 days prior to an election and ballots sent out to those missing the visits the following day. This would provide at least nine days to receive, complete, and return the ballot. BPDD also notes there is no guarantee SVD will be available at every facility. We remain concerned residents who do not have access to voting information and who do not know what to ask may be disenfranchised by virtue of where they live.

The bill makes a positive change by requiring the clerk to post a notification of the absentee ballot defect on the voter's voter information page on MyVote Wisconsin. However, BPDD notes many people with disabilities do not have internet access or devices to connect to the internet and may not find this notice. If they do not know their ballot is defective, it may result in their vote not being counted. If a voter with a disability can access the notice, it may not be clear what corrections need to be made or how to correct the ballot.

BPDD is concerned minor mistakes which a clerk can correct under current law would result in more voters with disabilities' absentee ballots being marked defective and uncounted. The bill expands the number of required fields that must be completed correctly. Any mistake by voter or witness results in ballot being uncounted. The bill specifies the voter or witness is the only individual who can correct their mistake. For voters with transportation barriers and who used witnesses who may not be readily available to coordinate corrections, the added layer of complexity may result ballots with minor mistakes remaining uncorrected and uncounted.

## Assembly Bill 1002 (SB 937) Indefinitely confined voters.

Wisconsin's indefinitely confined statute provides an important safeguard to ensure that many voters who are disabled or have chronic health conditions can cast a ballot. BPDD and disability advocates

appreciate the ongoing discussions with Senator Bernier to update the Indefinitely Confined Voter status, with the understanding that an additional amendment will be offered on the Senate floor to further improve the bill by clarifying the definition of “disability” and aligning it with language used by the Social Security Administration. Disability and aging advocates, including BPDD, have signed a letter of support for the amended version. Our comments below note specific provisions we support as well as concerns.

The bill includes several positive changes, including:

- Clarifying what it means to be indefinitely confined as a voter “who cannot travel independently without significant burden because of frailty, physical illness, or a disability that will last longer than one year.” Advocates have supported the need to clarify the language.
- Providing a way for some (but not all) indefinitely confined voters who have photo ID to meet the requirement by providing the number of their driver’s license or state ID.
- Providing that a voter who fails to vote a ballot the voter receives as a result of his or her indefinitely confined status may be removed from the indefinitely confined status list only if he or she fails to vote the ballot at the spring or general election.

BPDD has several concerns with the proposal.

Voters who have a photo ID and do not have access to the internet are NOT provided with an accommodation to meet the photo ID requirement. They are expected to provide a copy of their ID without accommodation for their status as an indefinitely confined voter. BPDD recommends indefinitely confined voters be allowed to provide their ID numbers on the application, the same standard as used for voters who have access to MyVote.

Voters who do not have photo ID are required to provide the last 4 digits of their social security number to verify their identity. However, the bill also requires the voter to provide an affirmation of a US citizen 18 or older that the elector is indefinitely confined. The purpose of the signature should be to affirm the person’s identity – not their health status. The Wisconsin Supreme Court has determined it is up to the voter to make this determination – it is not a medical diagnosis. This requirement does not appropriately accommodate the voter and creates a different higher standard for those who do not have a driver’s license or state ID. BPDD recommends resolving this issue by requiring indefinitely confined voters provide the last 4 digits of their SSN on their absentee ballot application. This information along with their birthdate should suffice to affirm their identity.

The bill would require an application for Indefinitely Confined Voter status that is separate from the absentee ballot applications which is widely available and familiar to voters. A separate form creates another administrative step for indefinitely confined voters and may cause confusion or unawareness of this option for people who need this status. At a minimum, the absentee ballot application should continue to include language about the indefinitely confined voter status and direct voters to the other form; BPDD recommends continuing to have one form.

## Assembly Bill 999 (SB 939) absentee ballots

Many people with disabilities rely on absentee voting to exercise their right to vote because of barriers to independently getting around in their community, including to the polls. These barriers are consistent from election to election. Many non-drivers, people with chronic or intermittent health conditions,

people with sensory disabilities and others face such significant mobility challenges that absentee voting options are the only way they can do the advance planning necessary to guarantee they can exercise their right to vote.

AB 999 would create the new restrictions listed below that would make it more difficult for voters to cast a ballot including:

- Requiring absentee voters to provide proof of identification every time they apply for an absentee ballot even if they have not moved or changed their name.
- Requiring voters to apply for absentee ballots for every election rather than for all elections in a calendar year.
- Requiring all in-person absentee voters to complete an absentee ballot application, even if they already have such a request on file
- Restricting who a voter may choose to return their absentee ballot

Repeatedly asking for the same information already on file and verified is unnecessary and burdensome especially for voters who have transportation, technology access, and mobility barriers. Voters with disabilities face the same challenges every election, which can cause significant difficulties applying for an absentee ballot—including lack of internet access to use MyVote Wisconsin, ability to get to the clerk's office, obtaining a copy of their ID to send via mail.

Federal law allows any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union.

This bill would restrict who can return an absentee ballot on a voter's behalf to the voter's immediate family or legal guardian or designate a registered Wisconsin voter who has not delivered more than two absentee ballots on behalf of absentee voters.

Current law recognizes a wide network of people who are willing to help their neighbors and allows people to choose who they trust to carry out important tasks. This approach better reflects the reality of people's lives and support networks. Many absentee voters with disabilities rely on friends, neighbors, extended family, and other community members to assist with routine errands and administrative tasks, including turning in their completed and secured absentee ballot.

Many absentee voters with disabilities do not have family members living close by that fit the definition of "immediate family" in the bill or guardians. Cousins, nieces, nephews, stepparents, in-laws, and other familial relationships are part of voter's familial networks. Even when absentee voters with disabilities have "immediate family" members, they may not live close by and may not be available or willing to return a voter's absentee ballot.

The ability to designate another registered voter to deliver an absentee ballot is insufficient and adds burden for absentee voters with a disability rather than providing a remedy. The burden is on the absentee voter to identify another registered voter who has not already delivered another absentee ballot and to designate that person in writing. Checking and verifying another person's registration status would be a barrier to many voters, and it is unclear why a person's registration status makes them better qualified to deliver paperwork. Many other important legal and governmental documents may be dropped off on behalf of someone else without any criteria imposed on the deliverer.



## Assembly Bill 996 (SB 941) administration of elections.

The US Department of Justice and other federal agencies issue guidance to protect the fundamental right to voting to all Americans, including specifically addressing the rights of voters with disabilities to have equitable access to the ballot. These rights are protected by federal laws including the Americans with Disabilities Act (ADA), the Voting Rights Act (VRA), the Help American Vote Act (HAVA), and other civil rights law.

This proposal creates a mechanism whereby the legislature institutes an automatic delay implementing federal guidance until a legislative committee has given approval. State action which impedes the operation of the federal statutes (or regulation) are in direct conflict with the Supremacy Clause, which establishes that the federal constitution, and federal law generally, take precedence over state laws, and even state constitutions. Arbitrary delays in implementing federal guidance that facilitates equal access to the ballot for voters with disabilities risks disenfranchising this population of voters.

BPDD is charged under the federal Developmental Disabilities Assistance and Bill of Rights Act with advocacy, capacity building, and systems change to improve self-determination, independence, productivity, and integration and inclusion in all facets of community life for people with developmental disabilities<sup>1</sup>.

Thank you for your consideration,



Beth Swedeen, Executive Director,  
Wisconsin Board for People with Developmental Disabilities

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<sup>1</sup> More about BPDD [https://wi-bpdd.org/wp-content/uploads/2018/08/Legislative\\_Overview\\_BPDD.pdf](https://wi-bpdd.org/wp-content/uploads/2018/08/Legislative_Overview_BPDD.pdf).



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PARALEGAL  
Ryan M. Riley

## MEMORANDUM

TO: Assembly Committee on State Affairs

FROM: City Attorney Michael Haas

DATE: February 21, 2022

RE: 2022 Election Bills – AB 997, AB 999, AB 1002, and AB 1004

Thank you for the opportunity to comment on the elections bills before the Assembly Committee on State Affairs.

As a general matter, the City of Madison notes that multiple judicial and scholarly reviews of the 2020 election have found no widespread fraud. A recent review by the Associated Press found 26 instances of improper voting, many of which were mistakes. There were only five cases which generated charges. According to the Associated Press, “one person was living in Florida and tried unsuccessfully to vote in Wisconsin. He did not cast a ballot. Two are felons and not eligible to vote. One man voted both in person and absentee and said he didn’t recall sending in his absentee ballot. In another case, a woman is charged with submitting an absentee ballot in November for her partner, who had died in July.”

The rarity and randomness of these cases highlight the integrity of our election process. Yet in the face of a successful and well-reviewed election, legislators have introduced multiple bills that overall make exercising the right to vote more burdensome, not less burdensome for Wisconsin voters. In the absence of any evidence of clerks engaging in fraud or nefarious behavior, the bills ladle on felony charges for a variety of practices that are both common place and benign, for instance, by completing missing address information on absentee ballot certificates using reliable records or a communication from a voter.

Beginning with a flawed premise – that voter fraud is prevalent and the work of election officials is suspect – inevitably leads to flawed, unnecessary and harmful legislation. The City of Madison encourages the Legislature to rethink measures which simply amount to a war on voters and which only add more paperwork and bureaucracy to the job of municipal clerks without making any difference to the integrity of our elections. The Legislature should take a voter-centric approach to our elections and stop creating new obstacles to voting that

have nothing to do with a voter's qualifications to vote. We have often heard the mantra that it should be easy to vote and hard to cheat. The reality is that it has always been hard to cheat at voting and several of these bills simply make it harder, not easier, to vote.

We offer the following feedback regarding specific proposals being considered.

### **AB 997**

Simply put, AB 997 is a voter disenfranchisement bill disguised as a nonthreatening bureaucratic notice process. It would turn a data-matching exercise into a substantive voter qualification, achieving a goal of some voter suppression advocates since the implementation of the statewide electronic voter registration database in 2006.

In a 2008 lawsuit brought by former Attorney General Van Hollen, the Wisconsin Supreme Court rejected this view that an individual is qualified to vote only if their personal information matches in the DMV database and the voter registration. These two databases were not constructed to guarantee that identical information is contained in every field. Discrepancies between the two databases are simply not a reflection of an individual's qualifications to vote or an indication of voter fraud or irregularities. Statistically speaking, the odds are that several people attending this hearing have data that does not exactly match in their voter and DMV records and that has not stopped them from voting, nor should it.

The most common reason for information not matching in the DMV and WEC databases is the variation on names that individuals may use for different reasons and at different times. An individual applying for a driver license as "Robert" may, years later, use the name "Rob" when registering to vote. This has no bearing on the individual's qualifications or right to vote as an adult citizen and resident of Wisconsin.

