



Testimony of Matt Rothschild

Executive Director, Wisconsin Democracy Campaign

To the Senate Committee on Elections, Election Process Reform, and Ethics

In opposition to SB 934, SB 935, SB 936, SB 937, SB 939, SB 940, SB 941, SB 943, and SJR 101

Feb. 7, 2022

Distinguished Chair and other Distinguished Members of this Committee:

I'm Matt Rothschild, the executive director of the Wisconsin Democracy Campaign. Since 1995, we've been tracking and exposing the money in Wisconsin politics, and we've been advocating for a broad range of pro-democracy reforms.

Before I get going, I would be remiss if I failed to acknowledge the tremendous public service that the chair of this committee has rendered in her career, first as a county clerk, then as a member of the Assembly, and most recently here in the Senate.

We may not agree on a lot of ideological issues, Madame Chair, but we certainly agree on the need to defend our democracy. I really appreciate your outspokenness on this bedrock principle, and your frank acknowledgment of the severity of the threat posed to our democracy by those who refuse to accept the legitimacy of the 2020 elections and instead peddle one lie after another and one smear after another for their own political gain or personal gratification.

You've been a profile of courage, and you'll be missed, and I wish you all the best in your retirement.

I've got some specific problems with many of these bills, as well as with the Joint Resolution.

But rather than go tediously through that itemization, let me instead make a few general remarks and then offer just a couple germane points, if I might.

First, I would like to underline an observation that Republican Senator Rob Cowles has made about our elections. He noted that our elections are “safe and secure.”

Second, there has been a drumbeat of baseless accusations and character assassinations against the dedicated administrator and the tireless staff of the Wisconsin Elections Commission, which has got to stop. It’s grossly unfair to them, and if it keeps up, we won’t be able to attract any talented people to administer our elections in this state.

And third, the endless fishing expedition being conducted by Michael Gableman and the constant smoke machine that some other partisans keep revving up about the November 2020 elections only serve to undermine the faith of the Wisconsin public in our elections and in our democracy.

That’s not healthy. And that’s got to stop, too.

And frankly, I worry that, when taken as a whole, the barge carrying all these new bills today may also be billowing out more smoke.

This is not to say that I disagree with everything in all these bills. Not at all. For instance, the bills by the Chair clarify a lot of processes and terms that needed clarification.

And I certainly agree that we should set clear rules for our elections, but let’s make sure that those rules are fair.

And let’s protect our freedom to vote rather than erect one barrier after another to the exercise of that fundamental freedom.

Unfortunately, some of these bills do erect such barriers.

First of all, two bills would make voting by absentee ballot more difficult for all voters in Wisconsin.

SB 935 would render an absentee ballot null and void for the pettiest of reasons. For instance, if I’m a witness for the absentee voter and I print my name, and I sign my name, and I put Madison, WI, down as my residence but I neglect to put my street down, should the voter I’m witnessing be disqualified because of that omission? The bill says yes, and that seems ridiculous to me. Even requiring a witness seems like a stretch to me, since the voter already is swearing about his or her identity. Now to make the witness have to fill out everything just right or the voter’s ballot is disqualified just adds another way to toss a perfectly good ballot into the waste basket.

SB 939 would prohibit the Wisconsin Elections Commission or any local clerk from sending out absentee ballot applications, en masse, to registered voters, as was prudently done during the pandemic. Our ability to exercise our freedom to vote by mail should not be needlessly curtailed by this blanket prohibition. Why shouldn't the Elections Commission be allowed to do this? If we want more people to be able to exercise their freedom to vote in our democracy, sending everyone an absentee ballot application makes sense, in general. And in specific, it makes a whole lot of sense during a pandemic. But this bill would nix both those options.

Second, one bill would make voting by absentee ballot especially more difficult for those in residential care facilities or retirement homes.

SB 935 would paternalistically require the notification of relatives of residents in long-term care facilities or retirement homes as to when special voting deputies are going to be there. Residents don't need their relatives looking over their shoulders when they're voting. This is an invasion of their privacy. Unless they have a legal guardian, residents should not have their freedom to vote interfered with in this obnoxious manner. What if they don't get along with "the relatives for whom the home or facility has contact information"? What business is it of the relatives, seriously?

SB 935 would also needlessly prohibit a personal care voting assistant from helping any resident of a residential care facility or qualified retirement home to register to vote. If the personal care voting assistant is there to help the resident fill out an absentee ballot, why can't the assistant help the resident register to vote? That distinction makes no sense. Plus, nursing homes that receive Medicare or Medicaid funding are required to support the residents' right to vote. That should include supporting residents who want to register to vote.

