



JOHN J. MACCO

STATE REPRESENTATIVE • 88TH ASSEMBLY DISTRICT

To: Senate Committee on Elections, Election Process Reform and Ethics

From: Representative John Macco

Date: February 7, 2022

In Favor of: SB 935/SB 936

Chairwoman Bernier and Committee Members,

As Vice-Chair of the Joint Audit Committee, in February 2021 we directed the nonpartisan Legislative Audit Bureau (LAB) to perform an audit on the Election Administration with the goal of ensuring our elections are secure and lawful. LAB has conducted numerous audits under the current and previous administrations, regardless of party or circumstance, and have delivered helpful results. Audits are a great tool to make sure state entities are functioning to the best of their ability for the people of Wisconsin. LAB's report on the Election Administration provided an excellent roadmap of what we need to improve in our election system with 18 detailed legislative recommendations.

SB 935 deals with election day concerns recommended in the findings of the audit. This includes solutions to absentee "ballot curing", the influence of private interest groups, and special voting deputies. Under current law many of these areas are gray and need clarification.

SB 936 addresses solutions to post-election concerns such as electronic voting equipment, filing complaints to the Wisconsin Election Commission (WEC), and recount regulations. Almost as important as election day, post-election proceedings need correction to ensure confidence in the final result.

The people of Wisconsin deserve to have confidence in our election system. These commonsense adjustments will give Wisconsinites more faith in our election process. The goal has always been to make it easy to vote, but hard to cheat. I am committed to making sure that every vote counts and our laws are followed. Thank you for hearing my testimony, I urge you to support this legislation.

STATE SENATOR KATHY BERNIER
TWENTY-THIRD SENATE DISTRICT



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From: Senator Kathy Bernier
To: The Senate Committee on Elections, Election Process Reform and Ethics
Re: Testimony on Senate Bills 934, 935, and 936
Relating to: legislation responding to the issues raised by the Legislative Audit Bureau's review of the November 2020 election.
Date: February 7, 2022

Thank you committee members for allowing me to provide testimony on Senate Bills 934, 935, and 936 today. I am grateful for the opportunity to work with several of my colleagues in the Senate and Representatives Dittrich and Macco on this important legislation.

To provide a basic overview of the three, SB 934 looks primarily at pre-election issues, such as clerk training and data sharing. Electronic equipment must be pre-tested before the public test and data from Electronic Registration Information Center (ERIC) must be regularly requested and implemented by the Election Commission.

SB 935 deals with Election Day topics. It clarifies the role of a Special Voting Deputy to ensure there can be no repeat of the confusion caused by the COVID-19 pandemic in nursing homes. The bill also bans the use of private resources for election administration. It prohibits "ballot curing" but brings statewide fairness and transparency by stating directly in statute what specific information must be included on an absentee ballot certificate and requires that clerks notify the voter if their envelope must be corrected.

SB 936 handles post-election issues. Formal complaints must be resolved within 60 days unless extended by a vote of a majority of Election Commissioners. The post-election audit practice will become more robust and the Legislative Audit Bureau will have a standing review of the audit already done by WEC.

Together, these three bills address nearly all of the legislative considerations presented by the Legislative Audit Bureau following their review of the November 2020 General Election. Several of the recommendations from the Wisconsin Institute for Law and Liberty's similar report are also included. Addressing these issues is why I ask you to please support the passage of these bills. Thank you again for allowing me to provide testimony today.



Testimony of Matt Rothschild

Executive Director, Wisconsin Democracy Campaign

To the Senate Committee on Elections, Election Process Reform, and Ethics

In opposition to SB 934, SB 935, SB 936, SB 937, SB 939, SB 940, SB 941, SB 943, and SJR 101

Feb. 7, 2022

Distinguished Chair and other Distinguished Members of this Committee:

I'm Matt Rothschild, the executive director of the Wisconsin Democracy Campaign. Since 1995, we've been tracking and exposing the money in Wisconsin politics, and we've been advocating for a broad range of pro-democracy reforms.

Before I get going, I would be remiss if I failed to acknowledge the tremendous public service that the chair of this committee has rendered in her career, first as a county clerk, then as a member of the Assembly, and most recently here in the Senate.

We may not agree on a lot of ideological issues, Madame Chair, but we certainly agree on the need to defend our democracy. I really appreciate your outspokenness on this bedrock principle, and your frank acknowledgment of the severity of the threat posed to our democracy by those who refuse to accept the legitimacy of the 2020 elections and instead peddle one lie after another and one smear after another for their own political gain or personal gratification.

You've been a profile of courage, and you'll be missed, and I wish you all the best in your retirement.

I've got some specific problems with many of these bills, as well as with the Joint Resolution.

But rather than go tediously through that itemization, let me instead make a few general remarks and then offer just a couple germane points, if I might.

First, I would like to underline an observation that Republican Senator Rob Cowles has made about our elections. He noted that our elections are “safe and secure.”

Second, there has been a drumbeat of baseless accusations and character assassinations against the dedicated administrator and the tireless staff of the Wisconsin Elections Commission, which has got to stop. It’s grossly unfair to them, and if it keeps up, we won’t be able to attract any talented people to administer our elections in this state.

And third, the endless fishing expedition being conducted by Michael Gableman and the constant smoke machine that some other partisans keep revving up about the November 2020 elections only serve to undermine the faith of the Wisconsin public in our elections and in our democracy.

That’s not healthy. And that’s got to stop, too.

And frankly, I worry that, when taken as a whole, the barge carrying all these new bills today may also be billowing out more smoke.

This is not to say that I disagree with everything in all these bills. Not at all. For instance, the bills by the Chair clarify a lot of processes and terms that needed clarification.

And I certainly agree that we should set clear rules for our elections, but let’s make sure that those rules are fair.

And let’s protect our freedom to vote rather than erect one barrier after another to the exercise of that fundamental freedom.

Unfortunately, some of these bills do erect such barriers.

First of all, two bills would make voting by absentee ballot more difficult for all voters in Wisconsin.

SB 935 would render an absentee ballot null and void for the pettiest of reasons. For instance, if I’m a witness for the absentee voter and I print my name, and I sign my name, and I put Madison, WI, down as my residence but I neglect to put my street down, should the voter I’m witnessing be disqualified because of that omission? The bill says yes, and that seems ridiculous to me. Even requiring a witness seems like a stretch to me, since the voter already is swearing about his or her identity. Now to make the witness have to fill out everything just right or the voter’s ballot is disqualified just adds another way to toss a perfectly good ballot into the waste basket.

SB 939 would prohibit the Wisconsin Elections Commission or any local clerk from sending out absentee ballot applications, en masse, to registered voters, as was prudently done during the pandemic. Our ability to exercise our freedom to vote by mail should not be needlessly curtailed by this blanket prohibition. Why shouldn't the Elections Commission be allowed to do this? If we want more people to be able to exercise their freedom to vote in our democracy, sending everyone an absentee ballot application makes sense, in general. And in specific, it makes a whole lot of sense during a pandemic. But this bill would nix both those options.

Second, one bill would make voting by absentee ballot especially more difficult for those in residential care facilities or retirement homes.

SB 935 would paternalistically require the notification of relatives of residents in long-term care facilities or retirement homes as to when special voting deputies are going to be there. Residents don't need their relatives looking over their shoulders when they're voting. This is an invasion of their privacy. Unless they have a legal guardian, residents should not have their freedom to vote interfered with in this obnoxious manner. What if they don't get along with "the relatives for whom the home or facility has contact information"? What business is it of the relatives, seriously?

SB 935 would also needlessly prohibit a personal care voting assistant from helping any resident of a residential care facility or qualified retirement home to register to vote. If the personal care voting assistant is there to help the resident fill out an absentee ballot, why can't the assistant help the resident register to vote? That distinction makes no sense. Plus, nursing homes that receive Medicare or Medicaid funding are required to support the residents' right to vote. That should include supporting residents who want to register to vote.

Third, one of the bills, SB 934, could erroneously toss voters from the voting rolls.

This bill would have the Wisconsin Elections Commission rely on the Electronic Registration Information Center (otherwise known as ERIC) to determine whether a voter has moved. Following that determination, the Commission must send a letter or a postcard to the voter. If the voter doesn't respond, the voter becomes unregistered. The problem with this is that the Wisconsin Election Commission's own data in 2020 showed that 7.07 percent of the voters who became unregistered because of ERIC's data actually had never moved and were wrongly deactivated. Such a high error is not acceptable when it comes to our freedom to vote.

Fourth, several of these bills would hog-tie the Wisconsin Elections Commission.

SB 940 would allow the Joint Finance Committee to gouge the staff or the funds of the Elections Commission if Joint Finance, on its own, says that the Elections Commission or the Department of Transportation or the Department of Corrections or the Department of Health Services

failed to comply with any election law. That would give Joint Finance a huge whip over the heads of the Elections Commission, with no decent check on that unilateral power.

SB 941 would give the Joint Finance Committee and the Joint Committee for Review of Administrative Rules the authority to block federal funds and federal guidance, which will make it very difficult for the Commission to do its job. It's also of dubious constitutionality: States aren't allowed to disregard federal guidance on the conduct of federal elections, for instance.

SB 941 would also inject hyper-partisanship at the staff level by mandating that each major political party gets its own legal counsel on the staff of the Wisconsin Elections Commission. The last thing we need is more partisan haggling at the Wisconsin Elections Commission.

SB 943 would require the Elections Commission to be nit-picked and hyper-monitored by the Joint Committee for Review of Administrative Rules. Every week, the Elections Commission would have to give to JCRAR "all documents and communications from the commission that the commission issued in the previous week that are applicable to municipal clerks generally and qualify as guidance documents." Are you going to allow the Elections Commission to do its job, or are you going to kill it by a thousand cuts?

So these are some of my biggest concerns.

Above all, I would appreciate it if we could all agree that:

- 1) The November 2020 elections were legitimate and move on,**
- 2) The staff of the Wisconsin Elections Commission has been doing an admirable job under incredibly difficult circumstances, and**
- 3) In Wisconsin, and in America, we all should have our freedom to vote protected.**

Thanks for considering my views, and I welcome any questions you might have.



February 7th, 2022

Committee on Elections, Election Process Reform and Ethics
Senator Kathy Bernier, Chair
State Capital, Rm 319 S
Madison, WI 53707

Dear Senator Bernier and members of the Committee:

The Wisconsin Board for People with Developmental Disabilities appreciates the opportunity to provide testimony on the numerous proposals related to elections and voters. Our comments focus on SB 934, SB 935, SB 937, SB 939, and SB 941.

While some bills contain positive changes, which we specifically note in our testimony, other proposed changes will make it harder for people with disabilities to vote and will disproportionately disenfranchise this part of the electorate.

