



CORY TOMCZYK

STATE SENATOR • 29TH SENATE DISTRICT

November 8, 2023

**Senate Committee on Shared Revenue, Elections and Consumer Protection
Testimony from Sen. Tomczyk in favor of Senate Bill 104**

Chairman Knodl and Members of the Committee on Shared Revenue, Elections and Consumer Protection, thank you allowing me the opportunity to testify today on hearing Senate Bill 104.

Under current state statute, if a local elected official is removed from office for cause, they are only prohibited from filling the vacancy caused by their own removal. They are not prohibited from holding that office in the future.

Senate Bill 104 would strengthen the integrity of elected office by preventing an individual removed for cause from holding that same position again. "For cause" is already defined in statute as "inefficiency, neglect of duty, official misconduct, or malfeasance in office." This means that the person has to actually do something wrong, not just have different political views than the body that removed them. The bill also does not prohibit the person from holding any other office: a removed mayor could run for city council or the Assembly.

This bill would also prevent someone from evading removal by resigning before removal proceedings are completed. If an elected official resigns after written verified charges are filed and before a public hearing is completed, they are also ineligible for that position in the future.

Lastly, under the substitute amendment, for the removal to affect future eligibility for the office the removal vote must have been by a 2/3 majority.

Again, thank you Chairman Knodl and Committee Members for allowing me to testify on this bill and I look forward to your support of Senate Bill 104.



JOHN SPIROS
State Representative • 86th Assembly District

November 8, 2023

Testimony on Senate Bill 104

Good Morning Chairman Knodl and members of the Senate Committee on Shared Revenue, Elections and Consumer Protection, and thank you for hearing my testimony this morning on Senate Bill 104. The bill closes a loophole in statutes that allows individuals who have been removed from local office to run for, and hold, that same position in the future.

Under current law, a person removed from local office by procedures outlined in statute is only prohibited from filling the vacancy left by their own removal. This means that they could run for the same position they were removed from the next election cycle. This is not unheard of. This very scenario occurred in Marshfield, WI a few years ago. The City Council removed the sitting mayor by an 8-2 vote after he deleted public records and lied about it. Less than a year later, he again ran for mayor.

The bill addresses this loophole by making two changes. First, it prevents persons who have been removed for cause from an elected position from running for that same elected office in the future. "For cause" is defined in statutes and includes things like neglect of duty, official misconduct, or malfeasance; "For cause" does *not* include removing someone simply because of their politics- an actual neglect of duty must have occurred. The bill does not prevent the person removed from running for a different elected position, for example if a mayor was removed he could still run for school board or city council.

Second, the bill addresses a situation where someone resigns to evade formal removal. If an elected official resigns after written verified charges are filed, but before a public hearing is completed, they would also be ineligible for that same position in the future. Again, their eligibility for other elected positions would not be affected.

The substitute amendment to the bill removes Section 3 and requires that the removal vote be a 2/3 majority for the removal to be permanent. The decision to remove Section 3 was made after discussions with local government organizations.

I want to be clear that this bill only applies to local office- it does not apply to state-wide positions. I also want to reiterate that the bill has been crafted to ensure that there is no room for political weaponization, and that an actual neglect of duty must have occurred.

Again, thank you Chairman Knodl and committee members for hearing my testimony on Senate Bill 104. I urge you to support this bipartisan bill and look forward to answering any questions you may have.

TESTIMONY REGARDING SB 104

August 21, 2023

Good afternoon and thank you for this opportunity to speak in behalf the SB104 sponsored primarily by Assemblyman John Spiros.

I had the opportunity to speak on this piece of legislation at the Assembly hearings some months ago and tried to make two points: The first was that the issue which 104 is trying to resolve is not unique to the City of Marshfield, and, the allowance of persons who have been removed from office under administrative procedures cause disruption in the orderly conduct of government.

While I feel those are two valid concerns, I wish to add a historical view of the question of who should be allowed to hold office after being previously removed from that office for misconduct.

My research surprised me in that it shows some rather startling facts:

This question is not a recent phenomenon.

It outlives the creation of our constitution and was an issue of heated debate during the creation of the constitution; and,

It even goes back to ancient debates over democracy itself.

