



February 21st, 2022

Assembly Committee on State Affairs
Rep. Swearingen, Chair
State Capitol, Rm 123 W
Madison, WI 53708

Dear Representative Swearingen 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 AB 1005, AB 1004, AB 1002, AB 999, and AB 996.

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.

Assembly Bill 1005 (SB 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

unregistered at the polls or may not have at all if their move has been recent. People with disabilities are often non-drivers and most have a hard time getting where they need to go routinely. An extra trip to the polls or to a government agency to get documentation of proof of residency may not be able to be accomplished, especially in a short time-frame.

Additionally, many people with disabilities have insecure housing and move frequently. Especially for people with I/DD living in congregate settings, people may be moved on short notice, may move multiple times in a short period, and may not have options on where they move. This is becoming more common as staffing shortages are resulting in facility closures or less bed capacity. The bill makes it more likely for people with disabilities to lose their existing voter registration because of unstable housing.

BPDD notes three positive changes the bill makes to reduce the time voters wait in line to vote, and improve election forms for accessibility, usability, clarity, and readability and improve training for clerks.

Assembly Bill 1004 (SB 935)—Absentee ballots

The creation of personal care voting assistants in the event of public health emergency or infectious disease outbreak and the moved-up date by which Special Voting Deputies (SVD) must arrange to visit are positive.

The timing of SVD visits 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. BPDD urges SVD visits be completed no less than 10 days prior to an election and ballots sent out to those missing the visits the following day. This would provide at least nine days to receive, complete, and return the ballot. BPDD also notes there is no guarantee SVD will be available at every facility. We remain concerned residents who do not have access to voting information and who do not know what to ask may be disenfranchised by virtue of where they live.

The bill makes a positive change by requiring the clerk to post a notification of the absentee ballot defect on the voter's voter information page on MyVote Wisconsin. However, BPDD notes many people with disabilities do not have internet access or devices to connect to the internet and may not find this notice. If they do not know their ballot is defective, it may result in their vote not being counted. If a voter with a disability can access the notice, it may not be clear what corrections need to be made or how to correct the ballot.

BPDD is concerned minor mistakes which a clerk can correct under current law would result in more voters with disabilities' absentee ballots being marked defective and uncounted. The bill expands the number of required fields that must be completed correctly. Any mistake by voter or witness results in ballot being uncounted. The bill specifies the voter or witness is the only individual who can correct their mistake. For voters with transportation barriers and who used witnesses who may not be readily available to coordinate corrections, the added layer of complexity may result ballots with minor mistakes remaining uncorrected and uncounted.

Assembly Bill 1002 (SB 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. BPDD and disability advocates

appreciate the ongoing discussions with Senator Bernier to update the Indefinitely Confined Voter status, with the understanding that an additional amendment will be offered on the Senate floor to further improve the bill by clarifying the definition of “disability” and aligning it with language used by the Social Security Administration. Disability and aging advocates, including BPDD, have signed a letter of support for the amended version. Our comments below note specific provisions we support as well as concerns.

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.

Assembly Bill 999 (SB 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 options are the only way they can do the advance planning necessary to guarantee they can exercise their right to vote.

AB 999 would create the new restrictions listed below that would make it more difficult for voters to cast a ballot including:

- Requiring absentee voters to provide proof of identification every time they apply for an absentee ballot even if they have not moved or changed their name.
- Requiring voters to apply for absentee ballots for every election rather than for all elections in a calendar year.
- Requiring all in-person absentee voters to complete an absentee ballot application, even if they already have such a request on file
- Restricting who a voter may choose to return their absentee ballot

Repeatedly asking for the same information already on file and verified is unnecessary and burdensome especially for voters who have transportation, technology access, and mobility barriers. Voters with disabilities face the same challenges every election, which can cause significant difficulties applying for an absentee ballot—including lack of internet access to use MyVote Wisconsin, ability to get to the clerk's office, obtaining a copy of their ID to send via mail.

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.

This bill would restrict who can return an absentee ballot on a voter's behalf to the voter's immediate family or legal guardian or designate a registered Wisconsin voter who has not delivered more than two absentee ballots on behalf of absentee voters.

Current law recognizes a wide network of people who are willing to help their neighbors and allows people to choose who they trust to carry out important tasks. This approach better reflects the reality of people's lives and support networks. Many absentee voters with disabilities rely on friends, neighbors, extended family, and other community members to assist with routine errands and administrative tasks, including turning in their completed and secured absentee ballot.