Third, one of the bills, SB 934, could erroneously toss voters from the voting rolls. This bill would have the Wisconsin Elections Commission rely on the Electronic Registration Information Center (otherwise known as ERIC) to determine whether a voter has moved. Following that determination, the Commission must send a letter or a postcard to the voter. If the voter doesn't respond, the voter becomes unregistered. The problem with this is that the Wisconsin Election Commission's own data in 2020 showed that 7.07 percent of the voters who became unregistered because of ERIC's data actually had never moved and were wrongly deactivated. Such a high error is not acceptable when it comes to our freedom to vote.

Fourth, several of these bills would hog-tie the Wisconsin Elections Commission.

SB 940 would allow the Joint Finance Committee to gouge the staff or the funds of the Elections Commission if Joint Finance, on its own, says that the Elections Commission or the Department of Transportation or the Department of Corrections or the Department of Health Services

failed to comply with any election law. That would give Joint Finance a huge whip over the heads of the Elections Commission, with no decent check on that unilateral power.

SB 941 would give the Joint Finance Committee and the Joint Committee for Review of Administrative Rules the authority to block federal funds and federal guidance, which will make it very difficult for the Commission to do its job. It's also of dubious constitutionality: States aren't allowed to disregard federal guidance on the conduct of federal elections, for instance.

SB 941 would also inject hyper-partisanship at the staff level by mandating that each major political party gets its own legal counsel on the staff of the Wisconsin Elections Commission. The last thing we need is more partisan haggling at the Wisconsin Elections Commission.

SB 943 would require the Elections Commission to be nit-picked and hyper-monitored by the Joint Committee for Review of Administrative Rules. Every week, the Elections Commission would have to give to JCRAR "all documents and communications from the commission that the commission issued in the previous week that are applicable to municipal clerks generally and qualify as guidance documents." Are you going to allow the Elections Commission to do its job, or are you going to kill it by a thousand cuts?

So these are some of my biggest concerns.

Above all, I would appreciate it if we could all agree that:

- 1) The November 2020 elections were legitimate and move on,**
- 2) The staff of the Wisconsin Elections Commission has been doing an admirable job under incredibly difficult circumstances, and**
- 3) In Wisconsin, and in America, we all should have our freedom to vote protected.**

Thanks for considering my views, and I welcome any questions you might have.



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MEMORANDUM

TO: Senate Committee on Elections, Election Process Reform and Ethics

FROM: City Attorney Michael Haas

DATE: February 7, 2022

RE: 2022 Election Bills – SB 935, SB 937, SB 939, and SB 940

Thank you for the opportunity to comment on the elections bills before the Senate Committee on Elections, Election Process Reform and Ethics. We are concerned about the Legislature's rush to make numerous changes to our election laws by issuing a notice for a Monday morning hearing just before the weekend. There are many substantive policy and process issues to work through and this Committee is not providing adequate time for voters, clerks and stakeholders to consider the impacts of this package of bills and to provide thoughtful feedback.

As a general matter, the City of Madison notes that multiple judicial and scholarly reviews of the 2020 election have found no widespread fraud. A recent review by the Associated Press found 26 instances of improper voting, many of which were mistakes. There were only five cases which generated charges. According to the Associated Press, "one person was living in Florida and tried unsuccessfully to vote in Wisconsin. He did not cast a ballot. Two are felons and not eligible to vote. One man voted both in person and absentee and said he didn't recall sending in his absentee ballot. In another case, a woman is charged with submitting an absentee ballot in November for her partner, who had died in July."

The rarity and randomness of these cases highlight the integrity of our election process. Yet in the face of a successful and well-reviewed election, legislators have introduced multiple bills that overall make exercising the right to vote more burdensome, not less burdensome for Wisconsin voters, and make voting acutely burdensome for the sick, elderly and disabled. In the absence of any evidence of clerks engaging in fraud or nefarious behavior, the bills ladle on felony charges for a variety of practices that are both common place and benign, for instance correcting an absentee ballot certificate with a missing zip code

number.

Beginning with a flawed premise – that voter fraud is prevalent and the work of election officials is suspect – inevitably leads to flawed, unnecessary and harmful legislation. The City of Madison encourages the Legislature to rethink measures which simply amount to a war on voters and add more paperwork and bureaucracy to the job of municipal clerks without making any difference to the integrity of our elections. The Legislature should take a voter-centric approach to our elections and stop creating new obstacles to voting that have nothing to do with a voter's qualifications to vote. We offer the following feedback regarding specific proposals being considered.