In the Republic, Plato's Socrates raises objections to democracy. He claims that democracy is a danger due to excessive freedom. He also argues that, in a system in which everyone has a right to rule, all sorts of selfish people who care nothing for the people but are only motivated by their own personal desires can attain power. He concludes that democracy risks bringing dictators, tyrants, and demagogues to power. He also claims that democracies have leaders without proper skills or morals and that it is quite unlikely that the best equipped to rule will come to power.¹

It's easy to see the correlation between Plato's concerns and SB104. A person who has been rightly removed from office can manipulate a democracy for his/her own selfish purposes to reclaim the office from which they were removed. I tried to relate this in far less eloquent terms when I addressed this to members of the Assembly. Plato thought the only way around this obstacle was to elect "Philosopher Kings" who had no other duty or motivation other than the welfare of the republic although he doubted the practicality of such an event and thought that a democracy would ALWAYS turn into a dictatorship or oligarchy based on special interests.

The debate that started over 2100 years ago wasn't resolved by the creation of the Constitution of the United States. In fact, a new term was inserted into the argument by none other than James Madison.²

Madison saw this in terms which seem foreign to us in modern America. He used the term "factions" to describe what we would now call political "parties". Madison, like so many of our other founding fathers feared democracy because they knew how intemperate speech, rabble-rousing, and rhetoric

¹ The Philosophy of Plato; The Internet Encyclopedia of Philosophy

² Federalist #10 1887, The Bill of Rights Foundation. March, 2022

could move masses to do things both against their best interests including movement to violence. In any disputed or politically charged local issue, there is bound to be a "faction" who will support the accused and rally to right what they consider to be wrongful removal from office. It is not difficult to predict that passions will be high on both sides and the rhetoric will be combustible.

We, as a unified State, should, and perhaps must, remove any haven for rhetoric and demagoguery by not allowing persons who have demonstrated they have been unfit to hold public office. To allow a person who, having once-before removed from public office, to manipulate and abuse the freedom of speech to achieve revenge does not help us "form a more perfect union" but capitalizes on the worst parts of human nature.

I urge your favorable consideration of SB104.

Sincerely,

Ed Wagner
Alderman, City of Marshfield
Council President, City of Marshfield

MEMORANDUM

TO: Honorable Members of the Senate Committee on Shared Revenue, Elections and Consumer Protection

FROM: Marcie Rainbolt, Government Affairs Associate

DATE: November 8, 2023

SUBJECT: Support of Senate Bill 104

The Wisconsin Counties Association supports SB 104, which assists counties in ensuring the most-qualified persons are serving the citizens of our state in elected office.

Under current law, an elected county officer may be removed from office by the governor in the case of the sheriff, coroner or register of deeds and the county board in the case of the clerk, treasurer, surveyor, or county board supervisor. The clerk of circuit court may be removed by the judge or a majority of judges in the circuit.

In all cases, such an official may be removed only for “cause,” which is defined in §17.001 as “inefficiency, neglect of duty, official misconduct, or malfeasance in office.” To establish cause for removal, the removing authority (typically county board or governor) must hold a full due process hearing established in §17.16 and otherwise required by the Constitution based upon written charges filed by a resident taxpayer.

Under current law, there is nothing prohibiting an elected official from running for the office from which that official was previously removed. Likewise, if an elected official resigns from office prior to the removing authority holding a hearing on the charges seeking removal, there is nothing prohibiting that elected official from later running for the same office. It makes little sense to allow a person that has either been found to have been unfit for office or who resigned to avoid such a finding to be able to later run for the same office. Yet, that is what has happened in certain circumstances and threatened in others. This is especially problematic in situations where a removal proceeding or resignation in lieu of a removal proceeding occur late in an incumbent’s term of office.

From WCA’s perspective, effective local government relies heavily upon the good faith of the officials elected to do their job and do it well. An individual found to be unfit to hold the office should not be eligible to be placed on the ballot again.

Support of SB 104
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WCA fully supports the amendment drafted by the author removing section 3 of the bill language.

WCA respectfully requests that the committee support SB 104.