Many absentee voters with disabilities do not have family members living close by that fit the definition of "immediate family" in the bill or guardians. Cousins, nieces, nephews, stepparents, in-laws, and other familial relationships are part of voter's familial networks. Even when absentee voters with disabilities have "immediate family" members, they may not live close by and may not be available or willing to return a voter's absentee ballot.

The ability to designate another registered voter to deliver an absentee ballot is insufficient and adds burden for absentee voters with a disability rather than providing a remedy. The burden is on the absentee voter to identify another registered voter who has not already delivered another absentee ballot and to designate that person in writing. Checking and verifying another person's registration status would be a barrier to many voters, and it is unclear why a person's registration status makes them better qualified to deliver paperwork. Many other important legal and governmental documents may be dropped off on behalf of someone else without any criteria imposed on the deliverer.

Assembly Bill 996 (SB 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.

STATE SENATOR KATHY BERNIER
TWENTY-THIRD SENATE DISTRICT



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From: Senator Kathy Bernier
To: The Assembly Committee on State Affairs
Re: Testimony on Assembly Bills 1003, 1004, 1005
Relating to: legislation responding to the issues raised by the Legislative Audit Bureau's review of the November 2020 election.
Date: February 21, 2022

Thank you, Chairman Swearingen and committee members for allowing me to provide testimony on Assembly Bills 1003, 1004, and 1005 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, Assembly Bill 1005 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.

Assembly Bill 1004 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.

Assembly Bill 1003 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 considering these bills to strengthen our elections system.



JOHN J. MACCO

STATE REPRESENTATIVE • 88TH ASSEMBLY DISTRICT

To: Assembly Committee on State Affairs

From: Representative John Macco

Date: February 21, 2022

In Favor of: AB 1003/AB 1004

Chairman Swearingen 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.

- AB 1004 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.
- AB 1003 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.

Date February 21, 2022

To Rep. Swearingen, Chair; Rep. Vorpapel, Vice Chair; members of the Assembly Committee on State Affairs

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

Re: Assembly Committee on State Affairs Public Hearing February 21, 2022

- Against – AB-996 / SB-941 **Elections Administration** Overseeing the administration of elections
- Against - AB 999 / 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.
- Information Only AB-1002 / SB-937 **Indefinitely Confined Voters** Status as an indefinitely confined voter for purposes of receiving absentee ballots
- Information Only -AB-1004 / 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 -AB-1005 / 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.
- Against – AJR 133 **Requiring photographic identification** to vote in any election
- Other – AJR 134 **Prohibiting the use of a donation or grant** of private resources for purposes of election administration and specifying who may perform tasks related to election administration

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 for people with disabilities provided by federal law as summarized in the linked document.

AB-996 Elections Administration - Against

DRW has the following concerns about AB 996:

- 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 bill 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, DRW recommends opposing AB-996.

AB 999 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.

AB 999 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 with 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 returns a voter's ballot in violation of these restrictions.

Concerns

While less restrictive than a 2021 proposal, there are several provisions which are very problematic for many disabled and elderly voters.

- 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 AB 999.

AB-1002 / 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. DRW has registered in support of the amended SB-937, with the understanding that an additional amendment will be offered on the floor to further improve the bill by clarifying the definition of disability in the bill and aligning it with the language used by the Social Security Administration.

Our comments on AB-1002 are for information only, as DRW is unable to support the bill without amendments. Our comments note specific provisions that we support as well as concerns.

Note: Please see the attached letter of support for the amended version of SB 937 from disability and aging groups and other partners.

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 receive 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 many residents with significant disabilities and frail elders who live in the community, and rely on this accommodation to vote. Because Wisconsin has been a leader in expanding community based long term care; over 80,000 people with disabilities and older adults are enrolled in these community 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.

AB 1002 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 similar to that used in some other states: *Permanent Absentee Voter Due to Disability, physical illness, or frailty.*

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. The bill specifies that a voter who fails to cast and return an absentee ballot in spring or general election (*current law states any election*) will receive notification that they will be removed from the rolls unless they notify the clerk. 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 if they did not vote in a primary election

Concerns about AB 1002

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 driver's 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 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 municipal 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 so may not receive it with enough time to complete and return it. 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.

5. The current language regarding eligibility states “ A disability that **will** last longer than one year. Concerns were raised at the Senate hearing regarding this language, and the author, State Senator Bernier will introduce an amendment to clarify it.

