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STATE REPRESENTATIVE • 1ST ASSEMBLY DISTRICT

**Testimony for the Senate Committee on Shared Revenue,
Elections and Consumer Protection
300 Southeast
December 19, 2023**

Thank you, Chairman Knodl and Committee Members.

Every session, we work on bills to protect people from being exploited financially. Those protections should also extend to our elections. Right now, state law is incomplete when someone loses their right to vote from a court ruling of incompetence. That needs to change for the protection of our vulnerable citizens and for the integrity of our elections.

In our state, when a judge makes the difficult decision to remove someone's voting rights because of incompetency, often two key people who need to deal with the ruling are not informed. The person who is ruled incompetent and the local clerks who have to enforce the decision.

This confusion led to many people voting who lost that right because of a court ruling. A review by Dane County election officials found nearly 100 people who cast more than 300 ballots since 2008 despite being declared incompetent to vote. Many of those people voted in multiple elections.

In more than half of those cases, the voter was registered under a different address than the one listed in the state's adjudicated incompetent list. It's highly unlikely a clerk would turn someone away if they were able to provide proof of their residency. I introduced Assembly Bill 572 after those concerns were raised to me by my clerks.

State law isn't clear on how people need protection and clarity on their voting rights. Often people declared incompetent don't even know they aren't allowed to vote because they weren't given a copy of the ruling. Our law also doesn't have a process for notifying clerks when someone is declared incompetent to vote.

While current law already requires municipal clerks to post a notice at the home or facility and on the Internet indicating the date and time that absentee voting will take place at that home or facility, there is no notification process for the individuals or individuals whom the resident has designated as authorized contact persons.

The bill includes a safeguard for families of individuals who were declared incompetent by requiring nursing homes to email the designated contact for a resident when special voting deputies will be in the facility.

AB 572 also requires the courts to contact the Wisconsin Elections Commission (WEC) within two days of a declaration of incompetence to declare that voter ineligible. The courts must also provide a copy of the determination of incompetency to the person and their guardian.

Many times, people are declared incompetent before they turn 18. The bill also requires WEC to create a voter file if none exists, so that the voter may be marked as ineligible. Under the bill, the clerk must examine the registration list before issuing a ballot to any potential voter. To address privacy concerns, an incompetent voter will only be marked as "ineligible" on the list.

WEC will also add being adjudicated incompetent to the list of reasons a voter is not allowed to vote on the registration form. However, incompetent voters may NOT be prosecuted for trying to vote.

AB 572 also provides that if a court restores the voter's right to vote. WEC must, within two business days, notify the voter that the voter is eligible to vote and that the voter is required to complete a new registration to vote if the voter intends to vote.

I believe AB 572 will improve the difficult process of declaring someone incompetent, make sure they and their guardian know their rights, give clerks the information they need to enforce court orders, and make sure family members are looped in when voting happens in a care facility.

Thank you for your time and I hope you consider supporting Assembly Bill 572. I am happy to answer any questions you might have.



December 19, 2023

Senate Committee on Shared Revenue, Elections and Consumer Protection
Senator Knodl, Chair
State Capitol, Room 108 South
Madison, WI 53707

Dear Rep. Knodl and members of the committee:

The Wisconsin Board for People with Disabilities (BPDD) appreciates the opportunity to testify on SB 593/AB 572 and SB 631/AB 570.

SB 593/AB 572 (Absentee voting in care facilities, loss and restoration of voting rights in guardianship cases)

Section 3

BPDD finds Section 3 of this bill unnecessary and problematic.

We find it discriminatory to require notification of family members or other contacts based on where a voter lives. If the same voter lived in their own home, they would not be subjected to these requirements. Care needs are not connected to an individual's right to vote and are not an indication of legal competency.

The right to vote resides with the individual, not whomever is listed as a contact at a retirement home or residential care facility. Whether an individual chooses to vote, not to vote, whom they vote for and for what reason(s), is private. No one beyond the voter must be informed of an individual's intent to use an absentee ballot to exercise their civil rights. The requirements in Section 3 are an invasion of privacy to which no other group of voters is subjected.

