

STATE SENATOR KATHY BERNIER
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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.



WISCONSIN INSTITUTE
FOR LAW & LIBERTY

Testimony to the Assembly Committee on State Affairs

February 21, 2022

Thank you, Chairman Swearingen, Vice-Chair Vorgapel, and members of the committee for hearing my testimony today. My name is Kyle Koenen and I am the Policy Director at the Wisconsin Institute for Law and Liberty. While we are supportive of much of this package, I will focus my comments on aspects of Assembly Bills 996, 997, 1003 and 1004 today. We are also registering in favor of Assembly Bills 1002, 1005, and 1006 but do not have prepared testimony. Thank you to the authors for bringing this important reform package forward for consideration.

This past December, WILL released [“A Review of the 2020 Election”](#), a comprehensive examination of said election. A team of WILL researchers and attorneys spent 10 months submitting over 460 records requests to conduct in-depth statistical and legal analyses. As part of the process, we examined over 65,000 pages of documents, including 20,000 ballots and 29,000 absentee ballot envelopes. Our work has been cited extensively nationwide, with a recent Wall Street Journal editorial calling the review, [“The Best Summary of the 2020 Election.”](#) I have submitted a summary of the report and would be happy to present our findings with my colleagues at a later date if the committee has interest.

Assembly Bill 1004

First, Assembly Bill 1004 would create an alternative process for absentee voting in residential care facilities and qualified retirement homes during a pandemic or an incident of infectious disease.

Wisconsin Statutes provide that two voting deputies will be dispatched to qualified retirement homes and residential care facilities by the municipal clerk or board of elections in the community where the facility is located.¹

Despite this, on three separate occasions in 2020, WEC issued guidance that ran contrary to this statute, advising communities that they were not required to dispatch special voting deputies. We won't question the commission's motivations, and acknowledge the difficulty of the situation. However, it is abundantly clear that the advice was contrary to the letter of the law and had an effect on how clerks operated. Our report reviewed records from a sample of 35 communities that were required to appoint special voting deputies and found that only 2 communities

¹ Wis. Stat. 6.875(4)(a)

actually did so. We believe that the process laid out in the bill represents a reasonable alternative to the special voting deputy process in the event of a pandemic or infectious disease.

Assembly Bill 1004 also prohibits governmental entities from accepting grant money, equipment or materials from private sources for the purposes of administering an election. Last year, WILL released an in-depth report on how grants from the Center for Technology and Civic Life (CTCL) were administered in Wisconsin. Our review found that \$10.3 million was distributed to 196 communities, with approximately 86% of that funding going to the five largest cities in the state (Milwaukee, Madison, Green Bay, Kenosha and Racine). We also found disparities in funding on a per-capita basis, with cities like Racine and Green Bay receiving \$36 and \$53 per 2016 voter respectively. For comparison, Appleton and Waukesha only received \$0.51 and \$1.18 per 2016 voter respectively. Lastly, a statistical analysis found that CTCL grants had a potential electoral impact of approximately 8,000 votes in the direction of Biden. Government administration of elections should be impartial and fair, and the infusion of private dollars from various sources threatens that dynamic. This bill correctly remedies this problem by prohibiting private dollars from being used for election administration, period.

Lastly, our review found significant variation in how mistakes on absentee ballot certificates are handled. Despite records levels of absentee voting, absentee ballot rejection rates were considerably lower than usual in the Fall 2020 election than other recent elections, with 0.2% of ballots rejected. For comparison, the rejection rate was 1.35% for the Fall 2016 general election and 1.57% for the Spring 2020 election.

We also surveyed a sample of 50 communities, asking the extent in which they “cured” defective or incomplete absentee ballot certificates. Of the 21 responses we received, 13 indicated they took action to cure mistakes, while 8 said they did not. Consequently, we reviewed nearly 29,000 absentee ballot certificates from around the state to practically see how communities handled defective absentee certificates. We found that practices varied considerably, with some communities ignoring mistakes, some correcting them and others rejecting ballots outright. A consistent standard and practice is needed to ensure that a voter has an equal chance of having their ballot counted regardless of where they live. This bill accomplishes just that by defining what constitutes a complete absentee ballot certificate, and bars clerks from making corrections.

Assembly Bill 1003

Assembly Bill 1003 makes changes to the complaint process at the Wisconsin Election Commission that we believe are prudent. Currently, the commissioners have delegated their responsibility to decide complaints to the Chair and

Administrator. This delegation results in citizens who have filed complaints with the commission, as permitted by statute, having their complaints to essentially be decided by staff and not by the commissioners. These complaints should be handled in a timely manner and decisions should be made by the full commission at a public meeting. Another provision allows complaints against WEC to bypass the standard complaint process and go straight to circuit court, thus potentially allowing for a timelier disposition of a case. The need for timely resolution of election disputes is important to ensure that laws are properly followed and the rules are set prior to an election.

