



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 5

TO: MEMBERS OF THE SPECIAL COMMITTEE ON ELECTION LAW REVIEW

FROM: Robert J. Conlin, Senior Staff Attorney, and Nicholas Zavos, Staff Attorney

RE: Election Day Issues From November 17, 2004 Meeting

DATE: December 8, 2004

This Memo summarizes and gives background information regarding all of the election day issues that have been raised by the committee members and that were identified in Memo No. 3, dated December 7, 2004. Where appropriate, possible suggestions or alternatives are noted for committee discussion. This Memo is organized as follows:

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POLL HOURS

Background

In Wisconsin, all regularly scheduled elections are held on Tuesdays. The primary for the Spring election is held on the third Tuesday in February, and the Spring election is held on the first Tuesday in April. [ss. 5.02 (21) and (22), Stats.] The primary for the Fall election is held on the second Tuesday in September, and the Fall election is held on the Tuesday after the first Monday in November. [ss. 5.02 (5) and (19), Stats.]

Poll hours vary depending on the type of municipality. In first, second and third class cities polls open at 7 a.m. and close at 8 p.m. In other municipalities, the polls are open from 9 a.m. to 8 p.m., but may be extended by the governing body to not earlier than 7 a.m. [s. 6.78, Stats.]

Suggestion for Modifications to the Law

Committee members have made the following suggestions for modifications to the law concerning poll hours:

- **Uniformity of Hours.** The committee should explore whether uniform poll hours for all municipalities would assist voters and avoid confusion.
- **Extended Voting.** The committee should investigate having an extended voting period. [This issue was discussed on page 6 of Memo No. 4 under the title “early voting.”]
- **Weekend Voting.** The committee should explore the idea of having Election Day fall on a weekend day.

CONDUCT AT POLLS

Background

Observers

From time to time, members of political parties, supporters of various candidates or causes, and members of the general public may wish to be present at polling places to observe voting activities to, among other things, determine if supporters are making it to the polls to vote, to identify faulty or fraudulent voting practices, or to simply observe the election process in a more personal way. Such persons are commonly referred to as “observers.”

Under current law, any member of the public may be present at any polling place for the purpose of observing an election, except a candidate at that election. The chief inspector at the polling place is authorized to “reasonably limit” the number of persons representing the same organization who are permitted to observe an election at the same time. [s. 7.41 (1), Stats.] In addition, the chief inspector is authorized to restrict the location of observers to certain areas at a polling place. Such an area is to be clearly designated as an observation area. Observation areas must be positioned to allow observers to readily observe all public aspects of the voting process. [s. 7.41 (2), Stats.]

The statutes authorize a chief inspector to order the removal from a polling place of any observer who commits an overt act which either disrupts the operation of the polling place or who engages in electioneering in violation of s. 12.03 (2), Stats. [s. 7.41 (3), Stats.]

Under the statutes, an observer may not view the confidential portion of a registration list relating to an individual who has obtained a confidential listing based on domestic abuse. However, the poll workers must disclose to an observer, upon request, the existence of such a list, the number of electors whose names appear on the list, and the number of those electors who have voted at any point during the election. In addition, an observer may not view the certificate of an absent elector who has obtained such a confidential listing. [s. 7.41 (4), Stats.]

Current law prohibits any person from refusing to obey a lawful order of a poll worker made for the purpose of enforcing the election laws; engaging in disorderly behavior at or near a polling place; or interrupting or disturbing the voting canvassing proceedings. [s. 12.13 (3) (x), Stats.] A person violating this prohibition may be fined not more than \$1,000, or imprisoned for not more than six months, or both. [s. 12.60 (1) (b), Stats.]

Challenges

An inspector at a polling place who knows or suspects that an elector attempting to vote is unqualified must challenge that elector. If a person is challenged by an inspector, the person must take an oath swearing or affirming that he or she will truthfully answer questions put to him or her by the inspectors with respect to his or her place of residence and other qualifications.

The challenged elector must be asked questions, which are specified in rules promulgated by the Elections Board, relating to the challenged elector’s qualifications. For example, if the elector’s citizenship is challenged, the elector is asked whether he or she is a citizen of the United States.