The bill also relies on a notification system leading up to a voter's registration being inactivated that utilizes the U.S. mail. Such processes have been unreliable for ensuring that voters receive adequate notification in the past and will be increasingly unreliable as all of us pay less and less attention to communications that come through the mail, especially anything that looks like a form letter. The HAVA Check process is a way to improve the consistency of voter information in two different government databases and it should not be converted into a voter qualification.

### **AB 999**

AB 999 continues the theme of adding unnecessary burdens to both voters and clerks by requiring absentee voters to submit photo identification for each election, and to use a special form for an absentee ballot; a voter can no longer send a letter or email to the Clerk's office to request a ballot. The proposed form requires a slew of information which is already contained in the individual's voter registration record. Curiously, the bill does not require the form to include the most important piece of information which is the address to which the ballot should be sent, which is often different from the absentee voter's home address.

The bill further burdens voters and clerks by eliminating the option for voters to request absentee ballots for all elections in a single year. This requirement has no justification

except to create more red tape and bureaucracy. The LAB Audit did not detect any issues with requests for ballots for all elections in a calendar year. Further, Sections 7 and 10 of the bill do not clarify whether a photo ID must be submitted for each election even if a voter applies for absentee ballots for both a primary and a general election at the same time.

### **AB 1002**

The City of Madison is taking a second look at this bill after registering in opposition to the companion bill in the Senate and listening to voter and accessibility advocates. This bill would change the definition of an indefinitely confined voter to an individual that is unable to travel to the polls due to frailty or illness or a disability that last more than a year, rather than the current definition which permits any voter to claim that status regardless of how long their condition prevents them from travelling to the polls.

The bill has been improved with one amendment addressing concerns of accessibility organizations and could be further improved by changing the definition of indefinitely confined voter to include a disability that is expected to last longer than a year. This is especially true given that it creates a new crime for a voter who falsely makes a statement for the purpose of qualifying as an indefinitely confined voter.

### **AB 1004**

This bill adds the requirement that voters print their name on the absentee ballot certificate, and prohibits clerks from correcting or completing information on absentee ballot certificates even if they have reliable information that could remedy minor errors. Based on experience and the LAB's recent audit, we know that any additional bureaucratic requirement, no matter how small it may seem within the Capitol, will result in additional absentee ballots being rejected. Whether or not a voter prints their name on the absentee ballot certificate has nothing to do with their qualifications to vote, and neither does omitting pieces of their address.

The bill would prohibit, and criminalize, very simple common corrections made by clerks, including the insertion of an apartment number or municipality on a correct address, even when the location is obvious and the clerk knows the location of the voter. There has been no evidence that clerks are sending absentee ballots to unqualified voters, so when the ballot is returned from the same address to which it was sent, it is simply punitive to voters to reject ballots for minor administrative reasons. The LAB audit found that almost 7% of the absentee ballot certificates it reviewed omitted some part of the address information, and all of the ballot certificates around the State with similar omissions would have led to the rejection of many ballots under this bill.

The bill does not require clerks to notify voters that their ballot is at risk of being rejected, and clerks often do not have the time to do so during the weeks before an election. Regardless of how perfectly legislators want voters to complete their paperwork, we should all be concerned about this new requirement that is likely to result in many thousands of absentee ballots being rejected at a general election without any sound policy justification.

It is good that the bill attempts to provide an alternative for voting in nursing homes and other adult-care facilities when special voting deputies are not allowed due to health and safety concerns. The lack of such legislation required the WEC and clerks to create procedures in a short period of time to ensure the constitutional right to vote when the

Legislature failed to address the issue in 2020. The Monday-morning criticism of these efforts have all lacked an alternative solution that would have allowed residents of these facilities to vote and unfortunately it simply amounts to an assertion that those residents should not have been allowed to vote.

This bill creates a mechanism for facility residents to vote with the assistance of employees of the facility when special voting deputies cannot enter. The fact that the Legislature is only now creating such a method to allow those residents to vote demonstrates that the WEC was correct to ensure that right in 2020. If the personal care voting assistant provisions were introduced as a stand-alone bill, it is likely the City of Madison would support it.

However, there is a possible discrepancy in section 6 of the bill which seems to state that special voting deputies are prohibited from serving an adult-care facility only during a public health emergency and if the facility is closed due to an infectious disease. But the same section and sections 12 and 13 state that personal care voting assistants are to serve such facilities if a public health emergency is declared or if the facility is closed due to an infectious disease. This discrepancy can be fixed by changing section 6 to refer to facility closures due to either a public health emergency or an incident of infectious diseases.

If the intent actually is to prohibit SVD's to enter such facilities only if a public health emergency is declared, that requirement is unrealistic. Even before COVID, nursing homes closed due to infectious diseases which did not warrant a public health emergency. To expect the State or a county to declare public health emergencies in such cases when time is limited and conditions change on a daily basis ignores reality. In addition, asking SVDs to enter these facilities when the facility is closed due to health concerns but no public emergency is declared risks the health of not only residents of the facilities but special voting deputies who are volunteers assisting the clerk.

AB 1004 also prevents municipalities from accepting donations or grants of private resources to assist with election administration which is broadly defined as "preparing for, facilitating, conducting or administering an election." While there has been much focus on election grants provided by a national non-profit organization in 2020, the broad language of AB 1004 risks some unintended consequences. First, this language may prohibit local businesses from assisting municipalities by making donations of supplies, polling locations or refreshments for poll workers. Second, printing ballots and mailing absentee ballots are essential tasks in conducting an election. How does this bill accommodate such contracts for routine services that are essential to election administration?

If nothing else AB 1004 and AJR 134 can put to rest the persistent but nonsensical claims that municipalities violated statutes or the Constitution by accepting election grants in 2020 to assist with challenges created by the pandemic and the resulting huge increase in absentee voting. Those claims, of course, have been soundly rejected by numerous courts around the country. If election grants violated the laws of either Wisconsin or another state, or the U.S. Constitution, surely at least one court would have so ruled. And likewise, it would not be necessary for the Legislature to pass a law outlawing such election grants. Anyone supporting this provision should be calling for the end of any investigation into the 2020 election grants as there is no reason to spend taxpayer funds investigating activity that was legal.

These proposals would deny election administrators the ability to seek and accept much needed resources when the State fails them. Communities throughout Wisconsin lost thousands of poll workers and polling locations as fear of the Coronavirus spread in early 2020. Personal protective equipment, plexiglass barriers and hand sanitizer were in short supply while demand for absentee ballots went through the roof. In April of 2020, Madison could only staff and open 62 of its 92 polling locations.

While clerks across the state worked thousands of hours of overtime and performed unbelievable feats to carry out elections, the Legislature refused to meet for 10 months and failed to send any assistance to ensure safe voting in the state and to preserve people's Constitutional right to vote.

As the 2020 Presidential Election approached, municipalities across the state recognized they would need more staff and more funding to administer a much larger election. Two hundred Wisconsin localities applied to a Chicago based non-profit called the Center for Tech and Civic Life for grants large and small.

On July 6, 2020 the mayors of Wisconsin's five largest cities announced they had secured \$6.3 million in grant funds from CTCL and explained how they would spend the funds. The purposes of these expenditures included:

- 1. Support Early In-Person Voting and Vote by Mail:** Expand the number of in-person Early Voting sites (including Curbside Voting). Provide assistance to help voters comply with absentee ballot requests and certification requirements. Utilize secure drop-boxes to facilitate return of absentee ballots. Deploy additional staff and/or technology improvements to expedite and improve accuracy of absentee ballot processing.
- 2. Launch Poll Worker Recruitment, Training & Safety Efforts:** Recruit and hire a sufficient number of poll workers to ensure poll sites were properly staffed during the COVID outbreak, utilizing hazard pay where required. Provide voting facilities with funds to compensate for increased site cleaning and sanitization costs. Provide updated training for current and new poll workers administering elections in midst of pandemic.
- 3. Ensure Safe, Efficient Election Day Administration:** Procure Personal Protective Equipment (PPE) and personal disinfectant to protect election officials and voters from the Coronavirus. Support and expand drive-thru voting on election day, including covering additional unbudgeted expenses for signage, tents, traffic control, and safety measures.
- 4. Expand Voter Education & Outreach Efforts:** Outreach to remind voters to verify and update their address, or other voter registration information, prior to the election.

Clearly, these funds were used to ensure access to voting for all eligible voters during a serious public health emergency.

Given the unpredictability of future health and safety threats to our elections, as well as the continuing trend to increase and complicate the work of election officials, clerk's offices around the State will almost certainly need additional resources in future elections. If the

Legislature is determined to proceed with this ban, the City of Madison recommends that it add language to AB 1004 and AJR 134 guaranteeing that the State will provide additional funding to localities on a per voter basis, particularly in the case of any future pandemic or threat to the franchise. Alternatively, the Legislature could restore shared revenue or provide municipalities with additional revenue-raising options. Without such measures, voters could once again face a collapsed voting system that threatens their right to vote.

Finally, AB 1004 creates new potential crimes that local clerks may be prosecuted for simply doing their jobs, without any significant public policy justification. Two provisions subject clerks to criminal prosecution based upon whether a voter registration or ballot subsequently turns out to be valid or invalid. Correcting such errors has traditionally been the province of recounts where mistakes are found and corrected. Inviting disgruntled partisans to press for the prosecution of clerks by claiming an error or oversight was intentional only discourages more hard-working clerks from continuing in their public service.

As with other bills in this legislative package, an honest assessment of these election processes argues for the Legislature to join state and local election officials in educating the public about the facts related to Wisconsin election processes. The public and local election officials are exhausted and discouraged with the constant misinformation and disinformation that continues to be perpetuated by those who are in office by virtue of the same elections and rules that they wish to question. On behalf of the City of Madison, its voters, election officials and poll workers, I request that the Legislature focus its efforts on legislation informed by the professionals in the field and with the goal of serving Wisconsin voters, not disenfranchising them.



Greater Wisconsin  
Agency on Aging Resources, Inc.

Date: February 21, 2022

To: Representative Swearingen, Representative Vorpapel, and members of the Assembly  
Committee on State Affairs

From: Janet L. Zander, Advocacy & Public Policy Coordinator

Re: **AJR 133 Against** - relating to: requiring photographic identification to vote in any election

**AB 999/SB 939 Against** - relating to: absentee ballot applications, unsolicited mailing or transmission of absentee ballot applications and absentee ballots, secure delivery of absentee ballots, canvassing absentee ballots, voter registration requirements, electronic voter registration, and providing a penalty.

**AB 1002 Information only/SB 937** - relating to: status as an indefinitely confined voter for purposes of receiving absentee ballots automatically and providing a penalty.