Assembly Bill 997

The Help America Vote Act (HAVA) was passed by Congress in 2002 and made sweeping reforms to the nation’s voting process following the 2000 Presidential election. Among the provisions of this law, is a requirement for states to implement a centralized voter registration database that includes a “system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”² To identify registrants that are eligible to vote HAVA requires, among other things, that a state’s chief election official shall enter into an agreement with the Department of Motor Vehicles to “verify the accuracy of information provided on applications for voter registration.”³ Wisconsin fulfills this requirement under Wis. Stat. § 85.61.

As part of our review, WILL obtained records from WEC showing the extent of mismatches between the voter registration file and DMV records. Those mismatches are reflected in the table below for prior to the 2020 election.

DMV Mismatch Reasons – 2020 Pre-November Only

Reason	Count	Percentage
2 – Name and DOB Do Not Match	274	1.17%
3 – Name Does Not Match	15,260	65.32%
4 – DOB Does Not Match	1,061	4.05%
5 – No Record of DL #	4,885	20.91%
S – Invalid Data Submitted	66	0.03%
Z – No Matches Found	1,815	7.77%

² 52 U.S.C. § 21083

³ 52 U.S.C. § 21083(a)(5)(B)(i)

Practically speaking, what does this mean? It means that over 23,000 people cast ballots despite having a mismatch between their voting registration record at WEC and their DMV record. While many of these mismatches may be the result of common variations in a name (Ex. Bill vs. William, or Jim vs. James.) or clerical transcription errors, it is impossible for WEC or clerks to verify the extent of these mismatches. The LAB audit confirmed as much in their review, stating “DOT does not provide WEC with any personally identifiable information, such as names or dates of birth.”

At some point in the process, WEC asks municipal clerks to send a letter to mismatched voters asking them to clarify the discrepancy. However, WEC informs the clerks that regardless of the results of the DMV check, it does not affect the voter’s eligibility, and the clerk has met their responsibility to verify the information once the letter has been sent. Whether the individual responds or not, nothing more is done. As a result, mismatches continue to exist in the system. This result renders the HAVA check meaningless. Why check for a mismatch if there is no consequence when one is found?

This lack of follow-through presents a potential weakness in Wisconsin’s electoral security. Here’s one hypothetical situation that could prove problematic. Voters do not need to present an ID to register in person or by mail. They must only show proof of residency, which includes a list of documents that could be rather easily fabricated⁴. Because HAVA checks are not uniformly used to remove ineligible voters, a person could use a faulty registration, then claim indefinitely confined status and cast a ballot without ever showing an ID. We cannot say whether this happens, because as stated above clerks and WEC are unable to see the extent of these mismatches. That is where Assembly Bill 997 comes in.

First, the bill requires that DOT provide WEC the personally identifiable information (Name, DOB, DL#) needed for election officials to determine the source and extent of a mismatch. Second, the bill lays out a multistep process for election officials to correct errors resulting from a DMV mismatch. If the discrepancy is the result of a single piece of minor information being inaccurate, it empowers the commission to correct the discrepancy on the basis of reliable information. Third, if an election official is unable to obtain reliable information, or there are multiple discrepancies, they must mail the elector notifying them of the discrepancy. If the elector does not correct the mistake within 30 days, election officials would then change the voter’s registration from active to inactive.

The responsibility of fulfilling this process lies with WEC. However, the bill allows WEC to delegate any step of this process to municipal clerks. Lastly, to ensure full transparency, the bill requires election officials to document how each discrepancy

⁴ While approved ID’s are accepted to prove residency, utility bills, bank/credit card statements, paystubs, and residential leases can be used to verify residency.

is corrected. This would be especially helpful in any post-election reviews from the public, where personally identifiable information could not be disclosed.

With easily accessible online and same-day in-person registration, Assembly Bill 1003 would be a prudent move towards ensuring accuracy in our voter rolls. It rightfully prioritizes correcting innocuous errors and removes a weakness in our current system.

Assembly Bill 996

Assembly Bill 996 increases both transparency and accountability in the voting process.

In the process of conducting our review, WILL had issues obtaining records on a number of occasions. I'll give you one example. In February 2021, WEC released a report that analyzed data from the November 2020 election. WILL requested data to recreate some of WEC's analyses, but were told that due to the dynamic nature of the voter registration list, we would be unable to receive the necessary data. This bill would fix this issue by requiring WEC to keep monthly snapshots of the voter file. It would also expand the information clerks are required to report to WEC following an election, making it easier for election watchers to spot potential issues to follow-up on.

Lastly, introducing bi-partisan legal counsel at WEC would be a prudent move towards ensuring a diversity of legal viewpoints are heard by commissioners. On a number of occasions leading up to the 2020 election, WEC issued legally questionable guidance to clerks, something that bi-partisan counsel could have prevented. A similar approach is taken by other states, most notably New York, who has bi-partisan Co-Executive Directors at the State Board of Elections.

Thank you, Chairman Swearingen and committee members for hearing my testimony today. I would be happy to answer any questions.