Common problems many voters with disabilities face when trying to vote

- Many people experience unpredictable disabilities, meaning they do not know from one day to the next if they will be able to leave the house for activities such as voting.
- Many have no way to get there. Many voters with disabilities are non-drivers and have few or no transportation options. Rides may need to be scheduled in advance and may not show up at all or on time.
- Many people with disabilities live in a group home or place with many other people where ability to independently leave, get information, or get online is limited or restricted.
- Many voters with disabilities rely on friends, neighbors, extended family, care workers and the community for help. Voters with sensory or physical disabilities may need help marking a ballot, dropping off or mailing an absentee ballot, and getting information about when and how to register and vote.
- Many have no reliable access to the internet because of a lack of broadband infrastructure, no internet subscription, and/or no devices that connect to the internet.
- Polling places and voting documents are not always accessible.

Senate Bill 934 voter registration list

Under the bill, the Wisconsin Elections Commission would be required to mark the voter as ineligible and change their voter registration status if they change addresses and move within a municipality. The bill would insert an unnecessary administrative burden upon the voter to register again. Many voters may not understand they are no longer registered to vote after moving, leading to confusion and potential disenfranchisement the next time they attempt to vote. Registering to vote requires voters to have proof of residence documentation which voters may not have with them if they discover they are

Senate Bill 937 Indefinitely confined voters.

Wisconsin's indefinitely confined statute provides an important safeguard to ensure that many voters who are disabled or have chronic health conditions can cast a ballot. The bill includes several positive changes, including:

- Clarifying what it means to be indefinitely confined as a voter "who cannot travel independently without significant burden because of frailty, physical illness, or a disability that will last longer than one year." Advocates have supported the need to clarify the language.
- Providing a way for some (but not all) indefinitely confined voters who have photo ID to meet the requirement by providing the number of their driver's license or state ID.
- Providing that a voter who fails to vote a ballot the voter receives as a result of his or her indefinitely confined status may be removed from the indefinitely confined status list only if he or she fails to vote the ballot at the spring or general election.

BPDD has several concerns with the proposal.

Voters who have a photo ID and do not have access to the internet are NOT provided with an accommodation to meet the photo ID requirement. They are expected to provide a copy of their ID without accommodation for their status as an indefinitely confined voter. BPDD recommends indefinitely confined voters be allowed to provide their ID numbers on the application, the same standard as used for voters who have access to MyVote.

Voters who do not have photo ID are required to provide the last 4 digits of their social security number to verify their identity. However, the bill also requires the voter to provide an affirmation of a US citizen 18 or older that the elector is indefinitely confined. The purpose of the signature should be to affirm the person's identity – not their health status. The Wisconsin Supreme Court has determined it is up to the voter to make this determination – it is not a medical diagnosis. This requirement does not appropriately accommodate the voter and creates a different higher standard for those who do not have a driver's license or state ID. BPDD recommends resolving this issue by requiring indefinitely confined voters provide the last 4 digits of their SSN on their absentee ballot application. This information along with their birthdate should suffice to affirm their identity.

The bill would require an application for Indefinitely Confined Voter status that is separate from the absentee ballot applications which is widely available and familiar to voters. A separate form creates another administrative step for indefinitely confined voters and may cause confusion or unawareness of this option for people who need this status. At a minimum, the absentee ballot application should continue to include language about the indefinitely confined voter status and direct voters to the other form; BPDD recommends continuing to have one form.

Senate Bill 939 absentee ballots

Many people with disabilities rely on absentee voting to exercise their right to vote because of barriers to independently getting around in their community, including to the polls. These barriers are consistent from election to election. Many non-drivers, people with chronic or intermittent health conditions, people with sensory disabilities and others face such significant mobility challenges that absentee voting

Senate Bill 941 administration of elections.

The US Department of Justice and other federal agencies issue guidance to protect the fundamental right to voting to all Americans, including specifically addressing the rights of voters with disabilities to have equitable access to the ballot. These rights are protected by federal laws including the Americans with Disabilities Act (ADA), the Voting Rights Act (VRA), the Help American Vote Act (HAVA), and other civil rights law.

This proposal creates a mechanism whereby the legislature institutes an automatic delay implementing federal guidance until a legislative committee has given approval. State action which impedes the operation of the federal statutes (or regulation) are in direct conflict with the Supremacy Clause, which establishes that the federal constitution, and federal law generally, take precedence over state laws, and even state constitutions. Arbitrary delays in implementing federal guidance that facilitates equal access to the ballot for voters with disabilities risks disenfranchising this population of voters.

BPDD is charged under the federal Developmental Disabilities Assistance and Bill of Rights Act with advocacy, capacity building, and systems change to improve self-determination, independence, productivity, and integration and inclusion in all facets of community life for people with developmental disabilities¹.

Thank you for your consideration,



Beth Swedeen, Executive Director,
Wisconsin Board for People with Developmental Disabilities

¹ More about BPDD https://wi-bpdd.org/wp-content/uploads/2018/08/Legislative_Overview_BPDD.pdf.



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MEMORANDUM

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

FROM: City Attorney Michael Haas

DATE: February 7, 2022

RE: 2022 Election Bills – SB 935, SB 937, SB 939, and SB 940

Thank you for the opportunity to comment on the elections bills before the Senate Committee on Elections, Election Process Reform and Ethics. We are concerned about the Legislature's rush to make numerous changes to our election laws by issuing a notice for a Monday morning hearing just before the weekend. There are many substantive policy and process issues to work through and this Committee is not providing adequate time for voters, clerks and stakeholders to consider the impacts of this package of bills and to provide thoughtful feedback.

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, and make voting acutely burdensome for the sick, elderly and disabled. 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 correcting an absentee ballot certificate with a missing zip code

number.

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 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 offer the following feedback regarding specific proposals being considered.

SB 935

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 a municipality or zip code 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 numerous 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 hundreds of 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.

However, there is a 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.

SB 935 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 SB 935 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 SB 935 and SJR 101 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 SB 935 and SJR 101 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, SB 935 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.

SB 937

In 2011, Republicans in the State Legislature lead the charge in passing Act 23 to help the elderly, sick and disabled who were “indefinitely confined” to vote. Once they were registered as voters and had shown a valid photo ID, the municipal clerk would send them an absentee ballot for each election and they were not required to continually provide a photo ID when they voted.

SB 937 is an about face on the issue, placing high hurdles in front of these voters. It is the clearest example of legislators’ war on voters and their constant unfounded suspicions about Wisconsin voters who put them in office. Worse, it targets the most vulnerable of our residents who are unable to travel to the polls for physical and medical reasons with new restrictions and requirements.

The most egregious change in the bill is the requirement that a voter can be considered indefinitely confined only if they certify that they cannot travel without significant burden because of frailty, physical illness or a disability that will last longer than one year. The requirement that a disability will last longer than one year is arbitrary and has no legal or medical justification. If a disability prevents a voter from traveling to the polls on Election Day, it is irrelevant that they may be able to do so a week later, much less a year later.

The definition is sure to invite challenges to voters and ballots because there is no standard for determining whether a disability will persist for longer than a year, and there is no definition of what constitutes a significant burden to traveling. It is also predictable that enterprising conspiracy theorists will clamor for the criminal prosecution after the fact of any indefinitely confined voter who is fortunate enough to have their disability last for less than a year.

At the very least, the provisions incorporating the definition of an indefinitely confined voter should list “a disability that will last longer than one year” before “frailty” and “physical illness” to make it clear that a frailty or physical illness need not last longer than a year for a voter to qualify as indefinitely confined. Otherwise there will surely be those who argue that “longer than one year” applies to frailty and physical illness as well, in order to further disenfranchise vulnerable voters.

Continuing the theme of adding unnecessary burdens to voters, SB 937 requires a special form to request indefinitely confined status; a letter or email to the clerk’s office will no longer suffice. It requires this special form for each and every election, and every form must be accompanied by photo ID or an affirmation, so if you submit the form and required ID for February you must do it again in April. There has been no evidence or public policy reason established which justify such additional hurdles and paperwork for both voters and clerks, except to make it more cumbersome to vote.

The fact that the Madison City Clerk’s office spends thousands of hours walking people through the absentee voting process, including those who continue to send in selfies in an attempt to comply with the photo ID law, attests to the complicated system the Legislature has constructed and seeks to worsen with bills such as SB 937. There are legal processes that are less complicated to complete than absentee voting and it seems the goal of these

bills is to require that all voters must hire attorneys to ensure that they jump through all the hoops necessary to complete the voting process.

The additional burdens added by SB 937 are likely to disenfranchise a significant number of elderly and disabled voters. When we have informed and enabled citizens, like former Lt. Governor Rebecca Kleefisch making mistakes with regard to these provisions, it will certainly be challenging for those who are not as well-informed.

The bill also requires that the municipal clerk remove a voter from the indefinitely confined status list if the voter casts their ballot at the polls in any election. So if a voter is well enough to have someone drive them to a curbside voting in February, they will be removed from the list and unable to vote absentee in April without reapplying. This is another provision that is likely to disenfranchise voters and cause confusion and apprehension.

The bill also 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 6, 2020, creating more burdens for the elderly and disabled. Finally, it is also noteworthy that SB 937 and other statutes would continue to authorize clerks to remove voters from the indefinitely confined list and the voter registration list based upon reliable information, but the Legislature does not trust those same clerks to use equally reliable information to complete minor flaws on absentee ballot certificates and thereby allow qualified individuals to vote. This speaks volumes about how the sponsors of more restrictive voting bills view both voters and local clerks.

SB 939

SB 939 continues the theme of adding unnecessary burdens to both voters and clerks by requiring 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 disrespects 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. 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.

SB 940

Simply put, SB 940 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. 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 database in a lawsuit brought by former Attorney General Van Hollen in 2008. 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.

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 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.

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 Senate Committee on Elections, Election Process Reform and Ethics

February 7, 2022

Thank you, Chairwoman Bernier, Vice-Chair Darling, 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 Senate Bills 935, 936, 940 and 941 today. We are also registering in favor of Senate Bills 934, 937, and 943, 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.

Senate Bill 935

First, Senate Bill 935 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.¹

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

¹ 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.

Senate Bill 935 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.

Senate Bill 936

Senate Bill 936 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.

Senate Bill 940

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.”² 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.”³ 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

Reason	Count	Percentage
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%

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

² 52 U.S.C. § 21083

³ 52 U.S.C. § 21083(a)(5)(B)(i)

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. While you must show a photo ID to register in-person, Wisconsin’s mail-in registration by indefinitely confined voters could allow registration with only proof of residence, which includes documents that presumably could be easily fabricated.⁴ Because our current DMV check process is not used to determine the eligibility of a voter, any intentional subversion would go largely unnoticed. 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 Senate Bill 940 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 is corrected. This would be especially helpful in any post-election reviews from the public, where personally identifiable information could not be disclosed.

⁴ 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.

With easily accessible online and same-day in-person registration, Senate Bill 940 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.

Senate Bill 941

Senate Bill 941 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, Chairwoman Bernier and committee members for hearing my testimony today. I would be happy to answer any questions.

February 7, 2022

Good Morning Senator Bernier,

We **all** want free and fair elections. I hope that you will continue to work with the disability and aging communities to address barriers to voting, protect voter rights, and ensure equitable access to voting for voters with disabilities.

