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# SHAE SORTWELL

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STATE REPRESENTATIVE • 2<sup>nd</sup> ASSEMBLY DISTRICT

**Hearing Testimony**  
**Assembly Committee on Campaigns and Elections**  
**June 6, 2023**  
**Assembly Bill 298**

Chairman Krug and members of the Assembly Committee on Campaigns and Elections – thank you for giving me the opportunity to speak on AB 298, relating to polling place closures.

There have been multiple attempts by city executives, notably in the city of Milwaukee, to close polling locations last minute. Unprecedented long lines and the lack of efficient public notice caused many voters to not bother turning in a ballot or not make it to their proper polling location on time.

AB 298 protects people’s right to vote by creating a more accountable system when a municipality seeks to close a polling location(s).

Under this bill, a municipality may close no more than 50% of its polling locations unless voted on by its legislative body more than 30 days prior to an election and after a public hearing on the proposed discontinuation. Within 30 days before an election, a polling location may only close with the approval of both the head of the municipality’s legislative body and the municipal clerk. If any closures occur, the municipality is required to provide proper notice to the public in accordance with public notice law.

In the event a polling location closes, the public will at least be better notified under this bill. And so, potential voters will be better prepared to go to their proper polling location and submit their vote on time.

I want to thank the committee for your time and consideration. I am happy to answer any questions members of the committee may have.



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# RACHAEL A. CABRAL-GUEVARA

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STATE SENATOR • 19<sup>TH</sup> SENATE DISTRICT

*Testimony before the Assembly Committee on Campaigns and Elections*

*Senator Rachael Cabral-Guevara*

*June 6, 2023*

Hello, Chairman Krug and members of the committee. Thank you for allowing me to provide testimony on Assembly Bill 299, an important piece of legislation that will help protect the votes of our service members.

During the 2022 election cycle, a gap in absentee ballot security for military members was exploited by an election official. This election official sent unsolicited military absentee ballots to the house of a state representative who then turned them over to law enforcement. Luckily those ballots were not falsely voted and returned, but this incident highlighted the need for bolstered security measures for these ballots.

Unlike regular absentee electors, military absentee electors do not require an ID to be on file with the municipal clerk prior to them sending the ballot to the elector. Additionally, military members have the added option of receiving their ballot via email and are not required to have their witness be a U.S. citizen. Wis. Stat. 6.22(2)(e); 6.22(2)(b).

This bill would require those requesting a military absentee ballot to also provide their federal Department of Defense number on the application. The municipal clerk would then be required to send the absentee ballot while working to verify the number with the Department of Military Affairs. In order to streamline the process for both the clerks and military electors, this verification would only be required every six years.

This proposal also allows military electors to return their ballots via email—so long as they use their official Department of Defense account. By adding this as an option, we can make the voting process more streamlined for our service members.

I am hopeful you will be able to support this critical piece of legislation that will help improve both trust and the security of our elections in Wisconsin.



**Testimony on Assembly Bill 298  
June 6, 2023**

Chair Krug, Ranking Member Snodgrass, and members of the Assembly Committee on Campaigns and Elections,

Thank you for the opportunity to submit testimony in opposition to AB 298, relating to polling place closures.

I appreciate the intent of the authors of this bill, but I have serious concerns about AB 298 as introduced. Closing or consolidating polling places is a very serious issue, especially when it happens within 30 days of an election. I have been outspoken at the local level within my own community against polling place consolidation, because I believe that polling places should only be closed or consolidated in the most serious of circumstances - and with the most rigorous of public notice requirements - especially in the weeks leading up to an election.

I also believe that state law must provide a more workable framework for local clerks and governing bodies to follow when an emergency situation requires a polling place to be closed or relocated. We saw that need on full display in April of 2020, when court cases dictated much of our election timeline as we went to vote during the first months of the COVID-19 pandemic. However, I am concerned that through a well-meaning effort to prevent the chaotic polling place closures of that election from being repeated, AB 298 inadvertently creates a legal roadmap for future polling place closures without meaningful safeguards to protect the rights of voters.