**AB 1004/SB 935 Information only** - relating to: certain kinds of election fraud, private resources and contracts for election administration, who may perform tasks related to election administration, defects on absentee ballot certificates, returning absentee ballots to the office of the municipal clerk, appointment of election officials, allowing an employee of a residential care facility or qualified retired home to serve as a personal care voting assistant during a public health emergency or an incident of infectious disease, and providing a penalty.

The Greater Wisconsin Agency on Aging Resources, Inc. (GWAAR) is a nonprofit agency committed to supporting the successful delivery of aging programs and services in our service area consisting of 70 counties (all but Dane and Milwaukee) and 11 tribes in Wisconsin. We are one of three Area Agencies on Aging in Wisconsin. Our mission is to deliver innovative support to lead aging agencies as we work together to promote, protect, and enhance the well-being of older people in Wisconsin. There are over one million adults aged 60 and older residing in our service area.

Thank you for this opportunity to provide testimony on AJR 133, AB 999, AB 1002, and AB 1004. As of Feb. 1, 2022, people aged 50 and older make up 55% of Wisconsin's registered voters.<sup>1</sup> Voting is a high priority for many older adults. Despite a strong desire to vote, as people age, there are often barriers standing between their desire to vote and being able to vote. Between 2009 – 2019, the 65 and older population in Wisconsin grew by over 32%. There are over one million Wisconsinites

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<sup>1</sup> Wisconsin Elections Commission. February 1, 2022 Voter Registration Statistics. Retrieved Feb. 5, 2022 from [https://elections.wi.gov/statistics/voter\\_reg/feb2022](https://elections.wi.gov/statistics/voter_reg/feb2022).



aged 65 and older (over 17% of the state's population).<sup>2</sup> Older Americans are one of the fastest-growing demographics in the country. Within the older population, a large and growing percentage of people are age 85 and older.<sup>3</sup> With advanced age people are more likely to have multiple chronic illnesses which can make it harder to get around. Age is also a significant risk factor for admission to a nursing home. Roughly 1% of people aged 65-74 live in nursing homes, compared to approximately 15% of people aged 85 and older. Additionally, AAA reports seniors outlive their ability to drive safely by an average of seven to ten years.<sup>4</sup>

### **AJR 133 – Against**

While a free photo ID for voting can be obtained at the Department of Motor Vehicles (DMV), voters with disabilities or chronic conditions face multiple barriers to obtaining one. Some voters face difficulties obtaining the necessary documentation (such as a copy of their birth certificate) required to obtain a photo ID for voting. Other voters find it challenging to get to the DMV. Non-drivers, individuals in need of accessible transportation, low-income individuals, and those who live in areas where the DMV has very limited hours, all face barriers getting to the DMV to obtain their photo ID for voting.

GWAAR supports voting processes that ensure every eligible older adult who wants to vote, can vote, no matter where they live or how they choose to vote. To that end, GWAAR recommends the photo ID options for voting be expanded to address the concerns on non-drivers and others who currently face barriers to accessing needed documentation or the DMV. Options to consider include, but are not limited to: any photo ID card issued by the federal government, the state of Wisconsin, or a Wisconsin county, local government, or other governmental entity; regular college and university ID cards from all WI colleges and technical schools; high school student photo ID cards, and an affidavit (similar to what has been made available in some other states) for voters who have reasonable impediments to obtaining a photo ID. In addition, GWAAR recommends options for obtaining a photo ID for voting be expanded to include improving DMV access by expanding hours (including the addition of evening and weekend hours), addressing any physical accessibility concerns related to DMVs, co-locating state ID operations at locations that are already accessed by older adults and people with disabilities such as Aging and Disability Resource Centers and income maintenance offices, and the availability of mobile DMV locations.

<sup>2</sup> Administration for Community Living. 2020 Profile of Older Americans, Publication date May 2021. Retrieved Feb. 5, 2022 from [https://acl.gov/sites/default/files/Profile%20of%20OA/2020ProfileOlderAmericans\\_RevisedFinal.pdf](https://acl.gov/sites/default/files/Profile%20of%20OA/2020ProfileOlderAmericans_RevisedFinal.pdf).

<sup>3</sup> Administration for Community Living. Projected Future Growth of Older Population, last modified on May 25, 2021. Retrieved on Feb. 5, 2022 from <https://acl.gov/aging-and-disability-in-america/data-and-research/projected-future-growth-older-population>.

<sup>4</sup> Figueroa IV, D. (2018, August 14). *Seniors outlive their safe driving age by 7 to 10 years, AAA says*. Tampa Bay News. Retrieved February 5, 2022, from [https://www.tampabay.com/news/Seniors-outlive-their-safe-driving-age-by-7-to-10-years-AAA-says\\_170888685/](https://www.tampabay.com/news/Seniors-outlive-their-safe-driving-age-by-7-to-10-years-AAA-says_170888685/).

AJR 133 calls for the creation of section 1m of article III of the constitution; relating to requiring photographic identification to vote in any election. GWAAR is concerned that a Constitutional amendment is not the right vehicle for this type of policy change, as it is difficult to change and therefore, cannot be responsive to public need. For these reasons, GWAAR asks you to oppose AJR 133.

### **AB 999/SB 939 – Against**

Older voters more heavily utilize absentee voting.<sup>5</sup> This bill proposes significant changes that would make it much more difficult for electors to apply for and return absentee ballots. Under existing law, an elector who previously submitted a copy of their photo ID when applying for an absentee ballot, and who has not changed their name or address, is not required to submit a copy of their photo ID again when reapplying each year. This bill would eliminate that exemption and would require all electors to submit a copy of their photo ID with each application. In addition, electors wishing/needing to vote by absentee ballot will no longer be able to apply to receive ballots for every election in a calendar year but will now be required to complete an application for each primary and the election associated with that primary. These changes will pose significant barriers for voters who do not drive; it can be challenging to obtain needed copies of a photo ID due to transportation barriers, limited access to technology, and/or limited ability to use available technology. Requiring this application renewal process for every primary and general election pair, when there has been no change in the voter's status, is unnecessary and places additional barriers that will make it more difficult for some older adults to vote.

Though GWAAR feels participation in all elections is important; the reality is, turnout among all voters is lower for primary elections. This bill penalizes absentee voters who do not vote in the primary by prohibiting municipal clerks from mailing an absentee ballot for an election to any elector who fails to return the absentee ballot mailed to the elector for the primary specified in the elector's application. There are many reasons a voter may not be able to, or may choose not to, vote in a primary election. The elector's decision regarding voting in a primary should not impact their ability to vote absentee in a general election.

GWAAR heard from older voters who found it very confusing to receive multiple absentee ballot applications in the mail from third parties and outside groups (some legitimate and some not). GWAAR is concerned that adding 6.86 (8) to the current statutes, as proposed in this bill, would only further magnify the confusion. As proposed, no municipal or county clerks or municipal or county board of election commissioners, and no person acting on behalf of the commission, may send or transmit an absentee ballot application (or and absentee ballot) to an elector for voting in an election unless the elector applies for the application (or ballot). Yet, the bill states candidate

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<sup>5</sup> Charles Stewart III, MIT. Some Demographics on Voting by Mail, March 20, 2020. Retrieved on Feb. 6, 2022 from <https://electionupdates.caltech.edu/2020/03/20/some-demographics-on-voting-by-mail/>.

committees, legislative campaign committees, political parties, etc., may not send or transmit absentee ballot applications to a voter that contains a return address on the application other than the address of the municipal clerk where the voter is registered. This change prohibits the entities electors would expect to send them voting and elections materials from sending absentee ballot applications but *permits* third parties and outside groups to send absentee ballot application if the return address is the address of the municipal clerk where the voter is registered.

Third parties and outside groups often do not coordinate with state or local election officials resulting in electors receiving multiple applications. It is easy for voters to become confused about whether their absentee ballot applications were processed and is not surprising that some voters submit multiple applications while waiting for their absentee ballot to arrive. Multiple applications from a single voter cause confusion for voters and additional work for local election offices.

This bill will also make it more difficult for some older adults to vote by limiting who can return an absentee ballot to the voters themselves, a member of their immediate family, a legal guardian, or any registered voter they designate in writing (with additional restrictions). While some older voters are perfectly capable of returning their own ballots, others find it much more difficult to do so. In the past year or two, voters have expressed concern about returning absentee ballots by mail, especially when the election date is near, as ballots may or may not arrive in time to be counted. While this bill does authorize the use of for-profit commercial delivery for return of an absentee ballot envelope; voters who are low-income may find this cost prohibitive and not an option available to them. Most older adults (or voters of any age) do not have legal guardians, and some do not have any immediate family members, or at least none within close proximity, available to assist them. While this bill does allow an elector to designate, in writing, one person who is registered to vote in this state to deliver the return envelope containing the absentee ballot, it is unclear how the designation process works and it may be difficult for electors to know in advance who may be available to help them return their ballot, whether the individual is a registered voter in the state, and whether they have delivered more than two envelopes for any election for persons who are not members of the person's immediate family. Some electors, with extremely limited social contacts, may only have regular contact with in-home, paid providers. These providers often serve multiple individuals and may be asked to assist with returning an absentee ballot by more than one client. Restricting who can return absentee ballots will result in confusion and will negatively impact older voters and voters with disabilities.

For the reasons noted, we ask you to oppose AB 999.

### **AB 1002 – Information Only/SB 937 – Support as amended**

Though GWAAR is unable to support AB 1002 in its current form, specific provisions we support, as well as our concerns, are noted below.

Use of the indefinitely confined status for voting has been an invaluable accommodation for many

older adults (and adults of all ages) who wish to vote but due to physical illness, infirmity or disability are unable to get to their polling sites. As “indefinitely confined” is self-determined, it has become increasingly important to clarify what this term means. This bill removes “age” from the current definition of indefinitely confined (due to age, physical illness, infirmity, or is disabled for an indefinite period) and replaces it with the following language, “an elector who is indefinitely confined and cannot travel independently without significant burden because of frailty, physical illness, or a disability that will last longer than one year.” GWAAR supports the removal of age from the definition of indefinitely confined, as age in and of itself is not an indication of frailty, physical illness, or disability. To provide further clarification, GWAAR recommends changing the name of the status to “permanent absentee voter,” to reflect the needs of these voters more accurately versus a condition of voters.

Under current law, the absentee ballot application provides electors the options available under law for voting absentee, including the option for electors to certify to their indefinitely confined status. Electors in need of being a permanent absentee voter, who may not know about the indefinitely confined voter accommodation can learn about it directly from the absentee ballot application. Recent reports have indicated some voters, in recent elections, checked the box to certify themselves as indefinitely confined unintentionally or without understanding what it meant. While GWAAR recognizes the importance of preserving this accommodation for those it was intended to serve, our recommendation is to provide additional clarification on the absentee ballot application rather than creating a distinct indefinitely confined status application as proposed in this bill. Electors in need of an indefinitely confined status may not know to request this application and, therefore, may not receive this needed accommodation.