Similarly, if the elector's residence in the ward is questioned, the elector is asked a series of questions designed to aid in determining the elector's residence. [s. 6.92, Stats.] The questions are specified in ch. ElBd 9, Wis. Adm. Code, and are reproduce below:

- (a) Are you a United States citizen?
- (b) Are you at least 18 years of age?
- (c) For at least the 10 days before this election, have you resided in, or been a resident of, the ward or election district from which you seek to vote?
- (d) Are you currently disqualified from voting for any of the following reasons:
 - 1. A felony conviction for which you are still serving probation or are on parole or extended supervision?
 - 2. A judge's ruling that you are incapable of voting?
 - 3. Having made a bet or wager on this election?
 - 4. Having voted previously in this election?

Challenges to an elector's qualifications may also be made by other electors, including observers, who know or suspect that an elector is not qualified to vote. In such a case, both the challenging elector and the challenged elector are asked questions designed to elicit information about the qualifications of the challenged elector. [s. 6.925, Stats., and ch. ElBd 9, Wis. Adm. Code.]

If the person who is challenged refuses to fully answer any relevant questions put to him or her by the inspectors, the inspectors must reject the elector's vote. If the challenge is not withdrawn after the person has answered the questions, one of the inspectors must administer to the challenged person an oath or affirmation specified in the statutes attesting to the person's qualifications.

If the person who is challenged refuses to take the oath or affirmation, the person's vote must be rejected. However, if the person challenged answers fully all of the relevant questions given by the inspector, takes the oath or affirmation and fulfills any necessary registration requirements, and the answers to the questions given by the person indicate that the person meets the voting qualification requirements, the person's vote must be received. [s. 6.94, Stats.] Before depositing such a ballot, however, the inspectors must write on the back of the ballot the serial number of the challenged person corresponding to the number kept on the registration or poll list. If voting machines are used in the municipality, the person's vote may only be received on an absentee ballot marked on the back with the elector's corresponding registration or poll number. The inspectors must mark on the registration or poll list the reasons for the challenge to the elector. The challenged person's vote must be counted and the challenge decided by local election officials. [s. 6.95, Stats.]

Electioneering Activities

Section 12.03, Stats., prohibits "electioneering" at or near polling places on election day. Specifically, the law prohibits an election official from engaging in "electioneering" on election day. In

addition, the law prohibits any person from engaging in “electioneering” during polling hours on any public property on election day within 100 feet of an entrance to a building containing a polling place. This restriction, though, does not apply to the placement of any material on the bumper of a motor vehicle that is located on such property on election day. A municipal clerk, poll worker, or law enforcement officer is authorized to remove posters or other advertising that violates the prohibitions on “electioneering.” [s. 12.03 (1) and (3), Stats.]

The law defines “electioneering” as any activity which is intended to influence voting at an election. [s. 12.03 (4), Stats.]

Persons who violate the above prohibitions on electioneering may be fined not more than \$1,000, or imprisoned for not more than six months, or both. [s. 12.60 (1) (b), Stats.] In addition, any election official who is convicted of violating the electioneering prohibitions is disqualified from acting as an election official for a term of five years from the time of the conviction. [s. 12.60 (3), Stats.]

Use of Interpreters and Translators

Generally, the voting of a ballot is a private matter, with each voter guaranteed a “secret ballot.” [See Art. III, s. 3, Wis. Const.] However, current law contemplates certain electors receiving assistance in marking their ballots under certain circumstances. For example, when poll workers are informed that a disabled person who, because of his or her disability, is unable to enter the polling place, they must let the elector be assisted in the marking of his or her ballot by any individual selected by the elector, except by the elector’s employer or agent of the employer or an officer or agent of a labor organization which represents the elector. After the ballot is voted, the assistant must return the ballot to the poll workers. The poll worker must announce that he or she has “a ballot offered by . . . (stating person’s name), an elector who, as a result of disability, is unable to enter the polling place without assistance.” The poll worker must then ask, “Does anyone object to the reception of this ballot?” If no objection is made, the poll worker must record the elector’s name and deposit the ballot in the ballot box, and must note on the poll list: “Ballot received at poll entrance.” If an objection is made by a qualified elector, the ballot is received as a challenged ballot. [s. 6.82 (1), Stats.]

In addition, if an elector declares to the chief inspector at a polling place that the elector cannot read or write, or has difficulty reading, writing, or understanding English, or that due to a disability is unable to mark a ballot or depress a button or lever on a voting machine, the elector must be informed that he or she may receive assistance. Intoxication is not to be considered a disability. The elector may select any individual to assist in casting his or her vote, except that the person chosen may not be the elector’s employer or an agent of the employer, or an officer or agent of a labor organization which represents the elector.