AB934

In part, this Bill addresses long waiting lines to vote. Many people want to vote in person because the act of going to the polls and voting has personal meaning for them. However, people with disabilities and older adults often are physically unable to stand in line for an extended period of time. By the time of election day, if they get to their polling place and there is a long waiting line, it is too late for them to choose another voting option. That is why this Bill should ensure that access to curbside voting is available and that the law requiring curbside voting is enforced at all polling places.

Regarding the purging of voters: The ERIC system has proven to have a fairly high error rate. People have been removed from the voting rolls in error, ERIC indicating that people have moved when they **have not** moved. To use this flawed data system more frequently to remove people from the voting rolls is increasing the error rate and negatively impacting the voters who are wrongfully purged.

Many people with disabilities and Wisconsinites who have low incomes, by necessity, move often. If their rent is increased to the point that they cannot afford to live in their current home, they move. If people move within their municipality, they should not have to re-register to vote. These inter-municipality address changes are easily remedied by local election officials. The current process provides a reasonable way for local election officials to maintain current registration information without requiring community members to re-register.

AB935

As a result of the "pandemic" elections, it has become abundantly clear that more state funding dedicated to election administration is needed. All of these proposed additional requirements on election administration being discussed today will also require more funding. Crystal clear.

Regarding errors that voters make on applications for absentee ballots and on the absentee ballot certificate envelopes: A redesign of these documents is necessary so that voters and witnesses can understand and **SEE** what information is required. With more education and a redesign, fewer errors will likely occur.

Where there are errors, please allow local Clerks to complete witness address information when possible.

AB937

Regarding Indefinitely Confined Voter Status:

While applicants with a photo ID who have access to the internet and thus to MyVote are able to upload a photo of their ID through MyVote, this Bill does not accommodate those who do not have such access. It requires that a copy of their ID be sent with their request for Indefinitely Confined status. This adds another burden for those least able to meet the requirement.

Currently, those without a photo ID are required to use the last 4 digits of their Social Security number to verify their identity. This Bill requires voters to provide affirmation of citizenship and age over 18, as well as indefinitely confined status.

The purpose here is to provide identity, not health status. The Wisconsin Supreme Court has ruled that "indefinitely confined" status is for the voter to determine -- it is not a medical diagnosis.

The requirement to have another person sign a statement affirming the indefinite confinement status of another person, with penalty threatened to anyone who falsely asserts this indefinitely confined status,

opens the door for two unnecessary problems: Reluctance to sign such an affirmation statement on behalf of an indefinitely confined voter due to threat of penalty, and making Social Security numbers (which we have been told repeatedly to keep to ourselves) available to others in the process of filling out the indefinitely confined affirmation status form.

The solution is to just require the last four digits of the Social Security number along with birthdate to affirm the identity of the applicant.

SB939

This Bill would require that absentee voters provide proof of identification for every election. It would also reduce the number of elections for which a voter can apply to receive ballots with a single application. Once again, for those with disabilities and older adults who have physical limitations that make uploading documents near impossible, this is adding herculean challenges. Also please always keep in mind that not **all** Wisconsinites have access to a computer and the internet, or the skills to use them in performing what these Bills will require.

The Bill requires that each time a person votes in-person absentee ballot, the voter will have to fill out a new absentee vote application form, even when there is one on file with the local Clerk. How inefficient.

And again, regarding voters with disabilities and older voters who are the most frequently challenged groups with these types of added restrictions, you are mandating, under threat of penalty, who can deliver and how many completed ballots can be put in a mailbox or secure drop box or delivered to the election Clerk. Please bear in mind that many voters live in facilities or are homebound, making it difficult for them to travel out of these facilities/their own homes and who rely on caregivers to help them with their daily activities. Now under threat of penalty you are limiting the ability of people to direct the return of their completed ballots.

Thank you for your consideration of my comments.

Sincerely,

Janie Riebe
2965 Siggelkow Road
McFarland, WI 53558
jkriebe@frontier.com

Date February 7, 2022

To Senator Bernier, Chair; Senator Darling, Vice Chair; members of the Committee on Elections, Election Process Reform and Ethics

From Barbara Beckert, DRW Milwaukee Office Director and Director of External Advocacy for Southeastern Wisconsin

Re: Senate Election Committee February 7, 2022 Public Hearing

- Against - SB-941 **Elections Administration** Overseeing the administration of elections
- Information Only - SB-934 **Voter Registration List** Maintenance of the voter registration list, training of municipal clerks, data sharing agreements, pre-election procedures, lines at the polls on election day , and granting rule-making authority.
- Information Only - SB-935 **Election Fraud** Certain kinds of election fraud, private resources and contracts for election administration, who may perform tasks related to election administration, defects on absentee ballot certificates, returning absentee ballots to the office of the municipal clerk, appointment of election officials, allowing an employee of a residential care facility or qualified retirement home to serve as a personal care voting assistant during a public health emergency or an incident of infectious disease, and providing a penalty.
- Information Only - SB-937 **Indefinitely Confined Voters** Status as an indefinitely confined voter for purposes of receiving absentee ballots
- Against - SB-939 **Absentee Ballots** Absentee ballot applications, unsolicited mailing or transmission of absentee ballot applications and absentee ballots, secure delivery of absentee ballots, canvassing absentee ballots, voter registration requirements, electronic voter registration, and providing a penalty.

As the federally mandated Protection and Advocacy system for our state, Disability Rights Wisconsin (DRW) is charged with protecting the voting rights of people with disabilities and mandated to help "ensure the full participation in the electoral process for individuals with disabilities, including registering to vote, casting a vote, and accessing polling places." (Help America Vote Act, 42 U.S.C. § 15461 (2002)). DRW staffs a Voter Hotline and assists voters with disabilities and older adults, family members, service providers, and others.

In coordination with the Wisconsin Disability Vote Coalition, we provide training and educational resources to voters with disabilities, their families, and service providers. The hotline and trainings provide us with a frontline understanding of the barriers experienced by many voters with disabilities.

Voters with Disabilities

A significant number of Wisconsin voters have a disability. The CDC indicates that 26% (1 in 4) of adults have some type of disability. According to the American Association of People with Disabilities (AAPD), approximately 23% of the electorate in November election were people with disabilities. Many older adults have disabilities acquired through aging, although they may not formally identify as a person with a disability.

Historically voters with disabilities are underrepresented at the ballot box. Many experience barriers to voting including the following:

- Polling place and voting documents are not always accessible.
- High percentage are non drivers and lack access to transportation, especially accessible transportation
- Lack of photo ID and difficulty obtaining it because they don't have transportation to get to DMV, and DMV hours are very limited
- Limited information about their voting rights including disability related accommodations.
- Legally required accommodations such as curbside voting and ballot assistance are not uniformly available; some voters experience discrimination and denial of accommodations.
- Lack of access to the internet and/or devices that connect to the internet, and to equipment to copy photo ID.
- May live in a group home or place with many other people where ability to independently leave, get information, or get online is limited or restricted.

Federal Law and Voting Rights

As referenced in this testimony, the US Department of Justice and other federal agencies issue guidance to protect the fundamental right to voting for all Americans, including specifically addressing the rights of voters with disabilities to have equitable access to the ballot. These rights are protected by federal laws including the Americans with Disabilities Act (ADA), the Voting Rights Act (VRA), the Help American Vote Act (HAVA), and other civil rights law. It is important that that these bills align with the protections afforded to people with disabilities by federal law.

SB-941 Elections Administration - Against

DRW has the following concerns about SB-941:

- Federal civil rights laws, as well as guidance from the US Department of Justice and other federal agencies, protect the fundamental right to voting for all Americans, and specifically address the rights of voters with disabilities to have equitable access to the ballot. These rights are protected by federal laws including the ADA, the VRA, HAVA, and other civil rights laws. It should not be optional to comply. Any state action that would impede the operation of the federal statutes (or regulation)

would raise constitutional issues, and fall under the Supremacy Clause, which establishes that the federal constitution, and federal law generally, take precedence over state laws, and even state constitutions, and prohibits states from interfering with the federal government's exercise of its constitutional powers.

- The bills adds significant reporting requirements for municipal clerks without providing any funding to provide clerks with support to comply with these requirements.
- This bill requires that legal counsel for the commission be partisan and chosen by the legislative leadership of the two major political parties. Under current law staff positions are not partisan and are not selected by the Legislature.

Based on these concerns, we ask you to oppose SB 941.

SB-934 **Voter Registration List** Information Only

Based on DRW's review of the bill, we are very concerned about some provisions in this bill related to maintenance of voter registration lists. We also noted some provision that would be helpful for others with disabilities. For that reason, our comments are for Information Only. The following provisions in the bill merit comment because of their impact voters with disabilities.

- **Changes in status for Voters Who Move.** The bill would require that people who move within a municipality be marked ineligible to vote. Clerks would no longer be allowed to send the voter a confirmation notice, and update the information without requiring the voter to re-register.

Concern: Many people with disabilities experience housing insecurity and may move often. The current process initiated by the clerk provides a reasonable way for local election officials to maintain current registration information without requiring community members to re-register.

- **The bills would require that information received from ERIC be considered reliable for purposes of changing voter status to ineligible.**
Concerns: The accuracy of ERIC data has been the subject of litigation, because of proven error rates in the range of 5 – 10 percent. In addition, ERIC relies in part on DMV data. In most states, the DMV has a role in assisting with voter registration, as required by the NVRA. This is not the case in Wisconsin, so DMV data is not as reliable a source as it may be in other states

- **Lines at Polling Places.**
This bill would require chief inspectors to report and document each occurrence of voters waiting in line for at least one hour before voting. It would require that

municipalities who report this take all necessary steps, including establishing additional polling places, to ensure that voters do not wait in line for an hour or more at future elections.

Long lines at the polling place are especially problematic for some voters with disabilities and older adults who are not able to wait in line for a long time. We support provisions in SB-934 to address this barrier.

An additional recommendation regarding long lines would be enforcing the Wisconsin law which requires that curbside voting be available for voters who because of disability are not able to enter the polling place. This accommodation is not consistently available, and we have received multiple reports of voters who have been denied this accommodation and are not able to wait in line. We ask policy makers to also take steps to ensure access to curbside voting.

- **Clerk Training.** The bill would create additional training requirements for municipal clerks including and requiring a clerk to complete at least three hours of training prior to conducting an election for the first time. We support this provision to address adequate training for clerks. Such training provides important information about voting rights, including the rights of voters with disabilities to have equitable access to voting, and disability related accommodations required by state and federal law.

SB-935 Election Fraud - For Information Only

DRW has appreciated the ongoing discussion with Senator Bernier to ensure the voting rights of care facility residents. Though DRW is unable to support the bill in its current form, our comments note specific provisions that we support as well as our concerns about SB-395.