Though GWAAR feels participation in all elections is important, we support changes made in this bill related to 6.86 (2) (b) specifying an indefinitely confined voter who fails to cast and return an absentee ballot “with respect to a spring or general election” (rather than any election) will receive notification from the clerk by 1<sup>st</sup> class letter or postcard that his/her name will be removed from the mailing list unless the clerk receives a renewal of the application within 30 days of the notification. Turnout among all voters is lower for primary elections and this change would prevent indefinitely confined voters from having to reapply to maintain their status due to not voting in a primary election.

In recognition of the challenges electors seeking an indefinitely confined status face in submitting copies of a photo ID or getting to the DMV to obtain an ID, existing law does not require those requesting an indefinitely confined voter status to submit a photo ID when applying for an absentee ballot. While many absentee voters requesting an indefinitely confined status have a valid ID, it can be exceedingly difficult for some to submit copies electronically or hard copy. This bill requires any elector who possesses proof of identification to submit a copy of their identification with *each* application for indefinitely confined status. GWAAR supports changes made in this bill to provide electors applying for an indefinitely confined voter status electronically to use the online

system - MyVote Wisconsin - to provide the number of a valid photo ID card, their name, and date of birth (in place of uploading copies of the ID as proof of identity). We would also recommend this option be made available to electors apply for indefinitely confined status who possess a valid ID and apply using the Wisconsin Elections Commission's paper application. The application could provide a location for the elector to include this information. Without this option, it will be very difficult for some electors in need of an indefinitely confined status to submit a copy with their application, even when they have a valid photo ID.

This bill continues to provide an option for electors applying for indefinitely confined status who do not possess proof of identification. GWAAR supports maintaining this option but recommends changes to the process outlined in this bill. Among the requirements outlined in the process in this bill are requirements for the elector to submit an affirmation that he/she meets the definition of indefinitely confined, the last four digits of his/her Social Security number, and a statement authorizing the commission to use the last four digits of the elector's Social Security number to verify the elector's identity. GWAAR believes these electors must receive assurance that any Social Security numbers, in combination with other personal data, will be maintained in a confidential manner to protect them from any potential fraud or abuse. In addition, GWAAR believes the above information should be sufficient for the elector's identification to be confirmed. The bill also; however, requires the affirmation of a U.S. citizen that the elector is indefinitely confined and cannot travel independently without significant burden because of frailty, physical illness, or a disability that will last longer than one year. If a witness signature continues to be required, GWAAR recommends the witness attest to the elector's identity, as is required under current law, and not be required to attest to the elector's health or disability status. It can be difficult for some absentee voters, especially those who are indefinitely confined, to find individuals eligible to serve as witnesses on absentee ballot applications. This new requirement will make it even more difficult, as many individuals may feel unqualified to make such a determination and may, therefore be unwilling to sign as a witness on the application.

Lastly, the bill requires the Wisconsin Elections Commission to facilitate removal from the indefinitely confined status mailing list any elector who first applied for this status between March 12, 2020 and Nov. 3, 2020. The electors removed from the mailing list will no longer be eligible to automatically receive absentee ballots unless the elector reapplies. As is the case every year (not just during a public health emergency), a number of older adults and adults with disabilities who determined they qualified for this status, will have applied for this status during this time period. Under this bill, all individuals added to the list during this time, will be removed. This will result in many voters who are qualified for this status being removed from the mailing list. GWAAR is concerned the bill does not outline how these electors will be notified they have been removed from the list and further, how these electors will be supported to reapply given how difficult this process can be for voters with significant "frailty, physical illness, or disability."

For the reasons noted above, GWAAR is unable to support AB 1002 in its current form. We ask you

to support amending AB 1002 to reflect the current amendment made to SB 937, as well as the floor amendment to be considered on Feb. 22, 2022. While not all of our concerns were addressed, SB 937, with the amendments, maintains this essential status for voters with a disability, chronic illness, or frailty.

### **AB 1004/SB 935 – Information Only**

GWAAR has appreciated ongoing discussions with Senator Bernier to ensure the voting rights of care facility residents. Though GWAAR is unable to support the bill in its current form, our comments note specific provisions that we support, as well as our concerns, regarding AB 1004/ SB 395.

GWAAR is concerned changes to the absentee ballot certificates and their review could result in additional ballots being disqualified (uncounted). The bill requires the completion of 12 different fields of information on the absentee ballot certificate. If all 12 fields are not completed on the certificate, the ballot may not be counted. Like existing law, this bill allows clerks to return the ballot to the voter, if time permits, to allow the voter to complete any missing information. In addition, the bill also creates a requirement for clerks who determine a certificate is improperly completed or missing to post notice of the defect in the voter's information page in the online voter registration system (MyVote Wisconsin) and maintains a provision allowing clerks to attempt to notify the voter by other means. GWAAR supports this addition but is concerned that some older voters lack internet access and/or may require additional assistance to identify how the certificate is to be corrected.

It is understood that clerks may not have time to contact by phone, email, or letter, all electors with incomplete or missing certificates. Creating a certificate requiring the minimal amount of required information and clear instructions would help to eliminate what are often simple mistakes (e.g., elector lists zip code but forgets to include municipality). In addition, continuing to allow clerks to correct certain minor errors such as adding a missing element of the witness address for a spouse (witness) residing at the same address as the elector as has been allowed under recent guidance from the Wisconsin Elections Commission, would prevent minor mistakes on the ballot certificate from keeping otherwise valid ballots from being counted. Under this bill, it would be a crime for clerks to correct even minor errors.

GWAAR appreciates the efforts that have been made in this proposal to expand voting options for electors in residential care facilities and qualified retirement homes. Specifically, we support the creation of statutory language outlining the process to follow to ensure electors in residential care facilities and qualified retirement homes receive the assistance needed to vote when Special Voting Deputies (SVDs) are restricted from conducting visits due to a public health emergency or an incident of infectious disease. For many years, visitors (including SVDs) have occasionally been restricted from visiting due to concerns related to the spread of disease. Though the process proposed is more restrictive than we recommended, it does outline a process to be followed when

these circumstances occur.

GWAAR also supports allowing individuals employed at residential care facilities or qualified retirement homes to be appointed as personal care voting assistants when Specialized Voting Deputies (SVDs) are restricted from conducting visits during a public health emergency or an incident of infectious disease. State law currently prohibits these employees from serving as SVDs, while current federal law requires licensed skilled nursing facilities (at all times, not just during public health emergencies) to have a plan in place that ensures residents can exercise their right to vote. Though some states, like Wisconsin, have programs in place that enable external assistance to come into the facility, regardless of whether this external assistance is available or not, providers are required to provide support to residents to help them vote, including “transporting residents to polling locations or drop boxes, assisting with absentee or mail-in voting processes, and ensuring residents who are otherwise unable to cast ballots in-person retain their right to vote and send in their ballots via State/locality authorized mechanisms.”<sup>6</sup> The authorization and training of personal care voting assistants will help to ensure federal requirements are met for electors in licensed skill nursing facilities, as well as residents in all other residential care facilities and qualified retirement homes impacted by this change.

In recognition of the high-level of turnover among staff in these facilities and the reality that not all facilities will have appointed and trained personal care voting assistants, we are concerned the bill restricts any other facility employee who is not a personal care voting assistant from assisting residents with voting (other than distributing absentee ballots in their unopened envelopes to residents who requested them). The process for voters in facilities where SVDs are not able to conduct visits and the facility has *not* identified any personal care voting assistants remains unclear under this proposal. We must ensure these voters are not disenfranchised based on where they live. In addition, we are concerned that the process as outlined under this proposal is also unclear as to how residents/tenants who have recently moved to a residential care facility or qualified retirement home will receive assistance, if needed, with registering to vote when visits are restricted for SVDs (only some of whom are also Special Registration Deputies). If personal care voting assistants are prohibited from assisting with registering to vote and other facility staff are also unable to assist, how will residents receive the assistance needed?

The change in timeline for SVDs to arrange and conduct visits to facilities and the authorization to allow clerks to send absentee ballots to electors who were unable to cast their ballots during an SVD visit because access to the home/facility was restricted due to a public health emergency or incident of infection disease are also supported by GWAAR. Requiring SVD contacts to be made with facility administrators and visits to be scheduled no later than 5 p.m. on the 11<sup>th</sup> working day (instead of the 6<sup>th</sup> working day) preceding an election will allow more time for the alternate

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<sup>6</sup> Centers for Medicare and Medicaid Services. Compliance with Residents’ Rights Requirement related to Nursing Home Residents, October 5, 2020. Retrieved on Feb. 5, 2022 from <https://www.cms.gov/files/document/qso-21-02-nh.pdf>

process, utilizing personal care voting assistants, to be completed should SVD visits be restricted due to a public health emergency or incident of infectious disease. Additionally, requiring SVD visits to be completed *no later than* 5 p.m. on the 6<sup>th</sup> working day preceding the election (rather than the Monday preceding the election) will provide more time for clerks to send absentee ballots to electors who were unable to cast their ballots during SVD visits due to restricted access to the facility by SVDs resulting from a public health emergency or incident of infectious disease and more time for personal care voting assistants to provide assistance.

GWAAR does not support the changes made under this bill requiring facilities to give notice of the days and times SVDs or personal care voting assistants will be assisting facility residents with voting, to each relative of an occupant/resident for whom the facility/home has contact information. GWAAR also does not support the proposal in this bill indicating relatives may be present in the room where the voting is conducted. Eligible voters, regardless of age, disability, or living arrangement, should have the right to decide who is and is not informed about and/or present during any activity, including voting. Current law, while still concerning, allows relative to request notice of voting dates/times and does not require the information be sent to all relatives.

GWAAR supports voting processes that ensure every eligible older adult who wants to vote, can vote, no matter where they live or how they choose to vote. Thank you for your consideration of these comments on AJR 13, AB 999, AB 1002, and AB 1004. We appreciate the interest in and efforts of policy makers to preserve, protect, and enhance the voting rights of older adults and people with disabilities. We look forward to continuing to work with you on policies that improve the quality of life of older people in Wisconsin.

Working together to promote, protect, and enhance  
the well-being of older people in Wisconsin

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WISCONSIN INSTITUTE  
FOR LAW & LIBERTY

## Testimony to the Assembly Committee on State Affairs

February 21, 2022

Thank you, Chairman Swearingen, Vice-Chair Vorgapel, and members of the committee for hearing my testimony today. My name is Kyle Koenen and I am the Policy Director at the Wisconsin Institute for Law and Liberty. While we are supportive of much of this package, I will focus my comments on aspects of Assembly Bills 996, 997, 1003 and 1004 today. We are also registering in favor of Assembly Bills 1002, 1005, and 1006 but do not have prepared testimony. Thank you to the authors for bringing this important reform package forward for consideration.