Unfortunately, AB 298 as introduced would broadly legalize the closure of up to half of a municipality's polling places less than 30 days before an election, without a vote of the local governing body that established the polling places in the first place, and without any finding of emergency. I have attached a memo from Legislative Council that outlines current law on polling place closures within 30 days of an election. While there are some gray areas that should be clarified by WEC rulemaking, the courts, and the legislature, the attached memo makes clear that outside of a narrow provision in Chapter 7 of state statutes (which allows the poll workers for a particular polling place to relocate it on Election Day in an emergency situation), there is no existing legal authority to close, relocate, or consolidate a polling place within 30 days of an election.

In a time of ongoing poll worker shortages, I worry that the provisions in this bill could lead to future last-minute polling place consolidations not because of an emergency, but because of

**15<sup>th</sup> SENATE DISTRICT**



expediency. I encourage members of the committee to carefully read this bill and the attached Legislative Council memo, which makes it clear that AB 298 would make closing polling places significantly easier than current law does.

There are good ideas in this bill - like barring the closure of more than half of polling places and requiring a public hearing when closing polling places outside of the 30 day window before an election - but they are paired with a set of procedures that would make closing polling places within 30 days of an election far easier than it is under current law.

Emergencies do happen, and we should give our clerks and local governing bodies appropriate guidance for when they do. I understand WEC is currently working on some rulemaking on this issue, and Chapter 7 also already includes some procedures that address these issues. Beyond that, I believe that any allowance for closing polling places shortly before an election should have strict requirements, including:

- a finding of emergency that necessitates the closure
- a vote of the local governing body whenever time allows (and possibly a supermajority requirement)
- public notice requirements that are actually likely to inform voters, particularly in communities where a newspaper is only published on a weekly basis; and
- stricter requirements for closing polling places in communities that have a smaller number of polling places to begin with (the vast majority of municipalities have only 1 polling place, or only a handful of polling places).
- We need these safeguards to ensure that voters can be confident that, when they head out to vote, they know exactly where they need to go.

I hope that the authors of this bill will introduce an amendment to rework this bill and address these issues, but I have serious reservations about moving forward with the bill before that amendment has been publicly introduced. For that reason, I hope this bill will not be scheduled for an Executive Session until this Committee is given an opportunity to hold another Public Hearing either on a substitute amendment or a new bill that addresses these concerns.

Thank you again for your consideration, and please feel free to reach out to me if you have any questions.

Sincerely,



Mark Spreitzer  
State Senator  
15th Senate District

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# Wisconsin Legislative Council



Anne Sappenfield  
Director

TO: SENATOR MARK SPREITZER

FROM: Katie Bender-Olson, Principal Attorney

RE: Closing and Relocating Polling Places

DATE: June 5, 2023

You asked whether and how municipalities may close and relocate polling places under current law, including during an emergency. State law gives municipal governing bodies broad authority to determine polling locations up until 30 days prior to an election. After that point, state law permits poll workers at a particular polling place to close and relocate the polls if certain conditions exist.

State law does not provide explicit authority for any other individual or entity to close or relocate polling places, nor does it create any special procedure for closing or relocating polling places during an emergency.

## **CLOSING AND RELOCATING POLLING PLACES MORE THAN 30 DAYS BEFORE AN ELECTION**

State law requires city councils, village boards, and town boards to establish polling places at least 30 days before an election.<sup>1</sup> These municipal bodies have authority to freely close and relocate polling places at any time that is more than 30 days prior to an election. However, locations chosen for polling places must still comply with other statutory requirements, such as being accessible by voters with disabilities and allowing all voters within a ward to vote at the same polling place. [s. [5.25](#) (4) (a) and (5) (a), Stats.]

## **CLOSING AND RELOCATING POLLING PLACES CLOSE TO AN ELECTION**

State law allows relocation of individual polling places within 30 days of an election, but only if certain conditions exist. Specifically, poll workers at a designated polling location may “adjourn to the nearest convenient place” if it becomes “impossible or inconvenient” to hold an election at that polling location. [s. [7.37 \(1\)](#), Stats.] State law does not define when it is impossible or inconvenient to hold an election at a particular polling place. Instead, state law leaves this determination to the poll workers at that location.

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<sup>1</sup> In the City of Milwaukee, the Board of Election Commissioners determines the location of polling places, but the requirement to establish polling places at least 30 days prior still applies. [s. [5.25](#) (2) and (3), Stats.]



