



DUEY STROEBEL

STATE SENATOR • 20TH DISTRICT

Testimony on SB 213

April 8, 2021

Good afternoon Chair Bernier and fellow members of the Senate Committee on Elections, Election Process Reform, and Ethics. SB 213 creates a pathway for expedited judicial relief for parties involved in election law disputes and expands election law enforcement options.

The legislature has spent a significant amount of time writing, deliberating and passing election laws. It is important that election officials, poll workers, poll observers and candidates abide by those laws. When election laws are violated, it is important that a speedy remedy be applied to the situation.

Under current law, anyone who is not a district attorney or the attorney general must file a complaint over election law violations with the Wisconsin Elections Commission. The Commission then has a 5-day period to review the complaint and determine whether or not to conduct an investigation. Final disposition may take weeks. All the while critical time elapses, deadlines potentially missed and possible remedies made unworkable due to events. Only after the Commission finishes its investigation may a party with a complaint take their concerns to the judicial system.

SB 213 leaves intact the complaint and investigation process at the Elections Committee. That route will still be available for those who wish to use it. It only removes the mandate that all complaints be routed through the Commission before a legal remedy is sought in court.

The second thing this bill does is expand the number of district attorneys who may prosecute election law violations. In elections for offices that span county boundaries or are for statewide office, the impact of election law violations expands beyond the jurisdiction of any single prosecutor. An improper or illegal election process negatively impacts everyone in the district served by the office being sought. The same is true of an illegally cast ballot: the process is diminished and legally cast votes are diluted.

That is why SB 213, with the introduced amendment, allows certain election law violations to be prosecuted by the district attorney of the county in which the violation occurred or, if the election is statewide or crosses county lines, by the DA of a county within the district and adjacent to the county in which the alleged violation occurred.

For example, if election laws were violated in a race for state Assembly the DA for the county in which the violation occurred could prosecute or, if he or she is unable to prosecute, the DA of a neighboring county could prosecute as long as at least portion of that county was part of the



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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.



City of Madison

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To: Senate Committee on Elections, Election Process Reform and Ethics
From: Mary Bottari, mbottari@cityofmadison.com
Date: April 8, 2021
Re: Senate Bills 207, 210, 213

I am writing on behalf of the City of Madison to raise concerns about the following bills, SB 207, SB 210 and SB 213. These are the first of many bills that will be taken up by the legislature addressing false claims of irregularities in the November 2020 election, claims that were not supported by any state or federal court, including the U.S. Supreme Court.

In the middle of the worst pandemic in modern American history, the Wisconsin State Legislature failed to take any action to aid localities charged with administering elections. Poll workers, with common sense safety concerns, quit by the thousands, and hundreds of polling places needed to be moved to keep residents safe. The state legislature failed to provide extra funding for additional staff needed to deal with these issues and the influx of absentee ballots. The legislature further failed to provide additional postage, PPE, plexiglass barriers, hand sanitizer, drop boxes or any of the provisions needed to keep voters and poll workers safe.

In the absence of legislative action, the City of Madison and over 200 other cities, towns and villages -- including Waukesha and Brookfield -- sought grant funding from a respected non-profit organization to help keep our voters and poll workers safe and to facilitate increased absentee voting. The Center for Tech and Civic Life has a list of these communities on its website. SB 207 would make it a Class I felony for any elections official to accept grant funding. The legislature instead should be appropriating funds to help localities prepare for the next election and allow municipalities to process increases in absentee voting, which are likely to become a permanent feature of Wisconsin elections.

SB 210: This bill would allow election observers to stand 3 feet from the registration and voting tables instead of 3 – 8 feet under current law. This solution in search of a problem. Wisconsin and other states have had problems with over-zealous observers packing into polls, creating disruptions and intimidating voters. Current Wisconsin

law allows election officials to create an appropriate distance based on room and crowd size.

During Madison's 2020 presidential recount, all election observers had close access to ballot processing in the large room secured by the County at the Monona Terrace. The County also secured hanging cameras so any overflow could be accommodated. However, in smaller localities with smaller rooms, three feet of distance may not be attainable and some flexibility is warranted. On a practical level, requiring election inspectors to work with observers stationed 3 feet away is simply onerous and risks interference with, and distractions in, administering the election as well as risking exposure of confidential information that may be requested for registration. For these reasons, flexibility will continue to be needed.