This past December, WILL released [“A Review of the 2020 Election”](#), a comprehensive examination of said election. A team of WILL researchers and attorneys spent 10 months submitting over 460 records requests to conduct in-depth statistical and legal analyses. As part of the process, we examined over 65,000 pages of documents, including 20,000 ballots and 29,000 absentee ballot envelopes. Our work has been cited extensively nationwide, with a recent Wall Street Journal editorial calling the review, [“The Best Summary of the 2020 Election.”](#) I have submitted a summary of the report and would be happy to present our findings with my colleagues at a later date if the committee has interest.

### Assembly Bill 1004

First, Assembly Bill 1004 would create an alternative process for absentee voting in residential care facilities and qualified retirement homes during a pandemic or an incident of infectious disease.

Wisconsin Statutes provide that two voting deputies will be dispatched to qualified retirement homes and residential care facilities by the municipal clerk or board of elections in the community where the facility is located.<sup>1</sup>

Despite this, on three separate occasions in 2020, WEC issued guidance that ran contrary to this statute, advising communities that they were not required to dispatch special voting deputies. We won't question the commission's motivations, and acknowledge the difficulty of the situation. However, it is abundantly clear that the advice was contrary to the letter of the law and had an effect on how clerks operated. Our report reviewed records from a sample of 35 communities that were required to appoint special voting deputies and found that only 2 communities

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<sup>1</sup> Wis. Stat. 6.875(4)(a)

actually did so. We believe that the process laid out in the bill represents a reasonable alternative to the special voting deputy process in the event of a pandemic or infectious disease.

Assembly Bill 1004 also prohibits governmental entities from accepting grant money, equipment or materials from private sources for the purposes of administering an election. Last year, WILL released an in-depth report on how grants from the Center for Technology and Civic Life (CTCL) were administered in Wisconsin. Our review found that \$10.3 million was distributed to 196 communities, with approximately 86% of that funding going to the five largest cities in the state (Milwaukee, Madison, Green Bay, Kenosha and Racine). We also found disparities in funding on a per-capita basis, with cities like Racine and Green Bay receiving \$36 and \$53 per 2016 voter respectively. For comparison, Appleton and Waukesha only received \$0.51 and \$1.18 per 2016 voter respectively. Lastly, a statistical analysis found that CTCL grants had a potential electoral impact of approximately 8,000 votes in the direction of Biden. Government administration of elections should be impartial and fair, and the infusion of private dollars from various sources threatens that dynamic. This bill correctly remedies this problem by prohibiting private dollars from being used for election administration, period.

Lastly, our review found significant variation in how mistakes on absentee ballot certificates are handled. Despite records levels of absentee voting, absentee ballot rejection rates were considerably lower than usual in the Fall 2020 election than other recent elections, with 0.2% of ballots rejected. For comparison, the rejection rate was 1.35% for the Fall 2016 general election and 1.57% for the Spring 2020 election.

We also surveyed a sample of 50 communities, asking the extent in which they “cured” defective or incomplete absentee ballot certificates. Of the 21 responses we received, 13 indicated they took action to cure mistakes, while 8 said they did not. Consequently, we reviewed nearly 29,000 absentee ballot certificates from around the state to practically see how communities handled defective absentee certificates. We found that practices varied considerably, with some communities ignoring mistakes, some correcting them and others rejecting ballots outright. A consistent standard and practice is needed to ensure that a voter has an equal chance of having their ballot counted regardless of where they live. This bill accomplishes just that by defining what constitutes a complete absentee ballot certificate, and bars clerks from making corrections.

### **Assembly Bill 1003**

Assembly Bill 1003 makes changes to the complaint process at the Wisconsin Election Commission that we believe are prudent. Currently, the commissioners have delegated their responsibility to decide complaints to the Chair and

Administrator. This delegation results in citizens who have filed complaints with the commission, as permitted by statute, having their complaints to essentially be decided by staff and not by the commissioners. These complaints should be handled in a timely manner and decisions should be made by the full commission at a public meeting. Another provision allows complaints against WEC to bypass the standard complaint process and go straight to circuit court, thus potentially allowing for a timelier disposition of a case. The need for timely resolution of election disputes is important to ensure that laws are properly followed and the rules are set prior to an election.

**Assembly Bill 997**

The Help America Vote Act (HAVA) was passed by Congress in 2002 and made sweeping reforms to the nation’s voting process following the 2000 Presidential election. Among the provisions of this law, is a requirement for states to implement a centralized voter registration database that includes a “system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”<sup>2</sup> To identify registrants that are eligible to vote HAVA requires, among other things, that a state’s chief election official shall enter into an agreement with the Department of Motor Vehicles to “verify the accuracy of information provided on applications for voter registration.”<sup>3</sup> Wisconsin fulfills this requirement under Wis. Stat. § 85.61.

As part of our review, WILL obtained records from WEC showing the extent of mismatches between the voter registration file and DMV records. Those mismatches are reflected in the table below for prior to the 2020 election.

**DMV Mismatch Reasons – 2020 Pre-November Only**

<b>Reason</b>	<b>Count</b>	<b>Percentage</b>
2 – Name and DOB Do Not Match	274	1.17%
3 – Name Does Not Match	15,260	65.32%
4 – DOB Does Not Match	1,061	4.05%
5 – No Record of DL #	4,885	20.91%
S – Invalid Data Submitted	66	0.03%
Z – No Matches Found	1,815	7.77%

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<sup>2</sup> 52 U.S.C. § 21083

<sup>3</sup> 52 U.S.C. § 21083(a)(5)(B)(i)

Practically speaking, what does this mean? It means that over 23,000 people cast ballots despite having a mismatch between their voting registration record at WEC and their DMV record. While many of these mismatches may be the result of common variations in a name (Ex. Bill vs. William, or Jim vs. James.) or clerical transcription errors, it is impossible for WEC or clerks to verify the extent of these mismatches. The LAB audit confirmed as much in their review, stating “DOT does not provide WEC with any personally identifiable information, such as names or dates of birth.”

At some point in the process, WEC asks municipal clerks to send a letter to mismatched voters asking them to clarify the discrepancy. However, WEC informs the clerks that regardless of the results of the DMV check, it does not affect the voter’s eligibility, and the clerk has met their responsibility to verify the information once the letter has been sent. Whether the individual responds or not, nothing more is done. As a result, mismatches continue to exist in the system. This result renders the HAVA check meaningless. Why check for a mismatch if there is no consequence when one is found?

This lack of follow-through presents a potential weakness in Wisconsin’s electoral security. Here’s one hypothetical situation that could prove problematic. Voters do not need to present an ID to register in person or by mail. They must only show proof of residency, which includes a list of documents that could be rather easily fabricated<sup>4</sup>. Because HAVA checks are not uniformly used to remove ineligible voters, a person could use a faulty registration, then claim indefinitely confined status and cast a ballot without ever showing an ID. We cannot say whether this happens, because as stated above clerks and WEC are unable to see the extent of these mismatches. That is where Assembly Bill 997 comes in.

First, the bill requires that DOT provide WEC the personally identifiable information (Name, DOB, DL#) needed for election officials to determine the source and extent of a mismatch. Second, the bill lays out a multistep process for election officials to correct errors resulting from a DMV mismatch. If the discrepancy is the result of a single piece of minor information being inaccurate, it empowers the commission to correct the discrepancy on the basis of reliable information. Third, if an election official is unable to obtain reliable information, or there are multiple discrepancies, they must mail the elector notifying them of the discrepancy. If the elector does not correct the mistake within 30 days, election officials would then change the voter’s registration from active to inactive.

The responsibility of fulfilling this process lies with WEC. However, the bill allows WEC to delegate any step of this process to municipal clerks. Lastly, to ensure full transparency, the bill requires election officials to document how each discrepancy

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<sup>4</sup> While approved ID’s are accepted to prove residency, utility bills, bank/credit card statements, paystubs, and residential leases can be used to verify residency.

is corrected. This would be especially helpful in any post-election reviews from the public, where personally identifiable information could not be disclosed.

With easily accessible online and same-day in-person registration, Assembly Bill 1003 would be a prudent move towards ensuring accuracy in our voter rolls. It rightfully prioritizes correcting innocuous errors and removes a weakness in our current system.

### **Assembly Bill 996**

Assembly Bill 996 increases both transparency and accountability in the voting process.

In the process of conducting our review, WILL had issues obtaining records on a number of occasions. I'll give you one example. In February 2021, WEC released a report that analyzed data from the November 2020 election. WILL requested data to recreate some of WEC's analyses, but were told that due to the dynamic nature of the voter registration list, we would be unable to receive the necessary data. This bill would fix this issue by requiring WEC to keep monthly snapshots of the voter file. It would also expand the information clerks are required to report to WEC following an election, making it easier for election watchers to spot potential issues to follow-up on.

Lastly, introducing bi-partisan legal counsel at WEC would be a prudent move towards ensuring a diversity of legal viewpoints are heard by commissioners. On a number of occasions leading up to the 2020 election, WEC issued legally questionable guidance to clerks, something that bi-partisan counsel could have prevented. A similar approach is taken by other states, most notably New York, who has bi-partisan Co-Executive Directors at the State Board of Elections.

Thank you, Chairman Swearingen and committee members for hearing my testimony today. I would be happy to answer any questions.

## *The Best Summary of the 2020 Election*

Rules were bent, GOP voters defected, and real fraud hasn't turned up.

By The Editorial Board  
Jan. 25, 2022 6:52 pm ET



At his first big political rally of 2022, President Trump was again focused on 2020. “We had a rigged election, and the proof is all over the place,” he said. Mr. Trump was apparently too busy over Christmas to read a 136-page report by a conservative group in Wisconsin, whose review shows “no evidence of widespread voter fraud.”

If curious Republicans want to know what really happened in 2020, [this is the best summation to date](#). Released Dec. 7, it was written by the Wisconsin Institute for Law and Liberty (WILL), a policy shop with conservative bona fides that supported many of Mr. Trump’s policies. A Wisconsin judge this month said ballot dropboxes are illegal under state law, in a challenge brought by WILL.

Its report on 2020 wallops state officials for bending election rules amid the pandemic. That mistake put ballots into legal doubt, due to no fault of the voter, while fueling skepticism. Yet the

stolen-election theory doesn't hold up. President Biden won Wisconsin by 20,682, and mass fraud "would likely have resulted in some discernible anomaly," WILL says. "In all likelihood, more eligible voters cast ballots for [Joe Biden](#) than [Donald Trump](#)." Here are some highlights:

- Only 14.7% of Wisconsin jurisdictions used Dominion voting machines. Mr. Trump won 57.2% of their ballots, up from 55.7% in 2016.

