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Assembly Committee on Campaigns and Elections

Testimony on Assembly Bill 494

Indefinitely Confined Voters

October 19, 2023

Thank you Mr. Chairman, and members of the Committee for this opportunity to provide testimony on Assembly Bill 494, relating to status as an indefinitely confined voter for purposes of receiving absentee ballots automatically and providing a penalty.

Elections should be fair, transparent, and auditable. Everyone should know and play by the same rules, set by the legislature and signed by the Governor. Unfortunately, current Wisconsin law has a loophole that lets individuals circumvent the spirit of voter ID laws by using "indefinitely confined" status. Status as an "indefinitely confined" elector provides the elector with an opportunity to vote absentee without ever showing proof of photo ID.

This is a problem that cuts to the heart of whether Wisconsinites will get fair, transparent elections. The state Supreme Court ruled that the current statute permits "each individual elector to make his or her own determination as to whether the elector is indefinitely confined" based on the voter's age, physical illness or infirmity.

The nonpartisan Legislative Audit Bureau, in their *Elections Administration Report*, noted a sharp increase in the number of people using this loophole in the 2020 elections. In the November 2020 election alone, the Audit Bureau found that up to 48,544 individuals voted who never had to show photo ID.

However, many voters who claimed the status were not "indefinitely confined" by any stretch of the imagination. According to court filings, many of these "indefinitely confined" voters were attending jazz concerts, parties, weddings, work, traveling out of state, engaging in recreation at Devil's Lake State Park, and visiting Hobby Lobby.

This is not the careful regulation Wisconsin citizens should expect from this method of voting. It is simply an evasion of the photo ID requirement.

AB 494 clarifies what the legislature intended to create with the "indefinitely confined" voter statute.

Among other things, the legislation clarifies that the “indefinitely confined” status can only be claimed by a voter 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.”

The bill also provides for the creation of a separate application form, prescribed by the Wisconsin Elections Commission, in at least 12-point font. It also requires submission of proof of identification, and provides for some exceptions if a voter does not have a photo ID.

The bill also specifies that the existence of an outbreak or epidemic of a communicable disease in a voter's community does not qualify the voter as indefinitely confined. This codifies the previous holding by the Wisconsin State Supreme Court.

Finally, it 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 3, 2020. Municipal clerks must also remove voters from indefinitely confined status if the voter casts an in-person absentee ballot or casts a vote at the polls.

Wisconsin citizens deserve free, fair, and transparent elections. This legislation helps us deliver exactly that.

I ask for your support on this bill, and am happy to answer any questions.

Good Evening,

Thank you for the opportunity to review this bill.

While I do understand as an election administrator for my community why this bill has come to fruition, certain aspects of it cause me considerable concern.

If I learned anything from the pandemic and the 2020 election cycle, it is that words in statute matter – and defining the intent of those words is critical.

What exactly does it mean to not be able to “travel independently without significant burden”?

If someone “May apply to have an absentee ballot sent to the elector for every election”, does that mean that someone who is not a medical professional or ADA attorney will be able to approve or disapprove someone’s application? It should cause concern when legislation may have the unintended consequence of violating accessibility or medical accommodations required by federal or state regulation. Only the voter and their doctor can really determine if they are able to travel independently and whether or not there is significant burden in doing so.

Requiring an application in 12 point font...does that mean that a voter can no longer provide the request in writing as currently required? We still get handwritten requests for absentees – will this require us to reject the application? That seems unnecessary and implies a requirement that someone who already has limitations would have access to a computer and printer.

Furthermore, what is the magic of someone having an illness or disability that is expected to last longer than one year? Is the intent to have someone with an illness or disability less than a year to apply on a calendar basis to receive absentees? Even so, what is the legislation trying to accomplish then?

While this testimony is for information only, I will state that I don’t believe it is burdensome to require every voter to comply with the photo ID law for consistency, as long as the ability to assist a voter in providing that ID is never restricted. As long as the ID on file is current, the voter should not be required to resubmit on an annual or indefinitely confined basis.

Once again, I thank you for the opportunity to review and weigh in on this legislation. Please feel free to follow up with answers to my concerns so I can be most informed.

Thank you for the work you do and allowing me to provide this written testimony to AB494.

With respect,

Lorena (Lori) Stottler, Clerk-Treasurer

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****NOTE that my email address has changed to stottler1@janesvillewi.gov effective 1-1-2023****

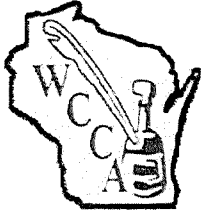


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Wisconsin County Clerk Association

October 19, 2023

Assembly Committee on Campaigns and Elections:

Chair Krug and Committee Members:

Wisconsin County Clerks Association (WCCA) REGISTERING IN SUPPORT:

AB – 494 – Relating to: poll list numbers marked on certain absentee ballots.