Recommendation. This language should be revised to state “A disability that **is expected to** last longer than one year. This better aligns with the author’s intent and give more clarity and to the voters who need this status. It also better aligns with the language used by social security in their definition of disability: *“The law defines disability as the inability to engage in any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment(s) which can be expected to result in death or **which has lasted or can be expected to last for a continuous period of not less than 12 months.**”* Part I - General Information (ssa.gov)

- For these reasons, we ask you to support the proposed amendments to AB 1002, and **if amended**, to support the amended bill.

AB-1004/ 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 AB-1004/ 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.
- AB-1004 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 about AB-1004/ SB 935:

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. Our Voter Hotline has already received calls from staff who are fearful of assisting residents with any voting related support.

The federal Centers for Medicare & Medicaid Services (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. Failing to provide such assistance could put facilities at risk for losing Medicare and Medicaid funding.

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.

Section 208 of the Voting Rights Act 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 helped 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. Municipalities do not have adequate funding to ensure accessible elections as required by the ADA.

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 these restrictions

- 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/or to a 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.

AB-1005 **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 on 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.

Recommendation: 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.

AJR 133 To create section 1m of article III of the constitution; Relating to: requiring photographic identification to vote in any election - **Against**

DRW is registering against this resolution because we are concerned that a Constitutional amendment is not the right vehicle for this type of policy change. Since it is difficult to change, it cannot be responsive to public need.

As an agency that directly assists disabled people who want to vote, we have heard about many disabled Wisconsinites who want to vote but do not have acceptable photo ID for voting as defined by current law. We have advocated for Wisconsin to expand acceptable ID options for voting. A Constitutional amendment would limit the ability to be responsive to these needs and to other needs.

Background. Access to photo ID is a barrier that prevents some disabled Wisconsinites from casting a ballot. Over 30% of Wisconsin adults are non-drivers and the number is growing as our population ages. Many people with disabilities do not drive; they do not have a driver's license and may not have other acceptable photo ID. While a free ID for voting can be obtained at Department of Motor Vehicle (DMV) offices, many people with disabilities have very limited access to transportation, especially accessible transportation. This is especially difficult in rural areas where many DMV locations have limited hours, are open only a couple of days a week, and may be at a significant distance with travel times in excess of 40 minutes each way. During the pandemic, DMV locations were closed for months; some locations are still closed.

Many of the voters we support are on a fixed income and have limited or no access to transportation. A ride to the DMV office to obtain a photo ID is not funded by Medicaid or other state transportation programs. Volunteer programs that provide transportation often do not have lift equipped vehicles, so they are not usable for persons with mobility disabilities.

In addition, we have heard from people with disabilities who struggle to provide the needed documentation. For example, individuals who have a representative payee to handle their bills and finances, may have difficulty providing the documents needed for proof of Wisconsin residency. Many people need access navigating the process of obtaining the required documentation, including a copy of their birth certificate.

Recommendations: Wisconsin should expand acceptable photo ID options for voting purposes to be inclusive of non-drivers.

- Some options to consider are: any photo ID card issued by the federal government, the state of Wisconsin, or a Wisconsin county, local government, or

- other governmental entity; regular college and university ID cards from all WI colleges and technical schools; high school student photo ID cards, and an affidavit for voters who have reasonable impediments to obtaining a photo ID.
- The option of an affidavit should be offered at polling places and early voting sites, and allow a voter to complete an affidavit of affirmation in lieu of photo ID. It could include the elector's residential address and date of birth, and have the elector sign a statement under penalty of false statement affirming their identity. According to the NCSL website, the affidavit option is available in a number of states - I did a quick scan and noted Connecticut, Delaware, Idaho, Michigan, New Hampshire, South Carolina, and South Dakota.

In addition, DRW encourages policymakers to take steps to expand options for obtaining photo ID including the following:

- Improving DMV access by expanding hours including adding evening and Saturday hours
 - Co-locating state ID operations at locations that are already accessed by people with disabilities and older adults such as Aging and Disability Resource Centers and income maintenance offices. Mobile locations would also be helpful and are used in some other states to outreach to people with disabilities and older adults. The physical accessibility of DMV offices should also be addressed.
- For these reasons, DRW recommends opposing AJR 133.

AJR 134 - prohibiting the use of a donation or grant of private resources for purposes of election administration and specifying who may perform tasks related to election administration. **Other**

As with AJR 133, DRW believes a Constitutional amendment is not the right vehicle for this type of policy change, as it is difficult to change, so cannot be responsive to public need.

The Resolution 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, how in some cases it has helped to address accessibility concerns.

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. Municipalities do not have adequate funding to ensure accessible elections as required by the ADA and HAVA.

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 ask you to work with us to ensure 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.