The assistant is supposed to enter the voting booth or machine with the elector and must read the names of all candidates on the ballot for each office, and ask, “For which one do you vote?” The ballot is then to be marked or the lever or button depressed according to the elector’s expressed preference. The assistant may not disclose to anyone how the elector voted.

After the ballot is voted, the assistant must certify that he or she assisted the elector. The election officials must note on the poll list after the name of any assisted elector the word “assisted” and the full name and address of the assistant. [s. 6.82 (2), Stats.]

Current law prohibits any election official and any person assisting an elector to cast his or her ballot from requesting, suggesting, or seeking to persuade an elector to cast a vote for or against any candidate, party, or question. [s. 6.82 (4), Stats.] Any person who, when called upon to assist an elector cast his or her ballot, informs the elector that the ballot contains names or words different than are printed or displayed on the ballot with the intent of inducing the elector to vote contrary to his or her inclination, or who intentionally fails to cast a vote in accordance with the elector's instructions or reveal the elector's vote to any third person is guilty of a Class I felony (a fine not to exceed \$10,000, or imprisonment not to exceed three years and six months, or both). [ss. 12.13 (3) (j) and 12.60 (1) (a), Stats.]

In addition, current law prohibits any person from soliciting another elector to offer assistance, except in the case of an elector who is blind or visually impaired to the extent that the elector cannot read a ballot. A person violating this prohibition may be fined not more than \$1,000, imprisoned not more than six months, or both. [ss. 12.13 (3) (s) and 12.60 (1) (b), Stats.]

Misleading Election-Related Material Distributed to Electors

Under current law, no person may knowingly make or publish, or cause to be made or published, a false representation pertaining to a candidate or referendum which is intended or tends to affect voting at an election. [s. 12.05, Stats.] A person violating this prohibition may be fined not more than \$1,000, or imprisoned not more than six months, or both. [s. 12.60 (1) (b), Stats.]

In addition, under current law no person may, personally or through an agent, by abduction, duress, or any fraudulent device or contrivance, impede or prevent the free exercise of the franchise at an election, or by any act compel, induce, or prevail upon an elector either to vote or refrain from voting at any election for or against a particular candidate or referendum. [s. 12.09, Stats.] A person violating this prohibition is guilty of a Class I felony (a fine not to exceed \$10,000, or imprisonment not to exceed three years and six months, or both). [s. 12.60 (1) (a), Stats.]

Suggestions for Modifications to the Law

Committee members have made the following suggestions regarding conduct at the polls:

- **Observers.** The committee should consider reviewing the law regarding observers at the polling places and consider establishing more clear guidelines regarding the activities of such persons.
- **Challenges.** The committee should review the law regarding challenges of voters at polling places to make sure that the law is an effective deterrent to fraud without resulting in unwarranted voter intimidation or suppression.
- **Electioneering Activities.** The committee should consider establishing clearer guidelines with respect to electioneering activities at polling places, including get out the vote efforts and the placement of signs.
- **Use of Interpreters and Translators.** The committee should consider establishing clear guidelines for election officials regarding the utilization of interpreters and translators at polling places.

- **Misleading Election-Related Material.** The committee should review the law and consider penalties against those who disseminate election-related materials that attempt to discourage people from voting.

VOTER IDENTIFICATION

Background

Under current law, most Wisconsin voters are not required to produce proof of identity and residence at the polling place in order to vote. Where registration is not required before being permitted to vote, each elector must state his or her full name and address. The officials must record the elector's name and address on a poll list in the same order that the votes are cast. Alternatively, each municipal clerk may maintain a poll list consisting of the full name and address of the electors compiled from previous elections. Whenever an elector appears, the officials are required to verify the correctness on the elector's name and address and enter the serial number next to the name of the elector in the order that the votes are cast. Officials may require any elector to provide identification, including applicable proof of residence, or to have another elector corroborate his or her information in accordance with the procedures specified in s. 6.55 (2) (b), Stats., relating to registration at the polling place, before permitting the elector to vote. [s. 6.79 (1), Stats.]