- In Milwaukee, the number of absentee votes tallied on election night is "consistent with what was reported to be outstanding." Mr. Biden's share, 85.7%, is plausible. The raw vote total in Milwaukee County was up only 4.4% from 2016, lower than the average rise of 10.2%. "Put simply, there was no unexplained 'ballot dump.'"

- WILL's hand recount of 20,000 votes from 20 wards, including in Milwaukee, found "no evidence of fraudulent ballots." It did show "a significant number of voters who voted for Biden and a Republican for Congress." In wards of suburban Mequon, to pick one, 10.5% of Biden ballots went for GOP Rep. Glenn Grothman.

- In 2020 only 0.2% of Wisconsin's absentee ballots were rejected, a steep drop from 1.35% in 2016. This, however, was a nationwide trend, aided in part by dropboxes. Also, WILL says, "rejection rates were actually slightly higher in areas of the state that voted for Biden."

- The state told clerks to correct incomplete witness addresses. Not every jurisdiction did so, and some didn't track such fixes. WILL reviewed 29,000 ballot certificates in 29 wards. The "vast majority" of problem ballots "were simply missing a portion of the second address line, such as a city, state or ZIP Code." State law doesn't define how much "address" is required, so these ballots probably were valid regardless.

- The number of "indefinitely confined" voters, who are exempt from photo-ID rules, rose 199,000. Yet the election proceeded, WILL says, with "no clear statement" on whether fear of Covid could qualify as home bound. County data suggest no link between confinement rates and partisan lean. WILL polled 700 random confined voters, turning up little. Fraud here would be "risky," it says, since real ballots by impersonated voters would then be flagged. Wisconsin has identified only four double votes.

- The state used dropboxes, which are legally disputed, and WILL says many clerks didn't sufficiently log chain of custody. Its statistical analysis estimates that dropboxes maybe raised Mr. Biden's turnout by 20,736. But WILL "does not claim" that such people "were ineligible voters or should have had their votes rejected."

- A nonprofit tied to Mark Zuckerberg gave \$10 million to help Wisconsin elections, mostly in five cities, a skewed distribution that WILL finds "troubling." A statistical analysis suggests it maybe lifted Mr. Biden's turnout by 8,000.

“We do not believe the election was ‘stolen,’” WILL says. “But it was not adequately secure.” Some of its suggestions for restoring election confidence are basic: Process ballots earlier to stop midnight results in Milwaukee. Redesign mail ballots with “specific spots” for witnesses to jot their cities, states and ZIP Codes. Define “confined voter.”

The overall lesson is to run elections by the book. WILL says the number of ballots that “did not comply with existing legal requirements” almost surely “exceeded Joe Biden’s margin.” The ambiguity is deadly to public trust.

But Mr. Trump didn’t raise hell until he lost. Then his campaign asked to throw out more than [200,000 random ballots](#) from two blue counties, even though questioned practices had taken place statewide. If an honest Wisconsinite followed some official procedure that wasn’t challenged, good luck getting judges after the fact to toss that vote—to say nothing of 28.4% of all the votes in Milwaukee County. Such selective treatment, as WILL says, is what the Supreme Court quashed in *Bush v. Gore*.

Perhaps more information is forthcoming. A former Justice of the Wisconsin Supreme Court, Michael Gableman, is also doing a review of the state’s 2020 election. To inform the next legislative session, Assembly Speaker Robin Vos said recently, “I really need his report by the end of February.”

Until then, WILL’s document stands as the best summary to date of the 2020 election: not secure, but not stolen, with suburban Republicans splitting tickets to defeat Mr. Trump.



**Date** February 21, 2022

**To** Rep. Swearingen, Chair; Rep. Vorpapel, Vice Chair; members of the Assembly Committee on State Affairs

**From** Barbara Beckert, DRW Milwaukee Office Director and Director of External Advocacy for Southeastern Wisconsin

**Re:** Assembly Committee on State Affairs Public Hearing February 21, 2022

- Against – AB-996 / SB-941 **Elections Administration** Overseeing the administration of elections
- Against - AB 999 / SB 939 **Absentee Ballots** Absentee ballot applications, unsolicited mailing or transmission of absentee ballot applications and absentee ballots, secure delivery of absentee ballots, canvassing absentee ballots, voter registration requirements, electronic voter registration, and providing a penalty.
- Information Only AB-1002 / SB-937 **Indefinitely Confined Voters** Status as an indefinitely confined voter for purposes of receiving absentee ballots
- Information Only -AB-1004 / SB-935 **Election Fraud** Certain kinds of election fraud, private resources and contracts for election administration, who may perform tasks related to election administration, defects on absentee ballot certificates, returning absentee ballots to the office of the municipal clerk, appointment of election officials, allowing an employee of a residential care facility or qualified retirement home to serve as a personal care voting assistant during a public health emergency or an incident of infectious disease, and providing a penalty.
- Information Only -AB-1005 / SB-934 **Voter Registration List** Maintenance of the voter registration list, training of municipal clerks, data sharing agreements, pre-election procedures, lines at the polls on election day, and granting rule-making authority.
- Against – AJR 133 **Requiring photographic identification** to vote in any election
- Other – AJR 134 **Prohibiting the use of a donation or grant** of private resources for purposes of election administration and specifying who may perform tasks related to election administration

As the federally mandated Protection and Advocacy system for our state, Disability Rights Wisconsin (DRW) is charged with protecting the voting rights of people with disabilities and mandated to help “ensure the full participation in the electoral process for individuals with disabilities, including registering to vote, casting a vote, and accessing polling places.” (Help America Vote Act, 42 U.S.C. § 15461 (2002)). DRW staffs a Voter Hotline and assists voters with disabilities and older adults, family members, service providers, and others.

In coordination with the Wisconsin Disability Vote Coalition, we provide training and educational resources to voters with disabilities, their families, and service providers. The hotline and trainings provide us with a frontline understanding of the barriers experienced by many voters with disabilities.

### **Voters with Disabilities**

A significant number of Wisconsin voters have a disability. The CDC indicates that 26% (1 in 4) of adults have some type of disability. According to the American Association of People with Disabilities (AAPD), approximately 23% of the electorate in November election were people with disabilities. Many older adults have disabilities acquired through aging, although they may not formally identify as a person with a disability.

Historically voters with disabilities are underrepresented at the ballot box. Many experience barriers to voting including the following:

- Polling place and voting documents are not always accessible.
- High percentage are non drivers and lack access to transportation, especially accessible transportation
- Lack of photo ID and difficulty obtaining it because they don't have transportation to get to DMV, and DMV hours are very limited
- Limited information about their voting rights including disability related accommodations.
- Legally required accommodations such as curbside voting and ballot assistance are not uniformly available; some voters experience discrimination and denial of accommodations.
- Lack of access to the internet and/or devices that connect to the internet, and to equipment to copy photo ID.
- May live in a group home or place with many other people where ability to independently leave, get information, or get online is limited or restricted.

### **Federal Law and Voting Rights**

As referenced in this testimony, the US Department of Justice and other federal agencies issue guidance to protect the fundamental right to voting for all Americans, including specifically addressing the rights of voters with disabilities to have equitable access to the ballot. These rights are protected by federal laws including the Americans with Disabilities Act (ADA), the Voting Rights Act (VRA), the Help American Vote Act (HAVA), and other civil rights law. It is important that that these bills align with the protections for people with disabilities provided by federal law as summarized in the linked document.

## **AB-996 Elections Administration - Against**

DRW has the following concerns about AB 996:

- Federal civil rights laws, as well as guidance from the US Department of Justice and other federal agencies, protect the fundamental right to voting for all Americans, and specifically address the rights of voters with disabilities to have equitable access to the ballot. These rights are protected by federal laws including the ADA, the VRA, HAVA, and other civil rights laws. It should not be optional to comply. Any state action that would impede the operation of the federal statutes (or regulation) would raise constitutional issues, and fall under the Supremacy Clause, which establishes that the federal constitution, and federal law generally, take precedence over state laws, and even state constitutions, and prohibits states from interfering with the federal government's exercise of its constitutional powers.
- The bill adds significant reporting requirements for municipal clerks without providing any funding to provide clerks with support to comply with these requirements.
- This bill requires that legal counsel for the commission be partisan and chosen by the legislative leadership of the two major political parties. Under current law staff positions are not partisan and are not selected by the Legislature.

**Based on these concerns, DRW recommends opposing AB-996.**

## AB 999 SB-939 Absentee Ballots - Against

Absentee voting is heavily utilized by disabled voters because so many have barriers to voting in person including lack of transportation, polling place accessibility issues, and/or disability related or health concerns that limit their ability to vote in person. Many also have limited access to technology and to the internet or disability-related barriers to using technology.

AB 999 would create the new restrictions listed below that would make it more difficult for many disabled Wisconsinites to cast a ballot.

- Absentee voters would need to provide proof of identification for every election. Under existing law, a voter who submitted a copy of their photo ID when applying for an absentee ballot once, and has not moved nor changed their name, need not submit a copy of their ID again when they apply.  
**Concern:** The voters we assist often struggle to provide a copy of their photo ID on My Vote or My Mail. Requiring this be mailed or uploaded to My Vote for every election would be a significant burden.
- Reduce the number of elections a voter can apply to receive ballots for with a single application to a single primary and general election pair. Under existing law, a voter can apply to receive ballots for every election in a calendar year.  
**Concern:** A high percentage of voters with disabilities vote absentee and request absentee ballots for the year. Because of limited access to technology, and in many cases limited mobility, it would be a significant burden for many disabled voters to have to repeatedly reapply to vote absentee. Having to repeatedly complete and resubmit absentee ballot applications will create a burden for voters with disabilities such as blindness, MS, spinal cord injuries, cerebral palsy that make it difficult to complete forms either by hand or on line.
- Require all in person absentee voters to complete an absentee ballot application, even if they already have such a request on file.  
**Concern:** Requiring voters who already have an absentee ballot request on file to complete the form again is unnecessary, inefficient, and will lead to longer waiting times. In addition, many individuals with disabilities may require assistance to complete the absentee ballot application, and will require election officials to provide this accommodation.
- Prohibit clerk from sending absentee ballot applications to anyone who has not requested them  
**Concerns:** Sending absentee ballot applications to registered voters provides equitable access to absentee voting for all voters, including those who do not have access to the internet or a device to complete the form online or to download and

print it. This restriction is especially troubling because the bill requires voters to repeatedly complete and submit their absentee ballot request. Many voters with disabilities will struggle with these new restrictions. It is truly a public service for our municipal clerks or the Wisconsin Election Commission to mail the absentee ballot applications to voters, as so many voters with disabilities and older adults are isolated and not able to easily obtain or print an application.