However, there are other statutory requirements that apply when poll workers determine that relocating a polling place is necessary. They must make a proclamation of the move and must station a police officer or other designated individual at the old polling place to inform voters of the move. [s. 7.37 (1), Stats.]

## **CLOSING OR RELOCATING POLLING PLACES DURING A STATE OF EMERGENCY**

State law does not explicitly permit anyone other than local poll workers to move a polling place fewer than 30 days prior to an election, though this did occur in 2020 following Governor Evers's declared public health emergency (Executive Order #72, issued March 12, 2020). At that time, WEC issued [guidance](#) stating that municipal clerks had authority to close and consolidate polling places without approval of the city council, village board, or town board in situations where the effects of Covid-19 required changes to or consolidation of polling places, such as a shortage of available poll workers. Several municipalities used this approach to close and consolidate polling places at the 2020 Spring Election.

The WEC guidance authorizing clerks to close and consolidate polling places on their own authority has been subject to legal challenge, however. A petition for original action was filed with the Wisconsin Supreme Court in November 2021, entitled *Kleefisch v. WEC*, 2021AP001976-OA. The lawsuit challenged WEC's guidance authorizing clerks to consolidate polling places alleging that the guidance was contrary to law, or alternatively, that any such guidance must be promulgated through the administrative rulemaking process. The Wisconsin Supreme Court [denied](#) the petition for an original action in February 2022, without addressing the merits of the challenge.

No court has resolved the question of whether a municipal clerk or other entity may close and move polling places during a declared emergency, but there is unclear legal support for such a conclusion. The statutes do not provide clerks with express authority to do so. The Legislative Audit Bureau conducted a 2021 audit of Election Administration, [Report 21-19](#), which concluded that the WEC guidance authorizing clerks to relocate polling places did not comply with state statutes and recommended WEC withdraw the guidance. WEC submitted a formal response indicating the recommendation was moot because its guidance applied only to the 2020 Spring Election and Executive Order #72.

WEC further indicated that it would pursue administrative rulemaking to allow moving of polling places during future pandemics, natural disasters, and catastrophic events. [[Progress Implementing Legislative Audit Bureau Recommendations](#), issued by WEC on March 31, 2022, at page 30.] In its response, WEC seems to acknowledge that clerks and local governments cannot relocate polling places within 30 days of an election under current state law and that administrative rules are necessary to provide such authorization. WEC has initiated the rulemaking process and indicated its intent to promulgate a rule that would allow clerks to relocate polling places in a case of emergency.<sup>2</sup>

Additionally, there is no explicit statutory authority for the Governor, DHS, or a local health officer to relocate a polling place during a state of emergency. The Governor has authority to declare a state of emergency based on a disaster or public health emergency, and may designate DHS as the lead agency to address a public health emergency. [ss. 323.10 and 323.12, Stats.] The Governor has additional

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<sup>2</sup> WEC issued scope statement [SS 010-22](#) in February 2022, relating to polling place emergency planning. The [stated objective](#) of the proposed rulemaking is to "allow municipal clerks who must run an election after a crisis has impacted polling places within 30 days of that election to remain statutorily compliant even if circumstances demand last-minute changes."

powers during a declared state of emergency, but these do not expressly include consolidating or relocating polling places. Unlike the Governor's power to suspend administrative rules during an emergency, the Governor does not have authority to suspend state statutes, so cannot supersede statutes establishing procedures for relocating polling places.

DHS and local health officers have authority to respond to public health issues, which includes the power to forbid public gatherings. [ss. 252.02 (3) and 252.03 (2), Stats.] This authority may include ordering closure of a particular polling place to control an epidemic, but there is no explicit authority for DHS or local health officers to order the relocation or consolidation of polling places.

No court has addressed the authority of clerks or other governmental actors to close and relocate polling places during an emergency. As noted, state law authorizes the local governing body to relocate polling places more than 30 days prior to an election, and authorizes poll workers at a particular polling place to do so shortly before an election. State law does not directly authorize any other officer or entity to close and relocate polling places during an emergency. However, it is possible a court would find legal justification after the fact for a governmental actor who took this action under extreme circumstances, such as a natural disaster. To reach this conclusion, a court would have to adopt a broad interpretation of existing emergency powers and find implied authority, given the lack of any direct authority.

Please let me know if I can provide any further assistance.

KBO:jal