Voting In Care Facilities

- This bill would establish a new process to provide residents of nursing homes and other eligible care facilities with assistance needed to vote when a facility will not admit Special Voting Deputies (SVDs) because of a pandemic or other public health issues (flu, mrsa, etc). DRW supports the creation of a statutory language to ensure residents receive the needed assistance, although the process proposed in SB 935 is more restrictive than we recommend.
- DRW also supports allowing facility staff to be appointed as Personal Care Voting Assistants who would be trained and certified to conduct in person absentee voting, when SVDs are unable to enter due to public health restrictions. Training facility staff on voting including rights is helpful and will ensure that the assistance they

provide is informed by an understanding of residents' rights as protected by Wisconsin and federal law.

- SB 935 moves up the date by which SVDs must make arrangements to visit and requires SVD visits to be completed by no later than the "sixth working day preceding the election" instead of the current Monday, preceding the election.
Recommendation While this is an improvement on current law and provides at least a chance for absentee ballots to be sent and returned for those unable to participate in SVD visits, we would urge that SVD visits be completed no less than 10 days prior to an election and that ballots be sent out to those missing the visits the following day. This would provide at least nine days to receive, complete, and return the ballot. The current process does not provide sufficient time for ballots to be mailed to residents, and for residents to complete and return them.

Concerns:

1. Residents Need Assistance with Voter Registration.

When individuals move to a nursing home, they need to re-register to vote. It is important that they receive this assistance. The personal care voting assistants are not allowed to register voters and most SVDs are not allowed to register voters.

Other staff may be afraid to offer assistance with voter registration, as this bill would make it a felony if an employee "coerces" a resident to register to vote. We adamantly oppose any coercion. That being said, "coercion" is not defined and could be more broadly interpreted as offering assistance. Such a severe penalty is likely to result in staff being unwilling to take the risk of providing any assistance with voter registration and leave residents disenfranchised.

CMS requires nursing homes that receive Medicare or Medicaid funding to affirm and support the residents right to vote. That should include supporting residents with registering to vote if they wish to do so.

Recommendations:

- Give personal care voting assistants and SVDs the training and authority to register voters, as clerks can do at in-person absentee voting.
 - Include voter registration as part of the intake process. New residents should be asked if they need assistance with registering to vote, and if they wish to request an absentee ballot. This process would also help to ensure more of the smaller care facilities meet the requirement to participate in the SVD program.
- #### **2. Limiting assistance with voting to only the two assistants** may restrict the residents from getting the support they need to register to vote, to complete an absentee ballot to return a ballot.

Federal law requires election officials to allow a voter who is blind or has another disability to receive assistance from a person of the voter's choice (other than the voter's employer or its agent or an officer or agent of the voter's union). In addition, Federal law requires that Medicare/ Medicaid certified long term care facilities affirm and support the right of residents to vote. "nursing homes are required to support a resident in the exercise of their right (§483.10(b)(2)) to vote, such as assisting with absentee or mail-in voting, or transporting residents to polling locations or ballot drop-boxes in a safe manner."

Recommendation. Align Wisconsin law with the federal law to permit people with disabilities, including nursing home residents, to receive assistance from a person of their choice with completing their ballot, and to allow staff to assist residents with voting, as requested by the resident.

3. The bill would provide notice of the times and dates of absentee voting to each relative for whom the facility has contact information. Such notifications must be respectful of resident rights to privacy, and should only be done with the residents consent.

Recommendation: Ensure notification of relatives and any observation of the voting process complies with the residents' rights and protections. Residents should have to consent to notification of family members or others.

Use of Private Resources for Election Administration

- The bill would prohibit municipalities from applying for or accepting donations or grant moneys for purposes of election administration. Grant funding has provided support for some municipalities to improve accessibility concerns at polling places. In addition, during the pandemic, grant funding helping to address health and safety concerns at polling places. We heard positive comments from community members about the safety precautions taken using grant funding.
- **Recommendation:** If grant funding is not allowed, the Legislature should allocate funding for municipalities to address polling place accessibility, curbside voting, health and safety concerns, and other election administration expenses.

Absentee Ballot Certificates

- This bill would prohibit a municipal clerk from correcting a defect on the completed absentee ballot certificate envelope. Under current law, if the witness certificate is missing certain address information, the clerk receiving the ballot may complete that address information if known. Alternatively, the clerk may return the ballot to the voter so they may contact the witness and correct the defect if time permits.

Under the bill, if a clerk received an absentee ballot with missing information, the clerk would be required to return the absentee ballot to the voter. This would be required regardless of how much time remains to correct the issue or to cast a different ballot before polls close. The clerk would also be required to post a notification of the defect on the voter's voter information page on MyVote Wisconsin.

Concerns about SB 935

- We are concerned about the harmful impact on some voters with disabilities and older adults. The certificate envelope has very small print, is crowded, and **is not accessible** for many voters who have some vision loss. It's not a surprise that there are often mistakes in completing it correctly.
- Based on the experience of voters we assist, it has been very helpful for clerks to correct a defect on the absentee ballot certificate envelope, such as completing the witness address, and honoring the voter's intent. If this process changes and clerk must return the ballot to the voter, it is highly probable that there will not be enough time for the voter to correct the problem and return the ballot. While posting information on MyVote may be helpful for those with internet access and who see the posting, it would result in inequitable access as many voters do not have ready access to the internet and to device. In addition, unless MyVote sends a notification to the voter, they are not likely to be aware of the post.

Recommendation:

- Redesign the certificate envelope with guidance from national usability and accessibility experts. Provide more public education, and conduct usability testing on the instructions for absentee voters, and including older adults and voters with disabilities in the usability testing.
- Allow clerks to complete witness address information when possible.

SB-937 Indefinitely Confined Voters - For Information Only

DRW has appreciate the ongoing discussion with Senator Bernier about changes to update the Indefinitely Confined Voter Status and to protect this important option for disabled voters. Though DRW is unable to support the bill in its current form, our comments note specific provisions that we support as well as concerns.

Background. This bill makes changes to the Indefinitely Confined Voter Status. Wisconsin's indefinitely confined statute has been on the books for decades, and provides an important safeguard to ensure that many voters who are disabled, or have chronic health conditions can cast a ballot. An indefinitely confined voter is a person who, because of age, physical illness, or disability, has difficulty voting at their polling

place, and always wants to cast an absentee ballot. The Wisconsin Supreme Court affirmed that “indefinitely confined” status is for the voter to determine – it is not a medical diagnosis.

Wisconsin has been a leader in expanding community based long term care; over 80,000 people with disabilities and older adults are enrolled in community based long term care programs. Participants qualify for these programs by meeting a nursing home level of care, meaning their support needs are significant and similar to nursing home residents. The increasing number of individuals with long term health conditions such as Cerebral Palsy, Multiple Sclerosis, Muscular Dystrophy, ALS, and quadriplegia who live in the community rather than in a nursing home has increased the need for the indefinitely confined voter provision.

SB 937 addresses the following:

1. Further defines what it means to be “indefinitely confined.” An elector.....“who cannot travel independently without significant burden because of frailty, physical illness, or a disability that will last longer than one year.” Advocates have supported the need to clarify the language. The bill removes “age” as age in and of itself should not qualify someone – it requires frailty, physical illness, or disability.

Although this language provides some clarification, we continue to believe the term “indefinitely confined” is problematic. Voters who need this accommodation have shared that they are hesitant to apply because the terminology infers that they are “bed-bound” and unable to leave their home. We recommend the language used in some other states of *Permanent Absentee Voter Due to Disability*.

2. Provides a way for some (but not all) indefinitely confined voters who have photo ID to meet the requirement by providing the number of their driver’s license or state ID. This is a helpful accommodation but it is unfortunately limited to voters who can provide this electronically using MyVote Wisconsin.
3. Provides that a voter who fails to vote a ballot the voter receives as a result of his or her indefinitely confined status may be removed from the indefinitely confined status list only if he or she fails to vote the ballot at the spring or general election. Turnout among all voters is lower for primary elections and this change would prevent indefinitely confined voters from having to reapply to maintain their status due to not voting in a primary election.

Concerns about SB 937

1. Voters who have a photo ID and do not have access to the internet and to MyVote are NOT provided with an accommodation to meet the photo ID requirement. They are expected to provide a copy - no accommodation is made to their status as an indefinitely confined voter for whom this can create an undue burden. DRW does not support this provision.

Recommendation: allow these voters using a paper application to provide their ID numbers on the application, the same standard as used for voters who have access to MyVote.

2. Voters who do not have photo ID are required to provide the last 4 digits of their social security number to verify their identify. This could be an effective way of verifying their identity. However, the bill also requires the voter to provide an affirmation of a US citizen 18 or older that the elector 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. DRW does not support this provision.

This requirement is problematic for two reasons:

- The purpose of the signature should be to affirm the person's identify – not their health status. The Wisconsin Supreme Court has determined it is up to the voter to make this determination – it is not a medical diagnosis. Because of the subjective nature of this status, other citizens may feel unqualified to make such a determination and be unwilling to sign an affirmation. This requirement does not appropriately accommodate the voter and creates a different higher standard for those who do not have a drivers license or state ID.
- The legislation establishes a new crime for anyone who "Falsely make any statement for the purpose of qualifying as indefinitely confined". The new crime could be interpreted as applying to the person who makes the makes the affirmation and make them unwilling to sign.
- The requirement for another person to sign their application form may put the voter at risk for fraud because it will include the last 4 digits of their social security number.

RECOMMENDATION: Require these voters provide the last 4 digits of their SSN on their absentee ballot application. This information along with their birthdate should suffice to affirm their identify. This information should be sufficient to confirm the voter's identity. In addition, voters must receive assurances that that social security numbers will be guarded in a manner that will protect the voter from fraud or abuse.

3. 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 6, 2020. A voter whose indefinitely confined status is so removed must submit a new application for indefinitely confined status in order to continue receiving absentee ballots automatically.

This requirement should not be needed as municipals clerks were already asked to

contact indefinitely confined voters after the 2020 election and advise voters who are not indefinitely confined to update their status.

Recommendation: Rather than remove these voters, they should receive notification that clarifies the requirements for indefinitely confined status and states their responsibility to update their status if they do not qualify. This will minimize confusion and ensure that those who qualify for this status do not need to re-apply. The process of reapplying can be difficult for voters with significant disabilities.

4. **Requires a separate application form from the absentee ballot application.** The absentee ballot application is widely available and well known. If a separate form is required, it will decrease awareness of the Indefinitely Confined voter status for citizens who need this status. Electors in need of an indefinitely confined status may not know to request this application. At a minimum, the absentee ballot application should continue to include language about the indefinitely confined voter status and direct voters to the other form.

Recommendation: Continue to have one form to ensure that voters who need this accommodation are aware of it. The current form clearly states that anyone who makes a false statement may be fined or imprisoned. This language is right next to the box that a voter must check to self certify as "indefinitely confined" and is very visible.

SB-939 Absentee Ballots - Against

Absentee voting is heavily utilized by disabled voters because so many have barriers to voting in person including lack of transportation, polling place accessibility issues, and/or disability related or health concerns that limit their ability to vote in person. Many also have limited access to technology and to the internet or disability related barriers to using technology.