Lisa Tollefson, Rock County Clerk, Co-Chair WCCA Legislative Committee

Meg Wartman, Waukesha County Clerk, Co-Chair WCCA Legislative Committee



October 19, 2023

Testimony in Support of Assembly Bill 494

Assembly Committee on Campaigns and Elections

Chairman Krug and Members of the Assembly Committee on Campaigns on Elections,

Thank you for the opportunity to submit testimony in support of Assembly Bill 494. My name is Kyle Koenen and I am the Policy Director at the Wisconsin Institute for Law & Liberty (WILL), a nonprofit law and policy center based out of Milwaukee.

Under Wis. Stat. § 6.86(2)(a) a voter who is indefinitely confined because of age, physical illness, or infirmity, or is disabled for an indefinite period, may, by signing a statement to that effect, apply for and receive an absentee ballot by mail for all future elections. Although the general rule is that voters who cast an absentee ballot must provide qualified voter identification with their absentee ballot, there are exceptions to the general rule. One of the exceptions, as set, is that a voter who qualifies as indefinitely confined under § 6.86(2)(a) does not need to provide Voter ID. The thinking for this seems to be that such voters may lack the ability to upload or copy identification or leave the home to receive assistance to do so.

Following the 2020 election, WILL conducted a comprehensive investigation of the Wisconsin election, which received accolades as 'The Best Summary of the 2020 Election' by the Wall Street Journal. One key aspect of this investigation was the examination of 'indefinitely confined' status. Our findings revealed a significant surge, with the number of indefinitely confined voters increasing from 66,611 in 2016 to 265,979 in 2020, marking a 400% increase. Among these ballots, 54,259 were cast by voters who had never been required to present an ID when voting, while an additional 12,726 were cast by first-time voters. The Legislative Audit Bureau also pointed out that among those claiming the status in 2020, 169,901 did so for the first time ever.

These increases also happened with the backdrop of legal controversy. Clerks in Dane and Milwaukee counties used the presence of the pandemic to encourage voters to adopt the indefinitely confined status, as a way to circumvent the state's voter ID requirement. The Wisconsin Supreme Court unanimously rebuked the Dane County clerk for encouraging voters to adopt this status in March 2020. In November, it confirmed that a person who did not wish to leave home due to the pandemic was not "indefinitely confined." Only those voters who are indefinitely confined "because of age, physical illness, or infirmity, or is disabled for an indefinite period" qualify. Fear of contracting a disease (such as COVID) does not qualify. It is unlikely that there was a fourfold increase in voters who met this requirement.

Why does this matter? Wisconsin's indefinitely confined exception to voter ID requirements law has the potential to be exploited. While you must show a photo ID to register in-person, Wisconsin's mail-in registration by indefinitely confined voters allows registration with easily fabricated proof of residence, such as a utility bill or bank statement. A post-election verification is the only way to confirm their accuracy. And because there is no requirement to verify these registrations, no one can say whether a problem exists. To ensure greater security, Wisconsin

should develop a tightened indefinitely confined standard, while still giving voters options in accessing this process.

Assembly Bill 494 makes a number of reasonable changes to the state's indefinitely confined statute, while maintaining the status for those who truly need it. It first clarifies the definition of who is eligible for indefinitely confined status and reaffirms the Supreme Court's decision in *Jefferson v. Dane County* that the presence of a pandemic does not qualify an individual to claim indefinitely confined status. The bill also changes how one applies for indefinitely confined status. Currently, a person requesting an absentee ballot can simply check a box on My Vote to claim indefinitely confined status and forgo the voter ID requirement. This has likely led to people claiming the status, even though they are ineligible to do so. The bill requires a separate form to be filled out in order to claim the status to limit this abuse.

The bill strengthens the voter ID exception, by generally requiring those who possess an ID to provide it. For individuals without an ID or those unable to provide one due to a disability, the bill introduces an alternative identification system that represents an improvement over the existing one. This enhanced verification process will better ensure that the individual claiming to vote is indeed the person they claim to be. Lastly, the bill creates a process to "reset" the indefinitely confined list and remove those who registered to use it between March 2020 and November 2020. It also clarifies that anyone who claims the status and votes in person will be removed from the list. This common-sense move ensures the status is maintained for those who truly need it.

Thank you again for the opportunity to submit testimony today. I urge the committee to support Assembly Bill 494.