



## Office of the City Attorney

Michael R. Haas, City Attorney

Patricia A. Lauten, Deputy City Attorney

### ASSISTANT CITY ATTORNEYS

Steven C. Brist  
Jason P. Donker  
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Amber R. McReynolds  
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Jaime L. Staffaroni  
Doran E. Viste  
Brittany A. Wilson  
Jennifer Zilavy

City-County Building, Room 401  
210 Martin Luther King, Jr. Boulevard  
Madison, Wisconsin 53703-3345

(Telephone) 608-266-4511  
(Facsimile) 608-267-8715  
attorney@cityofmadison.com

### 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.



## 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.



# DONNA M. ROZAR

STATE REPRESENTATIVE • 69TH ASSEMBLY DISTRICT

Office: (608) 267-0280  
Toll Free: (888) 534-0069  
Rep.Rozar@legis.wi.gov

P.O. Box 8953  
Madison, WI 53708-8953

## Testimony before the Assembly Committee on State Affairs

### AB 997

February 21, 2022

Thank you, Chair Swearingen and members of the Assembly Committee on State Affairs for holding this hearing on Assembly Bill 997, relating to: comparison of voter information on the state's official voter registration list with information maintained by the Department of Transportation. As explained by the Legislative Reference Bureau, AB 997 provides a process to correct discrepancies between official registration data and personally identifiable information maintained by the DOT.

Under current law, the Wisconsin Elections Commission is not required to investigate any discrepancies discovered between a voter's official registration information kept by WEC and the personally identifiable information kept by DOT. This has left local clerks in 'limbo' with regards to resolving these discrepancies, and the voter remains eligible, regardless of the reason for the mismatched information. AB 997 provides a statutory process for WEC to correct simple clerical errors and update the voter's information. However, if multiple discrepancies are found, or is outside of the scope listed, a voter will be mailed a notice of each violation, and will be provided an opportunity to correct their information. Additionally, a voter's status would be changed to ineligible if the discrepancy is not corrected within 30 days.

This Bill seeks to correct the root cause for over 23,000 incidents of voter information discrepancies in the November 2020 election, as reported in the audit conducted by the Wisconsin Institute for Law and Liberty. Many of these incidents could have been administrative errors, but the voter information should be corrected so all data in the WEC voter registration and DOT database match.

Thank you for your kind consideration and support of this important legislation to keep our elections honest, fair, and transparent. It is critical that every eligible voter's vote counts, but the process makes it difficult to cheat.



STATE SENATOR

**Eric Wimberger**

DISTRICT 30

**Testimony on Assembly Bill 997**

*Assembly Committee on State Affairs*

*Monday, February 21, 2022*

Thank you, Mr. Chairman and members of the committee for holding this hearing on Assembly Bill 997. I appreciate your time and attention.

At the heart of the American democracy is the election of public officials. Government of the people, by the people and for the people must, ultimately be accountable to the people. The ability for each of us to change our government and those who lead it is the cornerstone to the greatest democracy in the history of the world.

When the people begin to doubt or even become skeptical that the election process is fair, that their vote is being counted or that a powerful few, or an entrenched bureaucracy are controlling the results of our elections, the very bedrock of our country begins to crumble. It is no secret that recent events have caused many to begin to doubt the integrity of our elections and the actions of our government officials.

Assembly Bill 997 is one of several bills introduced to defend the integrity of our electoral process and restore the faith of the people in the validity and importance of their vote.

The rule of one person, one vote is a simple and vital concept, but one that requires effort and oversight to guarantee. Discrepancies in an individual voter's personal information may just be an oversight, but can cause that individual's vote to not be counted and may expose the electoral process to accusations of fraud.

Assembly Bill 997 establishes rules to be followed by the Elections Commission, the government agency charged with overseeing the integrity of our elections, to assure each of us are properly registered as legal electors in our state. If we discover individual discrepancies after an election is complete, it is too late and raises the level of concern and skepticism by the public. That is why this legislation expands upon current law which requires the Elections Commission and the Department of Transportation to enter into an agreement to match personally identifiable information and cross reference it with individual voter registration.

Under this bill, no later than 10 days after the date of each original voter registration or a change to a voter's registration, the Elections Commission must compare the voter's personally identifiable information with the personally identifiable information maintained by DOT. To achieve this, the agreement with the Elections Commission must require DOT to provide the commission access to that information.

If a discrepancy is found by this process, the Election Commission must take each of the following steps:

1. Correct the discrepancy if it is a single item of information and can easily be corrected based upon reliable information.
2. Mail a notice to the voter that informs them of each discrepancy identified and, if there are two or more items of information that cannot be corrected, that their voter registration will be suspended unless the voter corrects the information within 30 days after the date the notice is mailed, and
3. Change a voter's registration from eligible to ineligible if the voter has not corrected each discrepancy identified within 30 days of the notice being mailed.

As we enter another contentious campaign season, I know we will all agree that the integrity of our election must be a high priority. I urge your support for this important legislation.

State Capitol • PO Box 7882  
Madison, WI 53707-7882  
(608) 266-5670 • (800) 385-3385  
Sen.Wimberger@legis.wi.gov