SB-939 would create the new restrictions listed below that would make it more difficult for many disabled Wisconsinites to cast a ballot.

- Absentee voters would need to provide proof of identification for every election. Under existing law, a voter who submitted a copy of their photo ID when applying for an absentee ballot once, and has not moved nor changed their name, need not submit a copy of their ID again when they apply.

Concern: The voters we assist often struggle to provide a copy of their photo ID on My Vote or My Mail. Requiring this be mailed or uploaded to My Vote for every election would be a significant burden.

- Reduce the number of elections a voter can apply to receive ballots for with a single application to a single primary and general election pair. Under existing law, a voter can apply to receive ballots for every election in a calendar year.
Concern: A high percentage of voters with disabilities vote absentee and request absentee ballots for the year. Because of limited access to technology, and in many cases limited mobility, it would be a significant burden for many disabled voters to have to repeatedly reapply to vote absentee. Having to repeatedly complete and resubmit absentee ballot applications will create a burden for voters who disabilities such as blindness, MS, spinal cord injuries, cerebral palsy that make it difficult to complete forms either by hand or on line.
- Require all in person absentee voters to complete an absentee ballot application, even if they already have such a request on file.
Concern: Requiring voters who already have an absentee ballot request on file to complete the form again is unnecessary, inefficient, and will lead to longer waiting times. In addition, many individuals with disabilities may require assistance to complete the absentee ballot application, and will require election officials to provide this accommodation.
- Prohibit clerk from sending absentee ballot applications to anyone who has not requested them
Concerns: Sending absentee ballot applications to registered voters provides equitable access to absentee voting for all voters, including those who do not have access to the internet or a device to complete the form online or to download and print it. This restriction is especially troubling because the bill requires voters to repeatedly complete and submit their absentee ballot request. Many voters with disabilities will struggle with these new restrictions. It is truly a public service for our municipal clerks or the Wisconsin Election Commission to mail the absentee ballot applications to voters, as so many voters with disabilities and older adults are isolated and not able to easily obtain or print an application.

Absentee Ballot Return

Many voters with disabilities rely on a person of their choice to return their absentee ballot. Because of disability they may be unable to place their completed ballot in a mailbox, in a secure drop box, or return it to their clerk. Existing law does not restrict who may deliver a ballot for a voter. This bill would restrict who a voter may choose to return their ballot and create a felony to punish a person who return a voter's ballot in violation of these restrictions.

Concerns

While less restrictive than a 2021 proposal, there are several provisions which are very concerning.

- No one can return more than two ballots not their own for anyone not immediate family per election
- The person cannot be compensated to return the ballot.

Our concerns include the following:

Many people with disabilities and older adults live in a congregate setting. This includes Adult Family Homes (AFH), community based residential facilities (CBRF), supported housing, or apartment buildings. Because of lack of transportation, mobility restrictions, as well as unreliable mail delivery, many residents rely on paid staff to return their ballot. Those paid staff often assist multiple residents. In addition, volunteers often assist residents with voting including ballot return.

In addition to those living in congregate settings, these restrictions would impact many disabled and elderly individuals who live independently in their own home or apartment. Many are isolated and do not have access to family or other community members to assist them. They rely on paid staff to assist them with activities of daily living, including voting, and in many cases to assist with absentee ballot return.

If paid staff are no longer able to assist with absentee ballot return, it will disenfranchise many people with disabilities and older adults. Federal law allows any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union.

For the reasons noted, we ask you to oppose SB 939.

DRW welcomes the opportunity to work with policy makers to ensure that every eligible disabled voter has the opportunity to register to vote and cast a ballot, no matter where they live or how they vote. We are committed to ensuring that that Wisconsin elections are accessible and inclusive, and protect the rights of Wisconsinites with disabilities and older adults.

- For additional information or questions, please contact Barbara Beckert at barbara.beckert@drwi.org or 414-292-2724.

Disability Rights Wisconsin is the federally mandated Protection and Advocacy system for the State of Wisconsin, charged with protecting the rights of individuals with disabilities and keeping them free from abuse and neglect.

DRW is charged with protecting the voting rights of people with disabilities and mandated to help ensure the full participation in the electoral process for individuals with disabilities. DRW staffs a Voter Hotline and assists voters with disabilities and older adults, family members, service providers, and others.



Greater Wisconsin
Agency on Aging Resources, Inc.

Date: February 7, 2022

To: Senator Bernier, Senator Darling, and members of the Senate Committee on Elections, Election Process Reform and Ethics

From: Janet L. Zander, Advocacy & Public Policy Coordinator

Re: **Information Only SB 935** relating to: certain kinds of election fraud, private resources and contracts for election administration, who may perform tasks related to election administration, defects on absentee ballot certificates, returning absentee ballots to the office of the municipal clerk, appointment of election officials, allowing an employee of a residential care facility or qualified retired home to serve as a personal care voting assistant during a public health emergency or an incident of infectious disease, and providing a penalty.

Information Only SB 937 relating to: status as an indefinitely confined voter for purposes of receiving absentee ballots automatically and providing a penalty.

Against SB 939 relating to: absentee ballot applications, unsolicited mailing or transmission of absentee ballot applications and absentee ballots, secure delivery of absentee ballots, canvassing absentee ballots, voter registration requirements, electronic voter registration, and providing a penalty.

The Greater Wisconsin Agency on Aging Resources, Inc. (GWAAR) is a nonprofit agency committed to supporting the successful delivery of aging programs and services in our service area consisting of 70 counties (all but Dane and Milwaukee) and 11 tribes in Wisconsin. We are one of three Area Agencies on Aging in Wisconsin. Our mission is to deliver innovative support to lead aging agencies as we work together to promote, protect, and enhance the well-being of older people in Wisconsin. There are over one million adults aged 60 and older residing in our service area.

Thank you for this opportunity to share testimony for information only on SB 935. As of Feb. 1, 2022, people aged 50 and older make up 55% of Wisconsin's registered voters.¹ Voting is a high priority for many older adults. Despite a strong desire to vote, as people age, there are often barriers standing between their desire to vote and being able to vote. Between 2009 – 2019, the 65 and older population in Wisconsin grew by over 32%. There are over one million Wisconsinites

¹ Wisconsin Elections Commission. February 1, 2022 Voter Registration Statistics. Retrieved Feb. 5, 2022 from https://elections.wi.gov/statistics/voter_reg/feb2022.

aged 65 and older (over 17% of the state's population).² Older Americans are one of the fastest-growing demographics in the country. Within the older population, a large and growing percentage of people are age 85 and older.³ With advanced age people are more likely to have multiple chronic illnesses which can make it harder to get around. Age is also a significant risk factor for admission to a nursing home. Roughly 1% of people aged 65-74 live in nursing homes, compared to approximately 15% of people aged 85 and older. Additionally, AAA reports seniors outlive their ability to drive safely by an average of seven to ten years.⁴

SB 935 – Information Only

GWAAR appreciates the ongoing discussions to improve access to voting for older adults and adults with disabilities. Though GWAAR is unable to support this bill in its current form, specific provisions we support are noted below.

GWAAR is concerned changes to the absentee ballot certificates and their review could result in additional ballots being disqualified (uncounted). The bill requires the completion of 12 different fields of information on the absentee ballot certificate. If all 12 fields are not completed on the certificate, the ballot may not be counted. Like existing law, this bill allows clerks to return the ballot to the voter, if time permits, to allow the voter to complete any missing information. In addition, **the bill also creates a requirement for clerks who determine a certificate is improperly completed or missing to post notice of the defect in the voter's information page in the online voter registration system (MyVote Wisconsin) and maintains a provision allowing clerks to attempt to notify the voter by other means. GWAAR supports this addition but is concerned that some older voters lack internet access and/or may require additional assistance to identify how the certificate is to be corrected.**

It is understood that clerks may not have time to contact by phone, email, or letter, all electors with incomplete or missing certificates. Creating a certificate requiring the minimal amount of required information and clear instructions would help to eliminate what are often simple mistakes (e.g., elector lists zip code but forgets to include municipality). In addition, continuing to allow clerks to correct certain minor errors such as adding a missing element of the witness address for a spouse (witness) residing at the same address as the elector as has been allowed under recent guidance from the Wisconsin Elections Commission, would prevent minor mistakes on the ballot certificate from keeping otherwise valid ballots from being counted. Under this bill, it would be a crime for clerks to correct even minor errors.

² Administration for Community Living. 2020 Profile of Older Americans, Publication date May 2021. Retrieved Feb. 5, 2022 from https://acl.gov/sites/default/files/Profile%20of%20OA/2020ProfileOlderAmericans_RevisedFinal.pdf.

³ Administration for Community Living. Projected Future Growth of Older Population, last modified on May 25, 2021. Retrieved on Feb. 5, 2022 from <https://acl.gov/aging-and-disability-in-america/data-and-research/projected-future-growth-older-population>.

⁴ Figueroa IV, D. (2018, August 14). *Seniors outlive their safe driving age by 7 to 10 years, AAA says*. Tampa Bay News. Retrieved February 5, 2022, from https://www.tampabay.com/news/Seniors-outlive-their-safe-driving-age-by-7-to-10-years-AAA-says_170888685/.

GWAAR appreciates the efforts that have been made in this proposal to expand voting options for electors in residential care facilities and qualified retirement homes. Specifically, we support the creation of statutory language outlining the process to follow to ensure electors in residential care facilities and qualified retirement homes receive the assistance needed to vote when Special Voting Deputies (SVDs) are restricted from conducting visits due to a public health emergency or an incident of infectious disease. For many years, visitors (including SVDs) have occasionally been restricted from visiting due to concerns related to the spread of disease. Though the process proposed is more restrictive than we recommended, it does outline a process to be followed when these circumstances occur.

GWAAR also supports allowing individuals employed at residential care facilities or qualified retirement homes to be appointed as personal care voting assistants when Specialized Voting Deputies (SVDs) are restricted from conducting visits during a public health emergency or an incident of infectious disease. State law currently prohibits these employees from serving as SVDs, while current federal law requires licensed skilled nursing facilities (at all times, not just during public health emergencies) to have a plan in place that ensures residents can exercise their right to vote. Though some states, like Wisconsin, have programs in place that enable external assistance to come into the facility, regardless of whether this external assistance is available or not, providers are required to provide support to residents to help them vote, including “transporting residents to polling locations or drop boxes, assisting with absentee or mail-in voting processes, and ensuring residents who are otherwise unable to cast ballots in-person retain their right to vote and send in their ballots via State/locality authorized mechanisms.”⁵ The authorization **and training** of personal care voting assistants will help to ensure federal requirements are met for electors in licensed skill nursing facilities, as well as residents in all other residential care facilities and qualified retirement homes impacted by this change.