### **Absentee Ballot Return**

Many voters with disabilities rely on a person of their choice to return their absentee ballot. Because of disability, they may be unable to place their completed ballot in a mailbox, in a secure drop box, or return it to their clerk. Existing law does not restrict who may deliver a ballot for a voter. This bill would restrict who a voter may choose to return their ballot and create a felony to punish a person who returns a voter's ballot in violation of these restrictions.

### **Concerns**

While less restrictive than a 2021 proposal, there are several provisions which are very problematic for many disabled and elderly voters.

- No one can return more than two ballots not their own for anyone not immediate family per election
- The person cannot be compensated to return the ballot.

Our concerns include the following:

Many people with disabilities and older adults live in a congregate setting. This includes Adult Family Homes (AFH), community based residential facilities (CBRF), supported housing, or apartment buildings. Because of lack of transportation, mobility restrictions, as well as unreliable mail delivery, many residents rely on paid staff to return their ballot. Those paid staff often assist multiple residents. In addition, volunteers often assist residents with voting including ballot return.

In addition to those living in congregate settings, these restrictions would impact many disabled and elderly individuals who live independently in their own home or apartment. Many are isolated and do not have access to family or other community members to assist them. They rely on paid staff to assist them with activities of daily living, including voting, and in many cases to assist with absentee ballot return.

If paid staff are no longer able to assist with absentee ballot return, it will disenfranchise many people with disabilities and older adults. Federal law allows any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union.

**For the reasons noted, we ask you to oppose AB 999.**

## AB-1002 / SB-937 Indefinitely Confined Voters - For Information Only

DRW has appreciate the ongoing discussion with Senator Bernier about changes to update the Indefinitely Confined Voter Status and to protect this important option for disabled voters. DRW has registered in support of the amended SB-937, with the understanding that an additional amendment will be offered on the floor to further improve the bill by clarifying the definition of disability in the bill and aligning it with the language used by the Social Security Administration.

Our comments on AB-1002 are for information only, as DRW is unable to support the bill without amendments. Our comments note specific provisions that we support as well as concerns.

Note: Please see the attached letter of support for the amended version of SB 937 from disability and aging groups and other partners.

**Background.** This bill makes changes to the Indefinitely Confined Voter Status. Wisconsin's indefinitely confined statute has been on the books for decades, and provides an important safeguard to ensure that many voters who are disabled, or have chronic health conditions can cast a ballot. An indefinitely confined voter is a person who, because of age, physical illness, or disability, has difficulty voting at their polling place, and always wants to receive an absentee ballot. The Wisconsin Supreme Court affirmed that "indefinitely confined" status is for the voter to determine – it is not a medical diagnosis.

Wisconsin has many residents with significant disabilities and frail elders who live in the community, and rely on this accommodation to vote. Because Wisconsin has been a leader in expanding community based long term care; over 80,000 people with disabilities and older adults are enrolled in these community programs. Participants qualify for these programs by meeting a nursing home level of care, meaning their support needs are significant and similar to nursing home residents. The increasing number of individuals with long term health conditions such as Cerebral Palsy, Multiple Sclerosis, Muscular Dystrophy, ALS, and quadriplegia who live in the community rather than in a nursing home has increased the need for the indefinitely confined voter provision.

### **AB 1002 addresses the following:**

1. Further defines what it means to be "indefinitely confined." An elector...."who cannot gravel independently without significant burden because of frailty, physical illness, or a disability that will last longer than one year." Advocates have supported the need to clarify the language. The bill removes "age" as age in and of itself

should not qualify someone – it requires frailty, physical illness, or disability.

Although this language provides some clarification, we continue to believe the term “indefinitely confined” is problematic. Voters who need this accommodation have shared that they are hesitant to apply because the terminology infers that they are “bed-bound” and unable to leave their home. We recommend the language similar to that used in some other states: *Permanent Absentee Voter Due to Disability, physical illness, or frailty.*

2. Provides a way for some (but not all) indefinitely confined voters who have photo ID to meet the requirement by providing the number of their driver’s license or state ID. This is a helpful accommodation, but it is unfortunately limited to voters who can provide this electronically using MyVote Wisconsin.
3. The bill specifies that a voter who fails to cast and return an absentee ballot in spring or general election (*current law states any election*) will receive notification that they will be removed from the rolls unless they notify the clerk. Turnout among all voters is lower for primary elections and this change would prevent indefinitely confined voters from having to reapply to maintain their status if they did not vote in a primary election

### **Concerns about AB 1002**

1. Voters who have a photo ID and do not have access to the internet and to MyVote are NOT provided with an accommodation to meet the photo ID requirement. They are expected to provide a copy - no accommodation is made to their status as an indefinitely confined voter for whom this can create an undue burden. DRW does not support this provision.

**Recommendation:** allow these voters using a paper application to provide their ID numbers on the application, the same standard as used for voters who have access to MyVote.

2. Voters who do not have photo ID are required to provide the last 4 digits of their social security number to verify their identify. This could be an effective way of verifying their identity. However, the bill also requires the voter to provide an affirmation of a US citizen 18 or older that the elector is indefinitely confined and cannot travel independently without significant burden because of frailty, physical illness, or a disability that will last longer than one year. DRW does not support this provision.

### **This requirement is problematic for two reasons:**

- The purpose of the signature should be to affirm the person’s identify – not their health status. The Wisconsin Supreme Court has determined it is up to the voter to make this determination – it is not a medical diagnosis. Because of the

subjective nature of this status, other citizens may feel unqualified to make such a determination and be unwilling to sign an affirmation. This requirement does not appropriately accommodate the voter and creates a different higher standard for those who do not have a driver's license or state ID.

- The legislation establishes a new crime for anyone who "Falsely make any statement for the purpose of qualifying as indefinitely confined". The new crime could be interpreted as applying to the person who makes the affirmation and make them unwilling to sign.
- The requirement for another person to sign their application form may put the voter at risk for fraud because it will include the last 4 digits of their social security number.

**RECOMMENDATION:** Require these voters provide the last 4 digits of their SSN on their absentee ballot application. This information along with their birthdate should suffice to affirm their identify. This information should be sufficient to confirm the voter's identity. In addition, voters must receive assurances that that social security numbers will be guarded in a manner that will protect the voter from fraud or abuse.

3. Requires the Elections Commission to facilitate the removal of the indefinitely confined status of each voter who received that status between March 12, 2020, and November 6, 2020. A voter whose indefinitely confined status is so removed must submit a new application for indefinitely confined status in order to continue receiving absentee ballots automatically.

This requirement should not be needed as municipal clerks were already asked to contact indefinitely confined voters after the 2020 election and advise voters who are not indefinitely confined to update their status.

**Recommendation:** Rather than remove these voters, they should receive notification that clarifies the requirements for indefinitely confined status and states their responsibility to update their status if they do not qualify. This will minimize confusion and ensure that those who qualify for this status do not need to re-apply. The process of reapplying can be difficult for voters with significant disabilities.

4. **Requires a separate application form from the absentee ballot application.** The absentee ballot application is widely available and well known. If a separate form is required, it will decrease awareness of the Indefinitely Confined voter status for citizens who need this status. Electors in need of an indefinitely confined status may not know to request this application so may not receive it with enough time to complete and return it. At a minimum, the absentee ballot application should continue to include language about the indefinitely confined voter status and direct voters to the other form.



**Recommendation:** Continue to have one form to ensure that voters who need this accommodation are aware of it. The current form clearly states that anyone who makes a false statement may be fined or imprisoned. This language is right next to the box that a voter must check to self certify as “indefinitely confined” and is very visible.

5. The current language regarding eligibility states “ A disability that **will** last longer than one year. Concerns were raised at the Senate hearing regarding this language, and the author, State Senator Bernier will introduce an amendment to clarify it.

**Recommendation.** This language should be revised to state “A disability that **is expected to** last longer than one year. This better aligns with the author’s intent and give more clarity and to the voters who need this status. It also better aligns with the language used by social security in their definition of disability: *“The law defines disability as the inability to engage in any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment(s) which can be expected to result in death or **which has lasted or can be expected to last for a continuous period of not less than 12 months.**”* Part I - General Information (ssa.gov)

- For these reasons, we ask you to support the proposed amendments to AB 1002, and **if amended**, to support the amended bill.

## AB-1004/ SB-935 Election Fraud - For Information Only

DRW has appreciated the ongoing discussion with Senator Bernier to ensure the voting rights of care facility residents. Though DRW is unable to support the bill in its current form, our comments note specific provisions that we support as well as our concerns about AB-1004/ SB-395.

### **Voting In Care Facilities**

- This bill would establish a new process to provide residents of nursing homes and other eligible care facilities with assistance needed to vote when a facility will not admit Special Voting Deputies (SVDs) because of a pandemic or other public health issues (flu, MRSA, etc). DRW supports the creation of a statutory language to ensure residents receive the needed assistance, although the process proposed in SB 935 is more restrictive than we recommend.
- DRW also supports allowing facility staff to be appointed as Personal Care Voting Assistants who would be trained and certified to conduct in-person absentee voting, when SVDs are unable to enter due to public health restrictions. Training facility staff on voting including rights is helpful and will ensure that the assistance they provide is informed by an understanding of residents' rights as protected by Wisconsin and federal law.
- AB-1004 moves up the date by which SVDs must make arrangements to visit and requires SVD visits to be completed by no later than the "sixth working day preceding the election" instead of the current Monday preceding the election.

**Recommendation:** While this is an improvement on current law and provides at least a chance for absentee ballots to be sent and returned for those unable to participate in SVD visits, we would urge that SVD visits be completed no less than 10 days prior to an election and that ballots be sent out to those missing the visits the following day. This would provide at least nine days to receive, complete, and return the ballot. The current process does not provide sufficient time for ballots to be mailed to residents, and for residents to complete and return them.

### **Concerns about AB-1004/ SB 935:**

#### **1. Residents Need Assistance with Voter Registration.**

When individuals move to a nursing home, they need to re-register to vote. It is important that they receive this assistance. The personal care voting assistants are not allowed to register voters and most SVDs are not allowed to register voters.

Other staff may be afraid to offer assistance with voter registration, as this bill would make it a felony if an employee "coerces" a resident to register to vote. We adamantly oppose any coercion. That being said, "coercion" is not defined and

could be more broadly interpreted as offering assistance. Such a severe penalty is likely to result in staff being unwilling to take the risk of providing any assistance with voter registration and leave residents disenfranchised. Our Voter Hotline has already received calls from staff who are fearful of assisting residents with any voting related support.

The federal Centers for Medicare & Medicaid Services (CMS) requires nursing homes that receive Medicare or Medicaid funding to affirm and support the residents' right to vote. That should include supporting residents with registering to vote if they wish to do so. Failing to provide such assistance could put facilities at risk for losing Medicare and Medicaid funding.