SB 213 would eliminate the requirement that a person wishing to challenge the decision or action of an election official use the WEC's administrative complaint process, opening the door to a flood of frivolous lawsuits by citizen complainants unfamiliar with the law. The WEC's administrative process offers complainants a means of resolving complaints in an expedited manner using the expertise of elections professionals charged with administering elections and training local clerks. Both bring a valuable statewide perspective and consistency to the process.

Moreover, there is ample opportunity for interested and involved parties to bring court actions. During the November 2020 election, the City of Madison was subject to half a dozen unsuccessful lawsuits by attorneys, many from out of state, who were unfamiliar with Wisconsin election law, thereby demonstrating robust access to the courts by concerned parties.

Lastly, since there was no sustained evidence of wrongdoing on the part of election officials, we object to the series of new felony charges contained in these bills applying to Wisconsin's respected clerks and election officials. They are among the heroes of this pandemic, who worked tremendous hours to protect our democracy and voting rights in a time of crisis in a nonpartisan and professional manner.

Thank you for your consideration of our comments.

From: Kate Houston <kate.who@charter.net>
Sent: Wednesday, April 7, 2021 4:25 PM
To: Sen. Bernier <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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Testimony of Matt Rothschild
Executive Director, Wisconsin Democracy Campaign
To the Wisconsin Senate
Committee on Elections, Elections Process Reform, and Ethics
April 8, 2021

Re: In opposition to SB 207, SB 210, and SB 213

Chair Bernier, and other distinguished members of the Committee.

I'm Matt Rothschild, the executive director of the Wisconsin Democracy Campaign.

Now in our 26th year, the Wisconsin Democracy Campaign tracks and exposes the money in Wisconsin politics and advocates for a full range of pro-democracy reforms so that we have a democracy where everyone has an equal voice.

I'm testifying today to oppose SB 207, SB 210, and SB 213, and I'll get into the details in just a bit.

But before I do that, I want to take just a minute to discuss the context in which these bills, and a raft of others, are circulating.

Let me be blunt: There is an effort under way, here in Wisconsin and around the country, to continue to cast doubt on the validity of the Nov. 3 election, the legitimacy of the Biden presidency, and the integrity of our elections.

In part, this is an effort to retroactively substantiate the bogus claims, repeated ad nauseam, by Donald Trump.

In part, it is an effort to feed the Republican base red meat, and on Jan. 6th, we saw how a segment of that base reacts when fed that unhealthy diet.

And in part, it is an effort to erect barriers that interfere with the freedom to vote in an attempt to gain partisan advantage.

That is why we are seeing, in 43 states including Wisconsin, bills introduced that would interfere with the freedom to vote, the most basic freedom in our democracy.

This effort is toxic to our democracy.

Now, let me briefly discuss the particular problems we have with SB 207, SB 210, and SB 213.

SB 207 would impair the ability of clerks to find sufficient poll workers to conduct a smooth election. The bill prohibits an employee of an “issue advocacy” group from acting as poll worker, and it doesn’t define the term, “issue advocacy” group, either. Does this mean that no one who works for the League of Women Voters or the Wisconsin Democracy Campaign or the ACLU can act as a poll worker? As it is now, clerks have a hard enough time finding enough poll workers. This prohibition would make matters worse.

SB 210 requires election administrators to allow observers to be no more than three feet away from where voters are registering or voting. This may present logistical problems for clerks, may jeopardize poll worker safety, and may increase the possibility of voter intimidation.

SB 213 invites endless harassment of our election officials and endless litigation, and it would allow venue shopping in the courts to seek a favorable outcome. If any citizen can file a claim against any election official, you’re going to gum up our elections as never before, entangling them in legal thickets. And by allowing venue shopping, you would risk raising the suspicion that the fix was in. One additional consequence would be that you would be making it more difficult than ever to find people willing to be an election official.

For these reasons, the Wisconsin Democracy Campaign opposes SB 207, SB 210, and SB 213. Thank you for considering our views.