In recognition of the high-level of turnover among staff in these facilities and the reality that not all facilities will have appointed and trained personal care voting assistants, **we are concerned the bill restricts any other facility employee who is not a personal care voting assistant from assisting residents with voting** (other than distributing absentee ballots in their unopened envelopes to residents who requested them). The process for voters in facilities where SVDs are not able to conduct visits and the facility has *not* identified any personal care voting assistants remains unclear under this proposal. We must ensure these voters are not disenfranchised based on where they live. **In addition, we are concerned that the process as outlined under this proposal is also unclear as to how residents/tenants who have recently moved to a residential care facility or qualified retirement home will receive assistance, if needed, with registering to vote** when visits are restricted for SVDs (only some of whom are also Special Registration Deputies). If personal care

⁵ Centers for Medicare and Medicaid Services. Compliance with Residents’ Rights Requirement related to Nursing Home Residents, October 5, 2020. Retrieved on Feb. 5, 2022 from <https://www.cms.gov/files/document/qso-21-02-nh.pdf>

voting assistants are prohibited from assisting with registering to vote and other facility staff are also unable to assist, how will residents receive the assistance needed?

The change in timeline for SVDs to arrange and conduct visits to facilities and the authorization to allow clerks to send absentee ballots to electors who were unable to cast their ballots during an SVD visit because access to the home/facility was restricted due to a public health emergency or incident of infection disease **are also supported by GWAAR**. Requiring SVD contacts to be made with facility administrators and visits to be scheduled no later than 5 p.m. on the 11th working day (instead of the 6th working day) preceding an election will allow more time for the alternate process, utilizing personal care voting assistants, to be completed should SVD visits be restricted due to a public health emergency or incident of infectious disease. Additionally, requiring SVD visits to be completed *no later than* 5 p.m. on the 6th working day preceding the election (rather than the Monday preceding the election) will provide more time for clerks to send absentee ballots to electors who were unable to cast their ballots during SVD visits due to restricted access to the facility by SVDs resulting from a public health emergency or incident of infectious disease and more time for personal care voting assistants to provide assistance.

GWAAR does not support the changes made under this bill requiring facilities to give notice of the days and times SVDs or personal care voting assistants will be assisting facility residents with voting, to each relative of an occupant/resident for whom the facility/home has contact information. GWAAR also does not support the proposal in this bill indicating relatives may be present in the room where the voting is conducted. Eligible voters, regardless of age, disability, or living arrangement, should have the right to decide who is and is not informed about and/or present during any activity, including voting. Current law, while still concerning, allows relative to request notice of voting dates/times and does not require the information be sent to all relatives.

SB 937 – Information Only

GWAAR appreciates the ongoing discussions to improve access to voting for older adults and adults with disabilities. Though GWAAR is unable to support this bill in its current form, specific provisions we support are noted below.

Use of the indefinitely confined status for voting has been an invaluable accommodation for many older adults (and adults of all ages) who wish to vote but due to **physical illness, infirmity or disability** are unable to get to their polling sites. As “indefinitely confined” is self-determined, it has become increasingly important to clarify what it means. This bill removes “age” from the current definition of indefinitely confined (due to age, physical illness, infirmity, or is disabled for an indefinite period) and replaces it with the following language, “an elector 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.” **GWAAR supports the removal of age from the definition of indefinitely confined, as age in and of itself is not an indication of frailty,**

physical illness, or disability. To provide further clarification, GWAAR recommends changing the name of the status to “permanent absentee voter,” to more accurately reflect the needs of these voters versus a condition of voters.

Under current law, the absentee ballot application provides electors the options available under law for voting absentee, including the option for electors to certify to their indefinitely confined status. Electors in need of being a permanent absentee voter, who may not know about the indefinitely confined voter accommodation can learn about it directly from the absentee ballot application. Recent reports have indicated some voters, in recent elections, checked the box to certify themselves as indefinitely confined unintentionally or without understanding what it meant. **While GWAAR recognizes the importance of preserving this accommodation for those it was intended to serve, our recommendation is to provide additional clarification on the absentee ballot application rather than creating a distinct indefinitely confined status application as proposed in this bill.** Electors in need of an indefinitely confined status may not know to request this application and, therefore, may not receive this needed accommodation.

Though GWAAR feels participation in all elections is important, **we support changes made in this bill related to 6.86 (2) (b) specifying an indefinitely confined voter who fails to cast and return an absentee ballot “with respect to a spring or general election” (rather than any election)** will receive notification from the clerk by 1st class letter or postcard that his/her name will be removed from the mailing list unless the clerk receives a renewal of the application within 30 days of the notification. Turnout among all voters is lower for primary elections and this change would prevent indefinitely confined voters from having to reapply to maintain their status due to not voting in a primary election.

In recognition of the challenges electors seeking an indefinitely confined status face in submitting copies of a photo ID or getting to the DMV to obtain an ID, existing law does not require those requesting an indefinitely confined voter status to submit a photo ID when applying for an absentee ballot. While many absentee voters requesting an indefinitely confined status have a valid ID, it can be very difficult for some to submit copies electronically or hard copy. This bill requires any elector who possesses proof of identification to submit a copy of their identification with *each* application for indefinitely confined status. **GWAAR supports changes made in this bill to provide electors applying for an indefinitely confined voter status electronically to use the online system - MyVote Wisconsin - to provide the number of a valid photo ID card, their name, and date of birth (in place of uploading copies of the ID as proof of identity).** We would also recommend this option be made available to electors apply for indefinitely confined status who possess a valid ID and apply using the Wisconsin Elections Commission’s paper application. The application could provide a location for the elector to include this information. Without this option, it will be very difficult for some electors in need of an indefinitely confined status to submit a copy with their application, even when they have a valid photo ID. **This bill continues to provide an option for electors applying for indefinitely confined status who do not possess proof of identification. GWAAR**

supports maintaining this option but recommends changes to the process outlined in this bill.

Among the requirements outlined in the process in this bill are requirements for the elector to submit an affirmation that he/she meets the definition of indefinitely confined, the last four digits of his/her Social Security number, and a statement authorizing the commission to use the last four digits of the elector's Social Security number to verify the elector's identity. GWAAR believes these electors must receive assurance that any Social Security numbers, in combination with other personal data, will be maintained in a confidential manner to protect them from any potential fraud or abuse. In addition, GWAAR believes the above information should be sufficient for the elector's identification to be confirmed. The bill also; however, requires the affirmation of a U.S. citizen that the elector 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. **If a witness signature continues to be required, GWAAR recommends the witness attest to the elector's identity, as is required under current law, and not be required to attest to the elector's health or disability status.** It can be difficult for some absentee voters, especially those who are indefinitely confined, to find individuals eligible to serve as witnesses on absentee ballot applications. This new requirement will make it even more difficult, as many individuals may feel unqualified to make such a determination and may, therefore be unwilling to sign as a witness on the application.

Lastly, the bill requires the Wisconsin Elections Commission to facilitate removal from the indefinitely confined status mailing list any elector who first applied for this status between March 12, 2020 and Nov. 3, 2020. The electors removed from the mailing list will no longer be eligible to automatically receive absentee ballots unless the elector reapplies. As is the case every year (not just during a public health emergency), a number of older adults and adults with disabilities who determined they qualified for this status, will have applied for this status during this time period. Under this bill, all individuals added to the list during this time, will be removed. This will result in many voters who are qualified for this status being removed from the mailing list. **GWAAR is concerned the bill does not outline how these electors will be notified they have been removed from the list and further, how these electors will be supported to reapply given how difficult this process can be for voters with significant "frailty, physical illness, or disability."**

SB 939 – Against

Absentee voting is generally more heavily utilized by older voters.⁶ This bill proposes significant changes that would make it much more difficult for electors to apply for and return absentee ballots. Under existing law, an elector who previously submitted a copy of their photo ID when applying for an absentee ballot, and who has not changed their name or address, is not required to submit a copy of their photo ID again when reapplying each year. This bill would eliminate that

⁶ Charles Stewart III, MIT. Some Demographics on Voting by Mail, March 20, 2020. Retrieved on Feb. 6, 2022 from <https://electionupdates.caltech.edu/2020/03/20/some-demographics-on-voting-by-mail/>.

exemption and would require all electors to submit a copy of their photo ID with each application. In addition, electors wishing/needing to vote by absentee ballot will no longer be able to apply to receive ballots for every election in a calendar year but will now be required to complete an application for each primary and the election associated with that primary. These changes will pose significant barriers for voters who do not drive; it can be challenging to obtain needed copies of a photo ID due to transportation barriers, limited access to technology, and/or limited ability to use available technology. Requiring this application renewal process for every primary and general election pair, when there has been no change in the voter's status, is unnecessary and places additional barriers that will make it more difficult for some older adults to vote.

Though GWAAR feels participation in all elections is important; the reality is, turnout among all voters is lower for primary elections. This bill penalizes absentee voters who do not vote in the primary by prohibiting municipal clerks from mailing an absentee ballot for an election to any elector who fails to return the absentee ballot mailed to the elector for the primary specified in the elector's application. There are many reasons a voter may not be able to, or may choose not to, vote in a primary election. The elector's decision regarding voting in a primary should not impact their ability to vote absentee in a general election.

GWAAR heard from older voters who found it very confusing to receive multiple absentee ballot applications in the mail from third parties and outside groups (some legitimate and some not). **GWAAR is concerned that adding 6.86 (8) to the current statutes**, as proposed in this bill, would only further magnify the confusion. As proposed, no municipal or county clerks or municipal or county board of election commissioners, and no person acting on behalf of the commission, may send or transmit an absentee ballot application (or and absentee ballot) to an elector for voting in an election unless the elector applies for the application (or ballot). Yet, the bill states candidate committees, legislative campaign committees, political parties, etc., may not send or transmit absentee ballot applications to a voter that contains a return address of the application other than the address of the municipal clerk where the voter is registered. **This change prohibits the entities electors would expect to send them voting and elections materials from sending absentee ballot applications but *permits* third parties and outside groups to send absentee ballot application if the return address on is the address of the municipal clerk where the voter is registered.**

Third parties and outside groups often do not coordinate with state or local election officials resulting in electors receiving multiple applications. It is easy for voters to become confused about whether their absentee ballot applications were processed and is not surprising that some voters submit multiple applications while waiting for their absentee ballot to arrive. Multiple applications from a single voter cause confusion for voters and additional work for local election offices.

This bill will also make it more difficult for some older adults to vote by limiting who can return an absentee ballot to the voters themselves, a member of their immediate family, a legal guardian, or any registered voter they designate in writing (with additional restrictions). While some older

voters are perfectly capable of returning their own ballots, others find it much more difficult to do so. In the past year or two, voters have expressed concern about return absentee ballots by mail, especially when the election date is near, as ballots may or may not arrive in time to be counted. While this bill does authorize the use of for-profit commercial delivery for return of an absentee ballot envelope; voters who are low-income may find this cost prohibitive and not an option available to them. Most older adults (or voters of any age) do not have legal guardians and some do not have any immediate family members, or at least none within close proximity, available to assist them. While this bill does allow an elector to designate, in writing, one person who is registered to vote in this state to deliver the return envelope containing the absentee ballot, it is unclear how the designation process works and it may be difficult for electors to know in advance who may be available to help them return their ballot, whether the individual is a registered voter in the state, and whether they have delivered more than two envelopes for any election for persons who are not members of the person's immediate family. Some electors, with extremely limited social contacts, may only have regular contact with in-home, paid providers. These providers often serve multiple individuals and may be asked to assist with returning an absentee ballot by more than one client. Restricting who can return absentee ballots will result in confusion and will negatively impact older voters and voters with disabilities.

