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February 7, 2022

To: Senate Committee on Elections, Election Process Reform and Ethics Re: Opposition to
SB 941, SB 936, SB 937, SB 938, SB 939, SB 942, SB 943 and SJR 101

The League of Women Voters of Wisconsin believes that good government depends on the informed and active participation of its citizens, and that voting is a fundamental citizen right which must be guaranteed. Wisconsin election laws should provide citizens with maximum opportunity for registration, voting at the polls and absentee voting. Further, election administration should be adequately coordinated and funded to achieve statewide standards uniformly applied, verifiable results and local municipal effectiveness.

Since its founding in 1920 the League has studied many of the issues addressed in the bills before you in today's public hearing. Our members have agreed and affirmed the positions and principles stated above. We oppose several of the bills you are considering today for the following reasons:

- Some make it much harder for voters to apply for and cast an absentee ballot;
- Some add new levels of bureaucracy to election administration that will only complicate procedures and slow productivity for election officials;
- Some can only be characterized as a power grab by a legislative branch seeking to control elections.

Given that none of these proposals would improve elections, they would be a net loss for voters.

Therefore we oppose the following bills and urge you to reject them:

SB 941 This bill imposes requirements on the Wisconsin Elections Commission (WEC) that are not required for any other state agency. It would allow inappropriate legislative oversight of an agency tasked with overseeing the electoral activities that impact all Wisconsin voters. Voters have the right to expect electoral agency functions to be monitored and not micromanaged.

SB 936 This bill requires that, in the event of a recount, the municipal clerk is required to print and make available paper copies of all absentee ballot applications received electronically for the election. This is an impractical demand, especially in a statewide election. Also, legislators should be given copies only of complaints that could involve their own campaign or that of an opponent.

SB 937 This bill makes it harder for citizens with long-term disabilities to exercise their vote, while doing nothing to improve the security of elections.

SB 938 While it is appropriate to maintain an accurate list of electors, this bill is deeply flawed. It would disenfranchise many of the same groups of electors who are already burdened by voter photo ID and restrictive proof of residence requirements. It requires that WEC's voter registration database be coordinated with databases in various federal and state agencies. In particular, the Systematic Alien Verification for Entitlements (SAVE) database is limited to a select group of non-citizens and is not a comprehensive list. Updates are not frequent. The result would be false positives that could disenfranchise qualified citizens.

SB 939 Similar to SB 937, rather than improve the voter experience this bill complicates it for no apparent reason. Absentee voters should not have to provide ID for every election when the Clerk can keep a copy of the ID on file. This bill requires voters to submit an application (with ID) in addition to completing the certificate envelope.

SB 942 This very punitive bill singles out the Wisconsin Elections Commission for an unreasonable level of legislative control. Threatening to reduce staff in a key state agency does not consider what is best for voters, and it certainly will not improve elections.

SB 943 Like SB 942 this bill singles out the WEC for an unreasonable level of legislative control over elections. This potentially harmful oversight will only add confusion for local election officials and certainly will not improve elections.

SJR 101 It is reasonable for private funds to have some regulation, but the practice should not be banned. A constitutional amendment to ban private resources is uncalled for and utterly inappropriate.



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.



Senate Bill 943

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

February 7, 2022

Stewart Whitson
Visiting Fellow

Opportunity Solutions Project

Chairwoman Bernier and members of the committee,

My name is Stewart Whitson, and I am a visiting fellow at Opportunity Solutions Project (OSP). OSP is a non-profit, nonpartisan advocacy organization dedicated to advancing policies that reduce barriers to work and that promote free and fair elections by making it easy to vote, but hard to cheat.

Thank you for hearing this legislation before your committee. I am submitting this testimony in support of Senate Bill 943.

Across the country, in the lead up to the 2020 election, state and local election officials, citing COVID-19 worries, made a flurry of last-minute, unilateral changes to state election procedures. In the process they undermined, and in many cases simply ignored, state election law. Desperate times called for desperate measures, they said. Some of these election officials were well-intentioned, others were not. Yet they all shared something in common. All of them took it upon themselves to simply ignore the rule of law, and instead of relying on the laws passed by their state legislature to guide their elections, they relied instead on their own keen judgement to decide how their state's election should be run. In their mind, the end justified the means.