The bill language requires all contacts listed in a resident's file to be notified. Resident's files often have multiple contacts, but not all those contacts have an equal relationship—legal or otherwise—with the individual. Individuals may have contacts who are not related to them or who have a formal role (case worker, agent if a Power of Attorney is activated). A wide range of people might be listed as a contact—spouse, adult children, extended family members, individuals related through marriage. Some of these contacts may have a formal legal role (e.g. Power of Attorney for Health Care or Finances) that other listed contacts do not have.

It is beyond the ability of the law to predict or assume that all contacts listed in a resident's file have an equal or benevolent interest in the resident or their rights. Relationships with listed contacts may be close, distant, or estranged from the individual. Listed contacts may not have differences among themselves, and notification can become an opportunity for conflict that creates an unfair burden for the individual.



The bill language implies anyone receiving notification—which may be a significant number of people—has an equal right to be present in the room while the person is voting. The bill does not give the voter the ability to prohibit a notified person from being in the room while they are voting, and potentially witnessing how they are choosing to vote. It is difficult to conceive how a voter’s privacy could be protected if the law allows an unlimited audience to be in a (often small) room that is serving as a voting booth. We can think of no other group of voters who would be subject to mass witness of their voting.

The types of congregate residential facilities the bill seeks to further regulate overwhelmingly serve older adults and people with disabilities—two groups disproportionately impacted by guardianship. Notification requirements to contacts imply these contacts have an evaluative role or can question the resident’s right to vote. We are concerned this will prompt contacts to unduly influence a resident’s vote or initiate court proceedings as a mechanism to take away civil rights to prevent the individual from voting.

Section 1

Section 1 of the bill notifies the Wisconsin Election Commission in the event an individual’s right to vote has been removed or restored by the court under the proceedings outlined in Wis. Stats. Ch. 54. Section 1 of this bill is an effective policy to ensure that any person who has lost the right to vote is listed as ineligible to vote and that any votes cast in error are not counted.

Section 1 addresses the process concern the legislature seeks to address without disenfranchising voters. This part of the bill ensures an accurate record of eligible voters, while also honoring the confidentiality requirements for guardianship cases under Wis. Stats. 54.75. The bill recognizes that rights may be lost or restored and adjusts the list based on the court’s action¹.

We appreciate the bill will exempt people who have lost their right to vote through guardianship proceedings from Class 1 felony charges if they vote in an election after losing their right to vote. Based on the experience of individuals and families across the state, many petitioners are not fully aware of which rights they are petitioning to remove when engaging with the court and many wards are not aware of what rights they have lost.

SB 631/AB 570—Absentee ballots

SB 631 expands the number of required fields that must be completed on an absentee ballot and removes the ability for clerks to correct minor mistakes. Any mistake by a voter or witness results in ballot being uncounted. Only the voter or witness can correct their mistake.

¹ Wisconsin has a limited guardianship system, which means when petitioned to consider whether an individual is legally competent to exercise certain civil rights, the court decides whether the prospective ward loses or retains certain rights. The right to vote is among many civil rights that may be removed or retained by the person, and the right to vote may be restored by the court. “Understanding the objective of the elective process” is the threshold a person under guardianship who has lost the right to vote must meet when petitioning the court to have their right to vote restored. That threshold is higher than what is required of voters who have never lost their right to vote.



Minor administrative mistakes will result in major hurdles for people with I/DD to correct, assuming they know their ballot needs to be corrected to count. BPDD is concerned these minor mistakes would result in more voters with disabilities' absentee ballots being marked defective and uncounted. 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.

The creation of personal care voting assistants in the event of a 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 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 disabilities².

Thank you for your consideration,

A handwritten signature in cursive script that reads "Beth Swedeen".

Beth Swedeen, Executive Director,
Wisconsin Board for People with Developmental Disabilities

² More about BPDD https://wi-bpdd.org/wp-content/uploads/2018/08/Legislative_Overview_BPDD.pdf.



Greater Wisconsin
Agency on Aging Resources, Inc.