For the reasons noted, **we ask you to oppose SB 939.**

GWAAR supports voting processes that ensure every eligible older adult who wants to vote, can vote, no matter where they live or how they choose to vote. Thank you for your consideration of these comments providing additional information on SB 214. We appreciate the interest in and efforts of policy makers to **preserve, protect, and enhance the voting rights of older adults and people with disabilities.** We look forward to continuing to work with you on policies that improve the quality of life of older people in Wisconsin.

**Working together to promote, protect, and enhance
the well-being of older people in Wisconsin**

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PROTECTING THE VOTE FOR ALL AMERICANS

Testimony In Opposition to SB 935

Wisconsin Senate Committee on Elections, Election Process Reform and Ethics

February 7, 2022

Senators Bernier, Darling, Stroebel, Smith, and Roys,

We write in strong opposition to SB 935's provisions imposing new and needless requirements for absentee ballot certificate envelopes. This bill would compel the rejection of an absentee ballot where either a voter or a witness fails to fill in **any** of twelve separate fields on the certificate envelope. As drafted, these new requirements would be unconstitutional and also violate federal civil rights statutes. State legislatures do not operate in a vacuum, and legislators must comply not only with state constitutional requirements but with the United States Constitution and all federal law.

SB 935 seeks to override a policy put in place by the Wisconsin Elections Commission ("WEC") over five years ago in response to the League of Women Voters of Wisconsin's advocacy. Currently, Wisconsin law provides that "[i]f a certificate is missing the address of a witness, the ballot may not be counted." Wis. Stat. § 6.87(6d). In 2016, WEC had initially construed that requirement to mean that an address was not "missing" if the witness had, at a minimum, recorded their street number, street name, and municipality.¹ In a letter dated October 11, 2016, the League made clear to WEC that that interpretation of Section 6.87(6d), which had been announced a week prior on October 4, would have run afoul of the U.S. Constitution if left unmodified. The revised policy issued on October 18, 2016—which required clerks to do everything they could reasonably do to ascertain a missing witness address or a missing component of a witness address—made it unnecessary to file the federal lawsuit our lawyers had prepared.² It is this policy that SB 935 now threatens to unravel.

Even worse, SB 935 seeks to compound the constitutional deficiencies of the WEC's previous policy by enumerating additional technical defects that will result in the mandatory

¹ See Wisconsin Elections Commission, Memorandum re: "Missing or Insufficient Witness Address on Absentee Certificate Envelopes" (Oct. 4, 2016), *available at* <http://www.gab.wi.gov/node/4191>.

² Wisconsin Elections Commission, Memorandum to Wisconsin Municipal and County Clerks, "AMENDED: Missing or Insufficient Witness Address on Absentee Certificate Envelopes" (Oct. 18, 2016), *available at* https://elections.wi.gov/sites/elections.wi.gov/files/memo/20/guidance_insufficient_witness_address_amended_10_1_38089.pdf.

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rejection of an absentee ballot, thereby greatly expanding the ways in which Wisconsin voters can be deprived of their right to participate in their democracy. SB 935 would require clerks to reject a ballot because a voter or witness fails to fill in any of the following: the voter's printed first name, the voter's printed last name, the voter's house or apartment number, the voter's street name, the voter's municipality, the voter's signature, the witness's printed first name, the witness's printed last name, the witness's house or apartment number, the witness's street name, the witness's municipality, or the witness's signature. This is not a matter of policy preferences and choices, but rather what federal law allows and does not allow. The U.S. Constitution and Title I of the 1964 Civil Rights Act simply do not permit election officials to reject and refuse to count ballots with technical errors or omissions.

As we explained to the Commission back in October 2016, rejecting an absentee ballot for a purely technical defect on the absentee ballot certificate envelope³—such as omitted information that is obvious and/or can be readily ascertained from the face of the certificate or other readily available, commonly-used sources like WisVote or Wisconsin Department of Transportation (“DOT”) databases—would unnecessarily and unlawfully deny the right to vote without advancing a compelling state interest. This would violate the First and Fourteenth Amendments under longstanding U.S. Supreme Court precedents. Under those precedents, any burden on the right to vote must be balanced against a state's interest in that requirement. The Supreme Court has set forth the following test:

[T]he rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights. Thus, as we have recognized when those rights are subjected to “severe” restrictions, the regulation must be “narrowly drawn to advance a state interest of compelling importance.” *Norman v. Reed*, 502 U.S. 279, 289, 112 S.Ct. 698, 705, 116 L.Ed.2d 711 (1992). But when a state election law provision imposes only “reasonable, nondiscriminatory restrictions” upon the First and Fourteenth Amendment rights of voters, “the State's important regulatory interests are generally sufficient to justify” the restrictions. *Anderson*, 460 U.S., at 788, 103 S.Ct., at 1569–1570; *see also id.*, at 788–789, n. 9, 103 S.Ct., at 1569–1570, n. 9.

Burdick v. Takushi, 504 U.S. 428, 434 (1992). Here, the state's interest in the voter and witness filling out each of these twelve fields is not nearly significant enough to override the voter's

³ EL-122, Absentee Certificate Envelope, *available at* <https://elections.wi.gov/sites/elections/files/2020-08/EL-122%20Standard%20Absentee%20Ballot%20Certificate-portrait%20%28rev.%202020-08%29.pdf>.

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overwhelming interest in having their ballot counted. This is so because each of these data points can be readily ascertained and/or supplied by state and local election officials. WEC and municipal clerks can and should pre-populate the absentee ballot certificate, which already bears a unique identifying code assigned to that voter's specific ballot, with all of the voter's information, including the voter's printed first name, the voter's printed last name, the voter's house or apartment number, the voter's street name, and the voter's municipality. Requiring a voter to fill out all of this information is entirely unnecessary and duplicative as this information has already been provided on the voter's absentee ballot application online at myvote.wi.gov or on their print application. The voter should only be required to sign the certificate envelope.

The witness certification must be treated similarly. The legislative intent animating this new witness address requirement is the same as that underpinning the entire witness certification: to facilitate any law enforcement investigation into possible instances of absentee ballot fraud. A witness is not currently required to supply their printed first and last names, but they should be required to do so. However, omitting that information should not result in ballot rejection if that information can be readily ascertained from the face of the certificate, such as the signature. Similarly, the omission of any component of the witness's address cannot lawfully serve as grounds for denying a voter their right to cast a ballot, where this information can be readily ascertained by election officials by reference to available sources like WisVote, or by reference to the name and address information the witness *has* supplied. For example, SB 935, as drafted, would mandate the rejection of a ballot witnessed by a spouse who records the same street address as the voter but omits their municipality, as well as the rejection of a ballot witnessed by a registered voter who records their zip code or enough information to uniquely identify them in WisVote without any voter or witness outreach.

Even missing voter or witness signatures should not result in automatic invalidation. The Fourteenth Amendment's Due Process Clause requires election officials to afford voters an opportunity to cure that defect and sign their ballot in person at the clerk's office or have their witness do likewise.

Rejecting a ballot for easily-curable, technical defects is therefore illegal under federal law. SB 935 would impose an undue burden on such absentee voters' right to vote as protected by the First and Fourteenth Amendments, not justified by a compelling state interest. While the League will not quarrel with the state's purported antifraud objective in requiring a witness to sign and provide their name and address, insisting upon *perfection* in these fields serves no purpose. Where the missing name or address elements can be easily ascertained, the anti-fraud legislative purpose is in no way undermined. Therefore, the state's interest in a draconian certificate policy for voter and witness names and addresses on absentee ballot certificates is neither "compelling" nor "important." *Burdick*, 504 U.S. at 434.

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To the extent the state argues its interest in the complete address policy is in minimizing administrative burdens, the U.S. Supreme Court has explicitly stated that constitutional rights do not bend to administrative convenience and financial considerations. *See Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 218 (1986) (striking down Connecticut’s closed primary law on First Amendment associational rights grounds) (“Costs of administration would likewise increase if a third major party should come into existence in Connecticut, thus requiring the State to fund a third major party primary. Additional voting machines, poll workers, and ballot materials would all be necessary under these circumstances as well. But the State could not forever protect the two existing major parties from competition solely on the ground that two major parties are all the public can afford.”). Moreover, the Legislative Audit Bureau’s October 2021 report entitled “Elections Administration” reflects that a very small percentage of absentee ballots bear such technical omissions, so ascertaining missing information does not impose a significant burden on municipal clerks. The Bureau reviewed a random sample of 14,710 certificates and found that:

- 1,022 certificates (6.9 percent) in 28 municipalities had partial witness addresses because they did not have one or more components of a witness address, such as a street name, municipality, state, and zip code, including 799 certificates (5.4 percent) that did not have a zip code and 364 certificates (2.5 percent) that did not have a state;
- 15 certificates (0.1 percent) in 10 municipalities did not have a witness address in its entirety;
- 8 certificates (less than 0.1 percent) in 7 municipalities did not have a witness signature; and 3 certificates (less than 0.1 percent) in 2 municipalities did not have a voter’s signature.

Wisconsin Legislative Audit Bureau, Report 21-19 “Elections Administration,” at 42-43, *available at* <https://legis.wisconsin.gov/lab/media/3288/21-19full.pdf>. Therefore, perceived administrative burdens cannot be grounds to reject these ballots, instead of ascertaining the missing information and ensuring voters have their ballots counted.

The above constitutional principle has been squarely applied in a case concerning immaterial defects and omissions on a certificate envelope. The U.S. Court of Appeals for the Sixth Circuit has ruled on this very issue. In an opinion written by Judge Danny Boggs, who was appointed by President Reagan, and joined by Judge John Rogers, who was appointed by President George W. Bush, the Court found that any state interest Ohio had in rejecting absentee ballots for technical omissions and defects on the certificate envelope was far outweighed by the voter’s significant interest in having their ballot counted: “Ohio ha[d] made no such justification for mandating technical precision in the address and birthdate fields of the absentee-ballot

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identification envelope.” *Northeast Ohio Coal. for the Homeless v. Husted*, 837 F.3d 612, 632 (6th Cir. 2016). The three-judge panel rejected the notion that a mandatory rejection requirement for technical errors was necessary to fulfill the statute’s anti-fraud objective, as there were alternatives that had proven effective for that purpose in the past:

Before SB 205, boards were instructed to strike ballots if the identification envelope contained “insufficient” information and had discretion to “challenge” absent voters “for cause.” Ohio Rev. Code § 3509.07 (2013). That provision gave boards more than sufficient flexibility to investigate birthdate errors for fraud without the heavy-handed requirement of ballot rejection on a technicality.