But the end never justifies the means, and now the Wisconsin legislature, witnessing this behavior firsthand in its own backyard in 2020, has brought forward this bill to establish a clear guideline for the Elections Commission that it does not possess the power to make or alter election law, only the power to help carry out the law made by the legislature itself.

Senate Bill 943 requires the Elections Commission to submit to the Joint Committee for Review of Administrative Rules (JCRAR), every week, all documents and communications issued by the commission that are applicable to municipal clerks generally and qualify as guidance documents.

The bill requires JCRAR to determine if the document or communication satisfies the definition of a rule under current law, and if it does, the document or communication must be immediately withdrawn. Under this bill, the commission may still promulgate the withdrawn document or communication as a rule should it decide to do so, but that decision is left to the JCRAR, not the commission.

Finally, the bill also requires the commission to provide a disclaimer with all guidance documents that it provides to municipal clerks that remind the clerks that its guidance does not have the force of law.

It is not the job of election officials to create election law. It is their job to carry out the laws created by the legislature. This bill would ensure that occurs in all elections moving forward.

For all these reasons, I urge you to support Senate Bill 943.

Thank you for your time.

Stewart Whitson
Visiting Fellow
Opportunity Solutions Project (OSP)

Senate Bill 943

February 7, 2022

Testimony from Rep. Spiros

Hello, and thank you Chairwoman Bernier and members of the Senate Committee on Elections, Election Process Reform and Ethics for allowing me to testify on Senate Bill 943 relating to the Wisconsin Elections Commission (WEC) sending guidance documents to the Joint Committee for Review of Administrative Rules (JCRAR).

This bill comes after multiple years of WEC sending guidance documents to local clerks to guide election administration. These are supposed to just be guidance documents, but we can see from the Legislative Audit Bureau's (LAB) audit of the 2020 election, some of this guidance should have actually been submitted as rules to JCRAR. LAB identified various situations where WEC sent guidance that should have been promulgated as rules to have the full effect of law behind them. Examples of this include contents of training that municipal clerks provide to special voting deputies (SVDs) and election inspectors, establishment of drop boxes where individuals could return absentee ballots, ballot counting procedures, curing of ballots, and relocation of polling places.

SB 943 is an accountability bill that requires WEC to provide a weekly update to JCRAR of any guidance documents sent to municipal clerks. By giving JCRAR the ability to review these documents as they come out, they can determine if any of the guidance meets the definition of a rule. JCRAR must then inform WEC that they must go through the rule-making process in order to promulgate the rule, which would have the effect of law. WEC must then inform the municipalities that the documents are no longer applicable and are withdrawn.

Changes were made in the 2020 elections only through guidance documents, not laws or rules. SB 943 will ensure that this guidance is reviewed to help restore confidence in the election process.

Again, thank you again for allowing me the opportunity to testify in support of this bill.



Alberta Darling

Wisconsin State Senator | District 8

**TESTIMONY BEFORE THE SENATE COMMITTEE ON
ELECTIONS, ELECTION PROCESS REFORM AND ETHICS
Senate Bill 943
Senator Alberta Darling
February 7, 2022**

Thank you, Senator Bernier and committee members, for hearing Senate Bill 943.

During the 2020 election, the Wisconsin Elections Commission (WEC) made several changes to the way the state handles elections without approval from the Legislature. Those changes were made through guidance documents rather than through the rule-making process.

This committee is working on and has already passed several bills based on the decisions made by WEC. For example, Senate Bill 209, which I authored, created a safe and secure process for using drop boxes in an election. That bill was approved by this committee and the issue is now in front of the Wisconsin Supreme Court.

While WEC outlined that drop boxes should be monitored and secured in their guidance document, there were drop boxes in city parks and outside of grocery stores that did not seem to satisfy this requirement. Since guidance documents do not carry the force of law, there was no penalty for communities that didn't monitor their drop boxes.

Senate Bill 943 will make WEC more accountable by requiring weekly reports to the Joint Committee on Administrative Rules (JCRAR) of guidance given to clerks. JCRAR will be able to review that guidance and decide whether or not it must be promulgated as a rule and go through the already established rule-making process.

The bill also states that any guidance documents sent to clerks must contain a disclaimer that includes the definition of a “guidance document” and that the guidance documents, unlike administrative rules, do not have the force of law.

We hope that Senate Bill 943 will help restore confidence in our electoral process and provide better oversight of WEC while promoting transparency in their decisions.

Thank you for the opportunity to testify.



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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.