SB 935

This bill adds the requirement that voters print their name on the absentee ballot certificate, and prohibits clerks from correcting or completing information on absentee ballot certificates even if they have reliable information that could remedy minor errors. Based on experience and the LAB's recent audit, we know that any additional bureaucratic requirement, no matter how small it may seem within the Capitol, will result in additional absentee ballots being rejected. Whether or not a voter prints their name on the absentee ballot certificate has nothing to do with their qualifications to vote, and neither does omitting pieces of their address.

The bill would prohibit, and criminalize, very simple common corrections made by clerks, including the insertion of a municipality or zip code on a correct address, even when the location is obvious and the clerk knows the location of the voter. There has been no evidence that clerks are sending absentee ballots to unqualified voters, so when the ballot is returned from the same address to which it was sent, it is simply punitive to voters to reject ballots for minor administrative reasons. The LAB audit found that almost 7% of the absentee ballot certificates it reviewed omitted some part of the address information, and all of the ballot certificates around the State with similar omissions would have led to the rejection of numerous ballots under this bill.

The bill does not require clerks to notify voters that their ballot is at risk of being rejected, and clerks often do not have the time to do so during the weeks before an election. Regardless of how perfectly legislators want voters to complete their paperwork, we should all be concerned about this new requirement that is likely to result in hundreds of thousands of absentee ballots being rejected at a general election without any sound policy justification.

It is good that the bill attempts to provide an alternative for voting in nursing homes and other adult-care facilities when special voting deputies are not allowed due to health and safety concerns. The lack of such legislation required the WEC and clerks to create procedures in a short period of time to ensure the constitutional right to vote when the Legislature failed to address the issue in 2020. The Monday-morning criticism of these efforts have all lacked an alternative solution that would have allowed residents of these facilities to vote and unfortunately it simply amounts to an assertion that those residents should not have been allowed to vote.

However, there is a discrepancy in section 6 of the bill which seems to state that special voting deputies are prohibited from serving an adult-care facility only during a public health

emergency and if the facility is closed due to an infectious disease. But the same section and sections 12 and 13 state that personal care voting assistants are to serve such facilities if a public health emergency is declared or if the facility is closed due to an infectious disease. This discrepancy can be fixed by changing section 6 to refer to facility closures due to either a public health emergency or an incident of infectious diseases.

If the intent actually is to prohibit SVD's to enter such facilities only if a public health emergency is declared, that requirement is unrealistic. Even before COVID, nursing homes closed due to infectious diseases which did not warrant a public health emergency. To expect the State or a county to declare public health emergencies in such cases when time is limited and conditions change on a daily basis ignores reality. In addition, asking SVDs to enter these facilities when the facility is closed due to health concerns but no public emergency is declared risks the health of not only residents of the facilities but special voting deputies who are volunteers assisting the clerk.

SB 935 also prevents municipalities from accepting donations or grants of private resources to assist with election administration which is broadly defined as "preparing for, facilitating, conducting or administering an election." While there has been much focus on election grants provided by a national non-profit organization in 2020, the broad language of SB 935 risks some unintended consequences. First, this language may prohibit local businesses from assisting municipalities by making donations of supplies, polling locations or refreshments for poll workers. Second, printing ballots and mailing absentee ballots are essential tasks in conducting an election. How does this bill accommodate such contracts for routine services that are essential to election administration?

If nothing else SB 935 and SJR 101 can put to rest the persistent but nonsensical claims that municipalities violated statutes or the Constitution by accepting election grants in 2020 to assist with challenges created by the pandemic and the resulting huge increase in absentee voting. Those claims, of course, have been soundly rejected by numerous courts around the country. If election grants violated the laws of either Wisconsin or another state, or the U.S. Constitution, surely at least one court would have so ruled. And likewise, it would not be necessary for the Legislature to pass a law outlawing such election grants. Anyone supporting this provision should be calling for the end of any investigation into the 2020 election grants as there is no reason to spend taxpayer funds investigating activity that was legal.

These proposals would deny election administrators the ability to seek and accept much needed resources when the State fails them. Communities throughout Wisconsin lost thousands of poll workers and polling locations as fear of the Coronavirus spread in early 2020. Personal protective equipment, plexiglass barriers and hand sanitizer were in short supply while demand for absentee ballots went through the roof. In April of 2020, Madison could only staff and open 62 of its 92 polling locations.

While clerks across the state worked thousands of hours of overtime and performed unbelievable feats to carry out elections, the Legislature refused to meet for 10 months and failed to send any assistance to ensure safe voting in the state and to preserve people's Constitutional right to vote.