Id. at 633. Accordingly, the court found that “the fraud interest does not offset the burden of technical perfection on the identification envelope’s address and birthdate fields.” *Id.* In reaching this conclusion, the court focused on the information’s “sufficien[cy]” to achieve the legislative purpose, not the perfection of the information provided. *Id.* at 632-33.

Furthermore, rejecting absentee ballots for such technical, easily curable omissions on the absentee ballot certificate envelope would also violate federal civil rights law. Title I of the 1964 Civil Rights Act provides that:

No person acting under color of law shall . . . deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, *if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election*[.]

52 U.S.C. § 10101(a)(2)(B). Technical errors or omissions as to the voter’s and witness’s names, addresses, and signatures are “not material in determining whether” a voter is qualified to vote under Wisconsin law. Where such omitted information can be supplied and pre-printed or readily ascertained by municipal clerks, their staff, or law enforcement on the back end, the anti-fraud legislative purpose behind Section 6.87(6d) is not undermined at all.

Therefore, the above federal constitutional and statutory rules prohibit rejecting Wisconsin voters’ absentee ballots and set boundaries on what this legislature can do in directing the rejection of ballots in state law. If a missing name or address component on the absentee certificate envelope can be ascertained by reference to the face of the certificate envelope, readily available and reliable sources such as WisVote or Wisconsin DOT databases, or even by contacting the voter and/or the voter’s witness in some fashion, the state legislature’s anti-fraud objective is still fulfilled, as the voter or witness can be identified and questioned, if need be.



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The Commission and its counsel reviewed these legal arguments back in 2016, agreed with us, and amended the absentee ballot certificate defect correction policy accordingly. Federal law on this issue has not changed since that time, and neither should Wisconsin law outlining the certificate, its requirements, and the process for curing technical, immaterial omissions. With respect, this Committee should vote against SB 935, as the proposal clearly violates the U.S. Constitution and federal law.

Sincerely,

/s/ Jon Sherman

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**Testimony of Jay Heck,
Executive Director of Common Cause in Wisconsin**

Monday, February 7, 2022

**Wisconsin State Senate Committee on Elections, Election Process
Reform and Ethics**

Common Cause in Wisconsin (CC/WI) is the state's largest non-partisan political reform advocacy organization with more than 9,000 members and activists residing in every county in Wisconsin. We strongly support free and fair elections in this state and nation and oppose attempts to make voting more difficult and burdensome.

Much to the disservice to Wisconsin voters, the measures being considered by this State Senate Committee on Elections today were formulated without bipartisan cooperation or consultation, without any collaboration or consultation with CC/WI, or with little to no input from other non-partisan voting rights organizations in Wisconsin.

Furthermore, these measures were devised and made public only late last week and are being subjected to a "fast track" process in which the outcome has already been preordained. These measures have hardly been able to be viewed, digested and understood by the public and additionally by important, trusted election administrators like municipal and county clerks whose jobs are directly related to the bulk of the issues addressed in these bills have not been consulted nor had time to review these bills in this timeframe. Yet they are expected to be passed along party lines and sent to the full State Senate for a vote, as soon as this Wednesday, February 9. Such a process is disrespectful of the voters of Wisconsin who have a right to expect a fairer and more transparent legislative process.

Additionally, CC/WI believes that the following measures being considered today would have a detrimental effect on voter participation in Wisconsin and make it more difficult and burdensome to vote in a state that already has among the most extreme and restrictive voting laws of any state in the United States today.

Accordingly, CC/WI strongly opposes the following measures up for consideration in this committee today. We urge a “No” vote against them and further expect and will encourage Gov. Tony Evers to veto them should they be advanced and passed through the Wisconsin Legislature.

Senate Bill 935: This “catch all” measure purports to address certain kinds of election “fraud” and prohibits private resources and contracts for election administration without providing public resources, restricts who may perform tasks related to election administration, restricts the ability to correct minor mistakes/defects on absentee ballot certificates, restricts returning absentee ballots solely to the office of the municipal clerk, appointment of election officials, imposes restrictions on allowing an employee of a residential care facility or qualified retirement home to serve as a personal care voting assistant during a public health emergency or an incident of infectious disease, and imposes severe penalties.

Why CC/WI is opposed: This measure is a vast overreach. It imposes unnecessary restrictions on providing assistance to voters who are residents of nursing care facilities, reduces resources available to provide safe voting without providing additional public resources, restricts ability for election clerks to make common sense address corrections to absentee ballot envelopes which will result in qualified ballots not being counted, imposes unreasonable restrictions on who can be a poll worker and provides for unreasonably severe penalties. It will result in the disenfranchisement of voters for minor, technical mistakes.

Senate Bill 937: This measure severely restricts who can be considered or who qualifies to be an “Indefinitely Confined Voter” for purposes of receiving absentee ballots automatically and provides severe penalties for non-compliance.

Why CC/WI is opposed: It should be up to each Wisconsin voter to determine whether or not they want to receive an absentee ballot in the mail to utilize and not up to a partisan politician. This measure does not even consider a global pandemic, whether it be COVID or similar pandemics in the future, to be a sufficient reason to request an absentee ballot as an indefinitely confined voter. It would also require voters to apply for an absentee ballot for every election instead of just once, for subsequent elections as is now the case. The penalties for “violation” of this unnecessary measure are ridiculously and unreasonably punitive.

Senate Bill 938: This measure provides for the utilization of information from the Wisconsin Department of Transportation to verify U.S. citizenship and would require the designation: “not to be used for voting purposes” to be stamped on state issued driver’s licenses and other state issued photo ID.

Why CC/WI is opposed: This measure is completely unnecessary and xenophobic. Currently, only U.S. citizens may vote in elections and this additional classification is completely unwarranted and divisive. Furthermore, this measure will potentially disenfranchise qualified electors and relies on unreliable sources for citizenship information.

Senate Bill 939: This measure severely restricts the absentee ballot application process, restricts and prohibits the unsolicited mailing or transmission of absentee ballot applications and absentee ballots, restricts the secure delivery of absentee ballots, restricts the canvassing for absentee ballots, further restricts voter registration requirements, electronic voter registration, and provides unreasonable penalties for “violation.”

Why CC/WI is opposed: This unwarranted measure makes the entire process of voting by absentee ballot much more onerous and difficult. Absentee voters would need to provide proof of identification for every election. Under this bill, a voter must submit a separate application for each primary and the election associated with that primary for which the voter wishes to receive absentee ballots automatically. It would require the WEC to prescribe the form and instructions of the absentee ballot application and also unnecessarily require the absentee ballot application to be separate and distinct from the certificate envelope in which voters must seal and submit absentee ballots, the outer portion of which includes certifications of both the voter and a witness. Additionally, the bill requires that the application requires the voter to certify facts establishing that he or she is eligible to vote in the election and must include excessive and unnecessary information. In short, this measure discourages voting by absentee ballot, even for voters who have relied on this method of safe and lawful voting for years.

Senate Bill 940: This measure would require the Wisconsin Elections Commission to identify and seek a correction to any new or changed voter registration that contains any information different than what is contained by information compiled by the Department of Transportation within ten days by mailing a notice to the voter.

Why CC/WI is opposed: This measure is unreasonable and could result in the disenfranchisement of many voters because of a simple error or discrepancy in the information compiled by the DOT and on a voter registration form.

Senate Bill 941: This measure dilutes and diminishes the role of the non-partisan professional staff of the Wisconsin Elections Commission and provides for micromanagement of election-related decisions by partisan legislators. It would forbid WEC staff from taking any action to implement federal election guidance and procedures without the approval of partisan state legislators who are on the Joint Committee for the Review of Administrative Rules (JCRAR) with some exceptions.

Why CC/WI is opposed: This measure is very possibly illegal under federal law and it is nothing less than a power grab by partisan legislators seeking to seize control of the decision-making process from WEC staff and Commissioners. It also injects more partisanship into basic questions of election administration in the state.

Senate Bill 942: This measure requires the Wisconsin Elections Commission to submit an annual report to the Legislature's Joint Committee on Finance (JCF) detailing "all failures" of WEC and the Department of Transportation, Department of Corrections and Department of Health Services to comply with "certain election-related activities." It would abolish one or more full time positions in each of those agencies and lapse up to \$50,000 per day for "non-compliance" or for providing "erroneous guidance" as determined by JCF.

Why CC/WI is opposed: This measure is completely unreasonable and extremely punitive in both the reporting requirements and the penalties imposed by highly partisan legislators seeking to control the financial and policy-making process involved in Wisconsin elections. It is a power grab of the very worst kind and it is completely unwarranted.

Senate Bill 943: This bill requires the Elections Commission to weekly submit to the Joint Committee for Review of Administrative Rules all documents and communications from the commission that the commission issued in the previous week that are applicable to municipal clerks generally and qualify as guidance documents. If JCRAR determines that such a document or communication satisfies the definition of a rule under current law, JCRAR must notify the commission of that determination and the commission must notify the municipal clerks that the document or communication is withdrawn and no longer applicable.

Why CC/WI is opposed: This measure is micro-management in the extreme by partisan legislators over the everyday operations of the non-partisan WEC staff and is tantamount to a complete state legislative takeover by partisan legislators of Wisconsin elections.

Senate Bill 934 and Senate Bill 936: While CC/WI finds there are portions of these bills that are legitimately good ideas, they nevertheless are attached to other measures that fail to improve Wisconsin election law. For example, in SB 934, there are good provisions on security and list maintenance, but these are rolled into a bill that requires WEC to treat ERIC data that someone moved as 'reliable', when in 2019 the data proved to be unreliable and this treatment of voter registration information will result in a purge of eligible voters. The audit provision in SB 936, while not a Risk Limiting Audit as CC/WI supports, is an improvement on current statutes by requiring the audit to be pre-certification and done by hand. While there are reasonable provisions and fixes in some of these bills, they are attached to measures that harm voters, do nothing to further election integrity, and continue to erode confidence in our elections and democracy. For these reasons, CC/WI is opposed to SB 934 and SB 936.

Senate Joint Resolution 101: This constitutional amendment, proposed to the 2021-22 legislature on first consideration, does all of the following:

1. Provides that no state agency or officer or employee in state government and no political subdivision of the state or officer or employee of a political subdivision may apply for or accept any donation or grant of private resources for purposes of election administration.

2. Prohibits the use of a donation or grant of private resources for purposes of election administration.
3. Prohibits any individual other than an election official designated by law from performing any task in election administration.

A constitutional amendment requires adoption by two successive legislatures and ratification by the people before it can become effective.

Why CC/WI is opposed: This measure would prevent any city, town, village or municipality from applying or accepting any private donation for the purpose of mitigating the effect of COVID such as for masks, cleaning products, plastic shields, hiring poll workers or for any other reason even if there are insufficient public resources available for the purpose of making voting safe and free from possible infection and disease. There is no provision in this measure to provide increased public resources to replace private support for safe voting practices and would likely result in decreased voter participation.

Thank you for your respectful consideration of our views.