



# DUEY STROEBEL

STATE SENATOR • 20<sup>TH</sup> DISTRICT

## Testimony on SB 208

*April 8, 2021*

Good afternoon Chairwoman Bernier and members of the Senate Committee on Elections, Election Process Reform and Ethics. Senate Bill 208 is a common-sense transparency measure designed to increase public confidence in the state-level administration of our election laws. Under state law, the Wisconsin Elections Commission is not required to post copies of their meeting minutes on their website. This bill, and the author amendment, requires WEC to post copies of meeting minutes, and the texts of motions debated, on the Commission's website.

Under state law, governmental bodies must maintain a record of their proceedings.<sup>1</sup> I know the Commission maintains these records, and it has provided my office with copies of meeting minutes when requested. But the Commission does not currently post these meeting minutes on its website or proactively make them available to the public.

Other governmental bodies, such as counties and municipalities, technical college districts, and school districts are required to publish copies of their meeting minutes. The legislature itself not only publishes the text of bills introduced but also makes the actions of committees and chambers available online.

Legislation introduced both last session and this session seeks to allow the publication of meeting minutes online to replace the mandate that certain governing bodies publish their meeting minutes in newspapers.<sup>2</sup> Both that proposal and this proposal are a pragmatic nod to the increasingly digital information space where the public consumes news about their government.

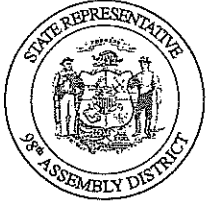
By posting meeting minutes online, WEC can contribute to a more informed debate about its role in election administration. Instead of relying on secondary sources of information, or watching hours and hours of video footage of meetings, citizens would be able to personally review the Commission's actions. If they were to attempt that now, they would need to request a copy of the meeting minutes from Commission staff. As the Commission itself noted in its February 2021 report about the 2020 election, during peak election season staff are already responding to hundreds of inquiries a day from local election officials, campaigns, media outlets and interested citizens.<sup>3</sup>

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<sup>1</sup> Wis. Stat. 19.88(3) <https://docs.legis.wisconsin.gov/statutes/statutes/19/v/88/3>

<sup>2</sup> 2021 SB 55 / AB 60

<sup>3</sup> <https://www.wispolitics.com/wp-content/uploads/2021/01/D.-November-2020-Election-Data-Report-Updated.pdf>



# Adam Neylon

State Representative • 98th Assembly District

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**DATE:** April 8, 2021

**TO:** Senate Committee on Elections, Election Process Reform and Ethics

**FR:** Rep. Adam Neylon

**RE:** Support for Senate Bill 208

Good afternoon Chair Bernier and Members of the committee and thank you for agreeing to hold a hearing on Senate Bill 208.

SB 208 is a simple but important bill that requires the Wisconsin Elections Commission to post meeting minutes and motion language on its website within 24 hours of a meeting or hearing.

Typically the Elections Commission waits until their next meeting to approve the previous meeting's minutes. That is a standard operating procedure with commissions and boards, however, due to the need for transparency in something as important as our elections, we believe WEC should be posting draft form preliminary meeting minutes online in the interim until the Elections Commission can convene again to formally approve the meeting minutes.

As of today, if you visit the Elections Commission website and navigate to their list of previous meetings, you will see they do not have meeting minutes available from their April 5<sup>th</sup> Special Teleconference Meeting. The public should have access to what the commissioners are discussing, particularly when they meet the day before election day on April 6<sup>th</sup>.

As the members of this committee are well aware, our elections have come under heightened scrutiny by a substantial number of Wisconsin residents in recent months. Many constituents I have spoken with since November of 2020 have shared their increased interest in what is being discussed at the Elections Commission meetings, and the motions commissioners are voting on.

Transparency in our elections should be a cornerstone of our elections process, like allowing all of our constituents the ability to find out what happened at a WEC meeting within 24 hours of the meeting.

Thank you again for your time.



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Testimony on Election Integrity Package *Senate Committee on Elections, Election Process Reform and Ethics*

Thank you Chairwoman Bernier and members of the committee for hearing our testimony today. My name is Kyle Koenen and I am the Policy Director at the Wisconsin Institute for Law & Liberty, a 501(c)(3) law and public policy center based out of Milwaukee. With me is Dr. Will Flanders, our Director of Research. Today, we will be testifying in favor of Senate Bills 207, 208 and 213.