**Recommendations:**

- Give personal care voting assistants and SVDs the training and authority to register voters, as clerks can do at in-person absentee voting.
- Include voter registration as part of the intake process. New residents should be asked if they need assistance with registering to vote, and if they wish to request an absentee ballot. This process would also help to ensure more of the smaller care facilities meet the requirement to participate in the SVD program.

2. **Limiting assistance with voting to only the two assistants** may restrict the residents from getting the support they need to register to vote, to complete an absentee ballot to return a ballot.

Section 208 of the Voting Rights Act requires election officials to allow a voter who is blind or has another disability to receive assistance from a person of the voter's choice (other than the voter's employer or its agent or an officer or agent of the voter's union). In addition, Federal law requires that Medicare/ Medicaid certified long term care facilities affirm and support the right of residents to vote: "nursing homes are required to support a resident in the exercise of their right (§483.10(b)(2)) to vote, such as assisting with absentee or mail-in voting, or transporting residents to polling locations or ballot drop-boxes in a safe manner."

**Recommendation.** Align Wisconsin law with the federal law to permit people with disabilities, including nursing home residents, to receive assistance from a person of their choice with completing their ballot, and to allow staff to assist residents with voting, as requested by the resident.

3. The bill would provide notice of the times and dates of absentee voting to each relative for whom the facility has contact information. Such notifications must be respectful of resident rights to privacy, and should only be done with the residents' consent.

**Recommendation:** Ensure notification of relatives and any observation of the voting process complies with the residents' rights and protections. Residents should have to consent to notification of family members or others.

### **Use of Private Resources for Election Administration**

- The bill would prohibit municipalities from applying for or accepting donations or grant moneys for purposes of election administration. Grant funding has provided support for some municipalities to improve accessibility concerns at polling places. In addition, during the pandemic, grant funding helped to address health and safety concerns at polling places. We heard positive comments from community members about the safety precautions taken using grant funding.
- **Recommendation:** If grant funding is not allowed, the Legislature should allocate funding for municipalities to address polling place accessibility, curbside voting, health and safety concerns, and other election administration expenses. Municipalities do not have adequate funding to ensure accessible elections as required by the ADA.

### **Absentee Ballot Certificates**

- This bill would prohibit a municipal clerk from correcting a defect on the completed absentee ballot certificate envelope. Under current law, if the witness certificate is missing certain address information, the clerk receiving the ballot may complete that address information if known. Alternatively, the clerk may return the ballot to the voter so they may contact the witness and correct the defect if time permits.

Under the bill, if a clerk received an absentee ballot with missing information, the clerk would be required to return the absentee ballot to the voter. This would be required regardless of how much time remains to correct the issue or to cast a different ballot before polls close. The clerk would also be required to post a notification of the defect on the voter's voter information page on MyVote Wisconsin.

### **Concerns about these restrictions**

- We are concerned about the harmful impact on some voters with disabilities and older adults. The certificate envelope has very small print, is crowded, and **is not accessible** for many voters who have some vision loss. It's not a surprise that there are often mistakes in completing it correctly.
- Based on the experience of voters we assist, it has been very helpful for clerks to correct a defect on the absentee ballot certificate envelope, such as completing the witness address, and honoring the voter's intent. If this process changes and clerk must return the ballot to the voter, it is highly probable that there will not be enough time for the

voter to correct the problem and return the ballot. While posting information on MyVote may be helpful for those with internet access and who see the posting, it would result in inequitable access as many voters do not have ready access to the internet and/or to a device. In addition, unless MyVote sends a notification to the voter, they are not likely to be aware of the post.

**Recommendation:**

- Redesign the certificate envelope with guidance from national usability and accessibility experts. Provide more public education, and conduct usability testing on the instructions for absentee voters, and including older adults and voters with disabilities in the usability testing.
- Allow clerks to complete witness address information when possible.

## AB-1005 **Voter Registration List** Information Only

Based on DRW's review of the bill, we are very concerned about some provisions in this bill related to maintenance of voter registration lists. We also noted some provision that would be helpful for others with disabilities. For that reason, our comments are for Information Only. The following provisions in the bill merit comment because of their impact on voters with disabilities.

- **Changes in status for Voters Who Move.** The bill would require that people who move within a municipality be marked ineligible to vote. Clerks would no longer be allowed to send the voter a confirmation notice, and update the information without requiring the voter to re-register.

**Concern:** Many people with disabilities experience housing insecurity and may move often. The current process initiated by the clerk provides a reasonable way for local election officials to maintain current registration information without requiring community members to re-register.

- **The bills would require that information received from ERIC be considered reliable for purposes of changing voter status to ineligible.**

**Concerns:** The accuracy of ERIC data has been the subject of litigation, because of proven error rates in the range of 5 – 10 percent. In addition, ERIC relies in part on DMV data. In most states, the DMV has a role in assisting with voter registration, as required by the NVRA. This is not the case in Wisconsin, so DMV data is not as reliable a source as it may be in other states

- **Lines at Polling Places.**

This bill would require chief inspectors to report and document each occurrence of voters waiting in line for at least one hour before voting. It would require that municipalities who report this take all necessary steps, including establishing additional polling places, to ensure that voters do not wait in line for an hour or more at future elections.

Long lines at the polling place are especially problematic for some voters with disabilities and older adults who are not able to wait in line for a long time. We support provisions in SB-934 to address this barrier.

**Recommendation:** An additional recommendation regarding long lines would be enforcing the Wisconsin law which requires that curbside voting be available for voters who because of disability are not able to enter the polling place. This accommodation is not consistently available, and we have received multiple reports of voters who have been denied this accommodation and are not able to wait in line. We ask policy makers to also take steps to ensure access to curbside voting.

- **Clerk Training.** The bill would create additional training requirements for municipal clerks including and requiring a clerk to complete at least three hours of training prior to conducting an election for the first time. We support this provision to address adequate training for clerks. Such training provides important information about voting rights, including the rights of voters with disabilities to have equitable access to voting, and disability related accommodations required by state and federal law.

AJR 133 To create section 1m of article III of the constitution; Relating to: requiring photographic identification to vote in any election - **Against**

DRW is registering against this resolution because we are concerned that a Constitutional amendment is not the right vehicle for this type of policy change. Since it is difficult to change, it cannot be responsive to public need.

As an agency that directly assists disabled people who want to vote, we have heard about many disabled Wisconsinites who want to vote but do not have acceptable photo ID for voting as defined by current law. We have advocated for Wisconsin to expand acceptable ID options for voting. A Constitutional amendment would limit the ability to be responsive to these needs and to other needs.

**Background.** Access to photo ID is a barrier that prevents some disabled Wisconsinites from casting a ballot. Over 30% of Wisconsin adults are non-drivers and the number is growing as our population ages. Many people with disabilities do not drive; they do not have a driver's license and may not have other acceptable photo ID. While a free ID for voting can be obtained at Department of Motor Vehicle (DMV) offices, many people with disabilities have very limited access to transportation, especially accessible transportation. This is especially difficult in rural areas where many DMV locations have limited hours, are open only a couple of days a week, and may be at a significant distance with travel times in excess of 40 minutes each way. During the pandemic, DMV locations were closed for months; some locations are still closed.

Many of the voters we support are on a fixed income and have limited or no access to transportation. A ride to the DMV office to obtain a photo ID is not funded by Medicaid or other state transportation programs. Volunteer programs that provide transportation often do not have lift equipped vehicles, so they are not usable for persons with mobility disabilities.

In addition, we have heard from people with disabilities who struggle to provide the needed documentation. For example, individuals who have a representative payee to handle their bills and finances, may have difficulty providing the documents needed for proof of Wisconsin residency. Many people need access navigating the process of obtaining the required documentation, including a copy of their birth certificate.

**Recommendations:** Wisconsin should expand acceptable photo ID options for voting purposes to be inclusive of non-drivers.

- Some options to consider are: any photo ID card issued by the federal government, the state of Wisconsin, or a Wisconsin county, local government, or



other governmental entity; regular college and university ID cards from all WI colleges and technical schools; high school student photo ID cards, and an affidavit for voters who have reasonable impediments to obtaining a photo ID.

- The option of an affidavit should be offered at polling places and early voting sites, and allow a voter to complete an affidavit of affirmation in lieu of photo ID. It could include the elector's residential address and date of birth, and have the elector sign a statement under penalty of false statement affirming their identity. According to the NCSL website, the affidavit option is available in a number of states - I did a quick scan and noted Connecticut, Delaware, Idaho, Michigan, New Hampshire, South Carolina, and South Dakota.

In addition, DRW encourages policymakers to take steps to expand options for obtaining photo ID including the following:

- Improving DMV access by expanding hours including adding evening and Saturday hours
  - Co-locating state ID operations at locations that are already accessed by people with disabilities and older adults such as Aging and Disability Resource Centers and income maintenance offices. Mobile locations would also be helpful and are used in some other states to outreach to people with disabilities and older adults. The physical accessibility of DMV offices should also be addressed.
- For these reasons, DRW recommends opposing AJR 133.

AJR 134 - prohibiting the use of a donation or grant of private resources for purposes of election administration and specifying who may perform tasks related to election administration. **Other**

As with AJR 133, DRW believes a Constitutional amendment is not the right vehicle for this type of policy change, as it is difficult to change, so cannot be responsive to public need.

The Resolution would prohibit municipalities from applying for or accepting donations or grant moneys for purposes of election administration. Grant funding has provided support for some municipalities to improve accessibility concerns at polling places. In addition, during the pandemic, grant funding helping to address health and safety concerns at polling places. We heard positive comments from community members about the safety precautions taken using grant funding, how in some cases it has helped to address accessibility concerns.

**Recommendation:** If grant funding is not allowed, the Legislature should allocate funding for municipalities to address polling place accessibility, curbside voting, health and safety concerns, and other election administration expenses. Municipalities do not have adequate funding to ensure accessible elections as required by the ADA and HAVA.

DRW welcomes the opportunity to work with policy makers to ensure that every eligible disabled voter has the opportunity to register to vote and cast a ballot, no matter where they live or how they vote. We ask you to work with us to ensure that Wisconsin elections are accessible and inclusive, and protect the rights of Wisconsinites with disabilities and older adults.

- For additional information or questions, please contact Barbara Beckert at [barbara.beckert@drwi.org](mailto:barbara.beckert@drwi.org) or 414-292-2724.

*Disability Rights Wisconsin is the federally mandated Protection and Advocacy system for the State of Wisconsin, charged with protecting the rights of individuals with disabilities and keeping them free from abuse and neglect.*

*DRW is charged with protecting the voting rights of people with disabilities and mandated to help ensure the full participation in the electoral process for individuals with disabilities. DRW staffs a Voter Hotline and assists voters with disabilities and older adults, family members, service providers, and others.*