Where voter registration is required, each elector, before receiving a voting number, is required to state his or her full name and address. First-time voters in a jurisdiction who registered by mail are required to provide identification when appearing at the polls to vote in a federal election. Acceptable identification is either: (1) a current and valid piece of identification containing a photograph of the elector; or (2) a copy of a utility bill, bank statement, paycheck, or a check or other document issued by a unit of government that shows the current name and address of the elector. [ss. 6.36 (2) (c) and 5.02 (6m), Stats.] Upon the prepared registration list, after the name of each elector, the official is required to enter the serial number of the vote as it is polled. The elector must be given a slip bearing the same serial number. [s. 6.79 (2), Stats.]

A person who registers to vote at the polls on election day is required to complete a registration form and provide acceptable proof of residence or corroboration of residence by one other elector of the municipality. Proof of residence is acceptable if it shows the person's current and complete name and current and complete residential address. Forms of identification which constitute acceptable proof of residence include the following: (a) a Wisconsin driver's license; (b) a Wisconsin identification card; (c) any other official identification card or license issued by a Wisconsin governmental body or unit or by an employer in the normal course of business (except a business card); (d) a credit card; (e) a library card; (f) a check-cashing or courtesy card issued by a merchant in the normal course of business; (g) a recent real estate tax bill or receipt; (h) a current residential lease; (i) a university, college, or technical college fee or identification card; (j) an airplane pilot's license; and (k) a gas, electric, or telephone service statement for the period commencing not earlier than 90 days before election day. [s. 6.55, Stats.]

2003 Wisconsin Act 265 requires registration by voters statewide beginning with the Spring 2006 Primary.

If any elector offering to vote at any polling place refuses to give his or her name and address, the elector may not be permitted to vote. [s. 6.79 (3), Stats.]

With respect to a Wisconsin driver's license being used as an identifier for purposes of voter identification, it should be noted that driver's licenses are generally valid for a period of 8 years from the date of issuance (except reinstated licenses, probationary license and certain other licenses which are usually valid for 2 years). [s. 343.20, Stats.] In addition, current law does not require the issuance of a new license when a licensee's address changes. Generally, whenever anyone who has been issued a state driver's license (or state identification card) moves from the address named in the application or on the license issued to him or her (or is notified by local or postal authorities that the address has been changed), the licensee must, within 10 days, either apply for a duplicate license showing the correct name and address or simply notify the Department of Transportation (DOT) in writing of his or her change of address. [s. 343.22 (2), Stats.] In addition, DOT advises that a person may also notify it of a change of address by calling DOT and requesting that the record address be changed.

Suggestions for Modifications to the Law

Committee members have made the following suggestions regarding voter identification:

- **Required Identification.** The committee should consider whether Wisconsin should adopt stricter requirements for voter identification at the polls.
- **Department of Transportation Information.** The committee should review whether state policies concerning the display of current address on a driver's license or state identification card are conducive to using such forms of identification as an identifier for voting purposes.
- **Harmonization and Updating of Identification Requirements.** The committee should review the types of identification that may be required of first-time voters who registered by mail and of those who register to vote at the polling place and make them consistent and useful. [For example, the current list of identifying documents that a person registering at the polls may provide could be amended to include a utility bill, paycheck, government check, government document, or a bank statement with the voter's name and current address. In addition, the references in current law to a library card, check cashing card, and credit card could be eliminated since those items normally do not list the voter's address. This issue is also discussed on page 11 of Memo No. 4, under the heading Acceptable Identification.]

MISCELLANEOUS

Background

Provisional Ballots

Under current law, if a person registers to vote by mail and has not previously voted in the municipality, he or she must show identification before voting. [s. 6.36 (2) (c), Stats.] If the individual is unable to provide the identification, he or she may be given a provisional ballot. The ballot will be counted only if the voter is able to provide identification by 4 p.m. the day following election. According to the Elections Board, this is only situation in which a person may cast a provisional ballot.

Font Size Used on Ballots

The font size used on all ballots must be easy to read and may be no smaller than 8 point. [ss. 5.51 and 5.53 Stats.] This is an example of 8 pt. font. This is an example of 10 pt. font. This Memo is written in 12 pt. font.

Suggestion for Modifications to the Law

Committee members have made the following suggestions for changes to the law concerning the above issues:

- ***Provisional Ballots.*** The committee should examine the law to ensure that it is clear and ensure that municipal clerks are interpreting the law consistently.
- ***Font Size Used on Ballots.*** The committee should review whether the current minimum font size is sufficient so that all voters can read the ballot.

RJC:NZ:tlu