**Senate Bill 207**

As I am sure you are all aware, the November 2020 election saw a large infusion of private funds to local government coffers through the Center for Technology and Civic Life (CTCL), a non-profit from Chicago that received a \$350 million donation from Facebook founder and CEO Mark Zuckerberg.

WILL is in the process of doing an in-depth analysis of these funds and how they were spent, pending response to records requests from a number of municipalities around the state. However, it has been publicly reported that the five largest cities received over \$6 million for the November election. While it has been pointed out that municipalities around the state received these grants, the amounts to other areas pale in comparison to the amounts received by these cities. To date we have received records from approximately 150 communities from around the state, of which 128 are for \$5,000 or less. While some locations like Marathon County received grants that equate to about \$73 per 1,000 residents, others like Green Bay received grants that equate to more than \$10,000 per 1,000 residents.

These disparate funding amounts create disparities in the effect of spending. We have already analyzed whether or not CTCL grants had an impact on the election, and found that turnout was indeed higher in cities that got grants than those that did not after controlling for 2016 turnout and the size of the municipality. On average, turnout increased by 61 votes in areas that got the grants over those that did not. This turnout change was far larger for Democratic voters than it was for Republican voters.

Democrats gained approximately 48 votes in areas that got grants relative to those that didn't. For Republicans, the turnout difference was not significant to the level of statistical significance that is generally required--95%. At the 90% level, Republicans gained approximately 16 votes in municipalities that got grants. Even if we utilize this lower standard for significance, there is a partisan gap on the net.

But this phenomenon ought not only be concerning to Republicans. The prospect of outside organizations coming in and impacting the election result is possible across the political spectrum—from CTCL to more conservative/libertarian groups like the Koch Brothers. Government administration of elections should be impartial and fair, and this bill finds an appropriate middle ground that still allows for clerks to utilize private funds to help with election administration, but in a way that is equitable to every community across the state.

### ***Senate Bill 208***

Senate Bill 208 will improve transparency of actions taken by the Wisconsin Elections Commission. As evidenced by this past year, WEC makes a number of consequential decisions at their meetings. These meetings can often run for hours on end and members of the public don't often have the capacity nor desire to spend this amount of time monitoring their government at work. By publishing meeting minutes within 24 hours of the meeting's conclusion, average citizens can more easily monitor the actions of the commission. This is a laudable goal that advances a more open government and should be supported.

### ***Senate Bill 213***

Under current law, if a voter believes an election official has violated the law they must first file a complaint with the Wisconsin Election Commission, who then has to dispose of the complaint before the voter can take their case to the courts. Senate Bill 213 includes an important provision that would allow an individual voter to sue directly in the circuit court, ensuring a decision can be made in a timelier manner. These changes are pertinent for a few primary reasons.

First, complaints that are presented to WEC are often on controversial issues where WEC's decision is unlikely to be final and the issue will ultimately be adjudicated by the courts. By design, WEC is not equipped to be a judicial body. With a 3 to 3 partisan split, the commission is unlikely to reach consensus on controversial issues, making the courts a more appropriate venue.

Secondly, a voter may want to file a complaint against an election official who they believe has violated the law. However, such a clerk may be acting on advice that was given to them by WEC. Especially in these instances, it does not seem appropriate to have the agency issue advice, which a local official then acts on, and then turn around and also decide whether or not that advice was lawful.

Lastly, the current requirement is simply a barrier for citizens to have their day in court without delay. If anything, the last year has demonstrated that regardless of where you may align on the legal questions in the various election cases, the need for a timely resolution of election disputes is important to ensuring laws are properly followed, giving voters greater faith in the system.

Thank you for your time today and we would be happy to answer any questions.

**From:** Kate Houston <[kate.who@charter.net](mailto:kate.who@charter.net)>

**Sent:** Wednesday, April 7, 2021 4:25 PM

**To:** Sen. Bernier <[Sen.Bernier@legis.wisconsin.gov](mailto:Sen.Bernier@legis.wisconsin.gov)>

**Subject:** comment for Public Hearing(s) for SB207, SB208, SB210 + SB213

To whom it may concern:

After having read the proposed bills (and the LRB's Analysis for each bill), I'd like to present the following comments for the Public Hearing(s) for **SB207, SB208, SB210 + SB213**. Please note that I was an Ephraim election official for about a decade, from 2004-5 to 2014, and a Chief Inspector for the last 4-5 years of that time, so I have some experience with the conducting of Wisconsin elections, albeit it in a very small village with less than 300 registered voters.