Date: December 19, 2023

To: Senator Knodl and members of the Senate Committee on Shared Revenue, Elections and Consumer Protection

From: Janet L. Zander, Advocacy & Public Policy Coordinator, Greater Wisconsin Agency on Aging Resources, Inc. (GWAAR)

Re: **SB 593/AB 572** relating to: absentee voting in certain residential care facilities and retirement homes and court determinations of incompetency and ineligibility to vote.

SB 631/AB 570 relating to: certain kinds of election fraud, defects on absentee ballot certificates, returning absentee ballots, 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, and providing a penalty.

Thank you for this opportunity to share testimony on SB 593/AB 572 and SB 631/AB 570. According to the Wisconsin Elections Commission's Voter Registration Statistics (October 2023), over 1.9 million Wisconsinites ages 50 and older are registered electors.¹ Voting is a high priority for many older adults. Despite a strong desire to vote, as people age, there are often barriers standing between their desire to vote and being able to vote.

SB 593/AB 572 – For Information Only

Section 3:

GWAAR has significant concerns regarding Section 3 of the bill related to *requiring* the administrator of a qualified retirement home or residential care facility to provide notice of the dates and times when the special voting deputies will be visiting the home or facility to *everyone* designated as a contact by the occupant who intends to vote by absentee ballot with the deputies. This requirement fails to recognize several detrimental impacts resulting from this practice.

First, this requirement results in discriminatory treatment of people based upon where they live. Voters in care facilities voting absentee via special voting deputies must have notifications sent to all contacts in their file, while people with the same/similar long-term care needs who are receiving care in their own homes and are voting by absentee ballot are not subject to this requirement. Individuals' level of care needs should not automatically imply questionable competence and where/how they choose to have their care needs met should have no relation to their rights to vote.

¹ Wisconsin Elections Commission (Oct. 2, 2023). October 1, 2023, Voter Registration Statistics. Retrieved on October 30, 2023 from <https://elections.wi.gov/resources/statistics/october-1-2023-voter-registration-statistics>.

Second, as a former nursing home social worker and assisted living facility manager, I can assure you, a few residents had no contacts identified in their files, while others had multiple contacts listed. Often, those with multiple contacts listed, specified the conditions under which each should be contacted; some were notified about health concerns, others were associated with transportation, grocery, laundry, and/or other types of needs. Some contacts were relatives or friends (some who lived far away), others were legal contacts (Power-of-attorney for health care or finances), and some were both family/friend and legal contacts. Resident files also included faith leaders/clergy and other types of contacts. This legislation gives all types of contacts in a resident file the right to be notified of their intention to vote and disregards residents' rights to determine who and when someone is notified about their personal business.

Third, while Senate Substitute Amendment 1 to SB 593 indicates communications sent to each contact from the facility administrator will include a disclaimer that the occupant maintains the right of privacy and that the notice is for information only; the reality is the dynamics in some relationships can make even the presence of certain individuals threatening or intimidating to the voter. Most of us not living in care facilities can vote privately at the polls or by absentee ballot from the privacy of our homes, while voters in care facilities (even those who must vote from their rooms) have no say as to who can observe them cast their vote, including two special voting deputies, any interested contacts who wish to be there, and any observers present. Given the size of the areas where voting occurs, it will be extremely difficult to ensure voter privacy. Residing in a care facility is not synonymous with incompetence and these voters deserve the same level of privacy and independence as any other voter.

Section 1:

GWAAR supports changes in Section 1 of the bill which address the need for an accurate record of eligible voters and recognizes that voting rights may be lost or restored and adjusts the eligible voters list based on specific actions taken by the courts.

Section 4:

Lastly, GWAAR appreciates the bill will exempt people who have lost their right to vote through guardianship proceedings (s. 54.25 (2) (c) i.g.) from Class 1 felony charges if they vote in an election after losing their right to vote.

SB 631/AB 570 – For Information Only

GWAAR is concerned changes to the absentee ballot certificates and their review could result in additional ballots being disqualified (uncounted). The bill requires the completion of 12 different fields of information on the absentee ballot certificate. If all 12 fields are not completed on the certificate, the ballot may not be counted. Like existing law, this bill allows clerks to return the ballot to the voter, if time permits, to allow the voter to complete any missing information. In addition, the bill also creates a requirement for clerks who determine a certificate is improperly

completed or missing to post notice of the defect in the voter’s information page in the online voter registration system (MyVote Wisconsin) and maintains a provision allowing clerks to attempt to notify the voter by other means. GWAAR supports this addition but is concerned that some older voters lack internet access and/or may require additional assistance to identify how the certificate is to be corrected.