The Best Summary of the 2020 Election

Rules were bent, GOP voters defected, and real fraud hasn't turned up.

By The Editorial Board

Jan. 25, 2022 6:52 pm ET



At his first big political rally of 2022, President Trump was again focused on 2020. “We had a rigged election, and the proof is all over the place,” he said. Mr. Trump was apparently too busy over Christmas to read a 136-page report by a conservative group in Wisconsin, whose review shows “no evidence of widespread voter fraud.”

If curious Republicans want to know what really happened in 2020, [this is the best summation to date](#). Released Dec. 7, it was written by the Wisconsin Institute for Law and Liberty (WILL), a policy shop with conservative bona fides that supported many of Mr. Trump’s policies. A Wisconsin judge this month said ballot dropboxes are illegal under state law, in a challenge brought by WILL.

Its report on 2020 wallops state officials for bending election rules amid the pandemic. That mistake put ballots into legal doubt, due to no fault of the voter, while fueling skepticism. Yet the

stolen-election theory doesn't hold up. President Biden won Wisconsin by 20,682, and mass fraud "would likely have resulted in some discernible anomaly," WILL says. "In all likelihood, more eligible voters cast ballots for [Joe Biden](#) than [Donald Trump](#)." Here are some highlights:

- Only 14.7% of Wisconsin jurisdictions used Dominion voting machines. Mr. Trump won 57.2% of their ballots, up from 55.7% in 2016.
- In Milwaukee, the number of absentee votes tallied on election night is "consistent with what was reported to be outstanding." Mr. Biden's share, 85.7%, is plausible. The raw vote total in Milwaukee County was up only 4.4% from 2016, lower than the average rise of 10.2%. "Put simply, there was no unexplained 'ballot dump.'"
- WILL's hand recount of 20,000 votes from 20 wards, including in Milwaukee, found "no evidence of fraudulent ballots." It did show "a significant number of voters who voted for Biden and a Republican for Congress." In wards of suburban Mequon, to pick one, 10.5% of Biden ballots went for GOP Rep. Glenn Grothman.
- In 2020 only 0.2% of Wisconsin's absentee ballots were rejected, a steep drop from 1.35% in 2016. This, however, was a nationwide trend, aided in part by dropboxes. Also, WILL says, "rejection rates were actually slightly higher in areas of the state that voted for Biden."
- The state told clerks to correct incomplete witness addresses. Not every jurisdiction did so, and some didn't track such fixes. WILL reviewed 29,000 ballot certificates in 29 wards. The "vast majority" of problem ballots "were simply missing a portion of the second address line, such as a city, state or ZIP Code." State law doesn't define how much "address" is required, so these ballots probably were valid regardless.
- The number of "indefinitely confined" voters, who are exempt from photo-ID rules, rose 199,000. Yet the election proceeded, WILL says, with "no clear statement" on whether fear of Covid could qualify as home bound. County data suggest no link between confinement rates and partisan lean. WILL polled 700 random confined voters, turning up little. Fraud here would be "risky," it says, since real ballots by impersonated voters would then be flagged. Wisconsin has identified only four double votes.
- The state used dropboxes, which are legally disputed, and WILL says many clerks didn't sufficiently log chain of custody. Its statistical analysis estimates that dropboxes maybe raised Mr. Biden's turnout by 20,736. But WILL "does not claim" that such people "were ineligible voters or should have had their votes rejected."
- A nonprofit tied to Mark Zuckerberg gave \$10 million to help Wisconsin elections, mostly in five cities, a skewed distribution that WILL finds "troubling." A statistical analysis suggests it maybe lifted Mr. Biden's turnout by 8,000.

“We do not believe the election was ‘stolen,’” WILL says. “But it was not adequately secure.” Some of its suggestions for restoring election confidence are basic: Process ballots earlier to stop midnight results in Milwaukee. Redesign mail ballots with “specific spots” for witnesses to jot their cities, states and ZIP Codes. Define “confined voter.”

The overall lesson is to run elections by the book. WILL says the number of ballots that “did not comply with existing legal requirements” almost surely “exceeded Joe Biden’s margin.” The ambiguity is deadly to public trust.

But Mr. Trump didn’t raise hell until he lost. Then his campaign asked to throw out more than 200,000 random ballots from two blue counties, even though questioned practices had taken place statewide. If an honest Wisconsinite followed some official procedure that wasn’t challenged, good luck getting judges after the fact to toss that vote—to say nothing of 28.4% of all the votes in Milwaukee County. Such selective treatment, as WILL says, is what the Supreme Court quashed in *Bush v. Gore*.

Perhaps more information is forthcoming. A former Justice of the Wisconsin Supreme Court, Michael Gableman, is also doing a review of the state’s 2020 election. To inform the next legislative session, Assembly Speaker Robin Vos said recently, “I really need his report by the end of February.”

Until then, WILL’s document stands as the best summary to date of the 2020 election: not secure, but not stolen, with suburban Republicans splitting tickets to defeat Mr. Trump.