1. **S.B.207** re: private funding of election administration, etc. Actually, I don't oppose **S.B.207**. I don't trust any outside attempts to "assist" the administration of our elections. Instead, the legislature should budget adequate financial support for proper and thorough training of any and all people who are involved in the conduct of elections and for the equipment (optical scanner voting machines, voting booths, etc) that are required.
2. **S.B.208** re: timely publication of WEC minutes. This seems like a reasonable proposal if it's possible to generate the minutes so quickly, especially if the WEC meeting is a long one, and/or goes late into the night. There's no way I could produce minutes that fast!
3. **S.B.210** re: election observers. I most definitely support the option to observe an election, during the voting process and especially after the polls are closed. Watching a poll closing process was the reason I volunteered to become an election worker in the first place. I'd had no idea what actually happens after 8 pm on election day, so wanted to observe the process (and to learn the results as soon as they were in). I also support the signing-in of any election observers; I had to do it during a statewide recount several years ago. It made sense then and does so today.

What I don't support is the reduction of the distance any observers must maintain from the election workers. "Not more than three feet..." is simply too close! Conducting the closing of an election is stressful enough when there are NO observers, because everyone wants to get the paperwork right, wants the machine's ballot count to match the hand count, wants all the extra details covered accurately and as quickly as possible. (Thank heavens the results are no longer sent to the County via dial-up modem!) Having any observers hovering no more than 3 feet away, especially ones who challenge EVERYTHING, is a terrible idea and would NOT make the elections more secure. Furthermore, this language from the LRB's Analysis seems erroneous [emphasis is mine —kh]: "...the bill expands the observation area required under current law so that it is not more than three feet from the table where voters announce their name and address and not more than three feet from the table where individuals are registered to vote." That's not an expansion of the current prescribed observation area [between 3' and 8' from tables], it's a major reduction, to 3' or less! That's too close!

Keep the original text; restore the stricken text below and delete the underlined text below:

**Section 1. 7.41 (2)** of the statutes is amended to read:

2. 7.41 (2) ... The observation areas shall be not less more than 3 feet from ~~nor more than 8 feet~~ from the table at which electors announce their name and address to be issued a voter number at the polling place, office, or alternate site and not less more than 3 feet from ~~nor more than 8 feet from~~ the table at which a person may register to vote at the polling place, office, or alternate site.

To summarize: Allow election observers, **YES**. Maximum distance between observers and election officials = 3 feet, **NO!** Three feet should be the **MINIMUM** distance between observers and election workers. I'd extend that minimum distance between observer(s) and election officials to not closer than four feet.

4. **S.B.213**, re: actions for violations of election laws. This is a HORRIBLE bill! It must have been proposed by desperate attorneys who need fees! And motel owners who'll collect revenue from changes of venue! (This part — change of venue — doesn't bother me...) Furthermore, to allow any person who objects to any action of any election official to "commence an action or proceeding to test the validity of any decision, action, or failure to act on the part of any election official without first filing a complaint" is beyond absurd! No, no, NO, do not pass **S.B.213**. Not now, not ever!

Keep the current law intact; restore the stricken text below and delete the underlined text below:

**Section 1. 5.06 (2)** of the statutes is amended to read:

5.06 (2) ~~No~~ Any person who is authorized to file a complaint under sub. (1) ~~other than the attorney general or a district attorney~~, may commence an action or

proceeding to test the validity of any decision, action or failure to act on the part of any election official with respect to any matter specified in sub. (1) without first filing a complaint under sub. (1), ~~nor prior to disposition of the complaint by the commission. A complaint is deemed disposed of if the commission fails to transmit an acknowledgment of receipt of the complaint within 5 business days from the date of its receipt or if the commission concludes its investigation without a formal decision.~~

Throw proposed **S.B.213** in the nearest waste basket! It doesn't belong anywhere else.

Finally, while reviewing my election official's training materials, I found this excerpt that I'd saved from the Wisconsin Constitution, Art. III, Section 1:

"... The Wisconsin Constitution vests and warrants the right **[to vote —kh]** at the time of election. Every one having the constitutional qualifications then, may go to the polls, vested with this franchise, of which no statutory condition precedent can deprive him, because the constitution makes him, by force of his present qualifications, a qualified voter at such election."  
The Right to Vote - *Wood v. Baker*, 38 Wis.71: (August 1875)

That excerpt sums up my thoughts nicely. Please enter my comments in the public record.

Most sincerely,

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