It is understood that clerks may not have time to make phone, email, or letter contacts for every elector with incomplete or missing certificates. This makes creating a certificate requiring the *minimal* amount of required information and clear instructions essential to help eliminate what are often simple mistakes (e.g., elector lists zip code but forgets to include municipality). In addition, allowing clerks to correct certain minor errors such as adding a missing element of the witness address for a spouse (witness) residing at the same address as the elector, would prevent minor mistakes on the ballot certificate from keeping otherwise valid ballots from being counted. Under this bill, it would be a crime for clerks to correct even minor errors.

GWAAR appreciates the efforts that have been made in this legislation to expand voting options for electors in residential care facilities and qualified retirement homes. Specifically, we support the creation of statutory language outlining the process to follow to ensure electors in residential care facilities and qualified retirement homes receive the assistance needed to vote when Special Voting Deputies (SVDs) are restricted from conducting visits due to a public health emergency or an incident of infectious disease. For many years, visitors (including SVDs) have occasionally been restricted from visiting due to concerns related to the spread of disease.

GWAAR supports allowing individuals employed at residential care facilities or qualified retirement homes to be appointed as personal care voting assistants when Specialized Voting Deputies (SVDs) are restricted from conducting visits during a public health emergency or an incident of infectious disease. State law currently prohibits these employees from serving as SVDs, while current federal law requires licensed skilled nursing facilities (at all times, not just during public health emergencies) to have a plan in place that ensures residents can exercise their right to vote. Federal law requires providers to provide support to residents to help them vote, including “transporting residents to polling locations or drop boxes, assisting with absentee or mail-in voting processes, and ensuring residents who are otherwise unable to cast ballots in-person retain their right to vote and send in their ballots via State/locality authorized mechanisms.”² The authorization and training of personal care voting assistants will help to ensure federal requirements are met for electors in licensed skill nursing facilities, as well as residents in all other residential care facilities and qualified retirement homes impacted by this change.

GWAAR also supports the change in timeline for SVDs to arrange and conduct visits to facilities and the authorization to allow clerks to send absentee ballots to electors who were unable to cast their ballots during the SVD visits. Requiring SVD contacts to be made with facility

² Centers for Medicare and Medicaid Services. Compliance with Residents’ Rights Requirement related to Nursing Home Residents, October 5, 2020. Retrieved on Feb. 5, 2022, from <https://www.cms.gov/files/document/qso-21-02-nh.pdf>

administrators and visits to be scheduled no later than 5 p.m. on the 11th working day (instead of the 6th working day) preceding an election and requiring SVD visits to be completed *no later than 5 p.m.* on the 6th working day preceding the election (rather than the Monday preceding the election) will provide more time for absentee ballots to be sent, completed and returned for electors who were unable to cast their ballots during SVD visits.

The Greater Wisconsin Agency on Aging Resources, Inc. (GWAAR) is a nonprofit agency committed to supporting the successful delivery of aging programs and services in our service area consisting of 70 counties (all but Dane and Milwaukee) and 11 tribes in Wisconsin. We are one of three Area Agencies on Aging in Wisconsin. Our mission is to deliver innovative support to lead aging agencies as we work together to promote, protect, and enhance the well-being of older people in Wisconsin. There are over one million adults ages 60 and older residing in our service area.

Thank you for your consideration of our testimony regarding SB 593/AB 572 and SB631/AB 570. GWAAR supports voting processes that ensure every eligible older adult who wants to vote, can vote, no matter where they live or how they choose to vote. We appreciate the interest in and efforts of policy makers to preserve, protect, and enhance the voting rights of older adults and people with disabilities. We look forward to continuing to work with you on policies that improve the quality of life of older people in Wisconsin.

Working together to promote, protect, and enhance
the well-being of older people in Wisconsin.

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