As the 2020 Presidential Election approached, municipalities across the state recognized they would need more staff and more funding to administer a much larger election. Two

hundred Wisconsin localities applied to a Chicago based non-profit called the Center for Tech and Civic Life for grants large and small.

On July 6, 2020 the mayors of Wisconsin's five largest cities announced they had secured \$6.3 million in grant funds from CTCL and explained how they would spend the funds. The purposes of these expenditures included:

- 1. Support Early In-Person Voting and Vote by Mail:** Expand the number of in-person Early Voting sites (including Curbside Voting). Provide assistance to help voters comply with absentee ballot requests and certification requirements. Utilize secure drop-boxes to facilitate return of absentee ballots. Deploy additional staff and/or technology improvements to expedite and improve accuracy of absentee ballot processing.
- 2. Launch Poll Worker Recruitment, Training & Safety Efforts:** Recruit and hire a sufficient number of poll workers to ensure poll sites were properly staffed during the COVID outbreak, utilizing hazard pay where required. Provide voting facilities with funds to compensate for increased site cleaning and sanitization costs. Provide updated training for current and new poll workers administering elections in midst of pandemic.
- 3. Ensure Safe, Efficient Election Day Administration:** Procure Personal Protective Equipment (PPE) and personal disinfectant to protect election officials and voters from the Coronavirus. Support and expand drive-thru voting on election day, including covering additional unbudgeted expenses for signage, tents, traffic control, and safety measures.
- 4. Expand Voter Education & Outreach Efforts:** Outreach to remind voters to verify and update their address, or other voter registration information, prior to the election.

Clearly, these funds were used to ensure access to voting for all eligible voters during a serious public health emergency.

Given the unpredictability of future health and safety threats to our elections, as well as the continuing trend to increase and complicate the work of election officials, clerk's offices around the State will almost certainly need additional resources in future elections. If the Legislature is determined to proceed with this ban, the City of Madison recommends that it add language to SB 935 and SJR 101 guaranteeing that the State will provide additional funding to localities on a per voter basis, particularly in the case of any future pandemic or threat to the franchise. Alternatively, the Legislature could restore shared revenue or provide municipalities with additional revenue-raising options. Without such measures, voters could once again face a collapsed voting system that threatens their right to vote.

Finally, SB 935 creates new potential crimes that local clerks may be prosecuted for simply doing their jobs, without any significant public policy justification. Two provisions subject clerks to criminal prosecution based upon whether a voter registration or ballot subsequently turns out to be valid or invalid. Correcting such errors has traditionally been the province of recounts where mistakes are found and corrected. Inviting disgruntled partisans to press for the prosecution of clerks by claiming an error or oversight was intentional only discourages more hard-working clerks from continuing in their public

service.

SB 937

In 2011, Republicans in the State Legislature lead the charge in passing Act 23 to help the elderly, sick and disabled who were “indefinitely confined” to vote. Once they were registered as voters and had shown a valid photo ID, the municipal clerk would send them an absentee ballot for each election and they were not required to continually provide a photo ID when they voted.

SB 937 is an about face on the issue, placing high hurdles in front of these voters. It is the clearest example of legislators’ war on voters and their constant unfounded suspicions about Wisconsin voters who put them in office. Worse, it targets the most vulnerable of our residents who are unable to travel to the polls for physical and medical reasons with new restrictions and requirements.

The most egregious change in the bill is the requirement that a voter can be considered indefinitely confined only if they certify that they cannot travel without significant burden because of frailty, physical illness or a disability that will last longer than one year. The requirement that a disability will last longer than one year is arbitrary and has no legal or medical justification. If a disability prevents a voter from traveling to the polls on Election Day, it is irrelevant that they may be able to do so a week later, much less a year later.

The definition is sure to invite challenges to voters and ballots because there is no standard for determining whether a disability will persist for longer than a year, and there is no definition of what constitutes a significant burden to traveling. It is also predictable that enterprising conspiracy theorists will clamor for the criminal prosecution after the fact of any indefinitely confined voter who is fortunate enough to have their disability last for less than a year.

At the very least, the provisions incorporating the definition of an indefinitely confined voter should list “a disability that will last longer than one year” before “frailty” and “physical illness” to make it clear that a frailty or physical illness need not last longer than a year for a voter to qualify as indefinitely confined. Otherwise there will surely be those who argue that “longer than one year” applies to frailty and physical illness as well, in order to further disenfranchise vulnerable voters.

Continuing the theme of adding unnecessary burdens to voters, SB 937 requires a special form to request indefinitely confined status; a letter or email to the clerk’s office will no longer suffice. It requires this special form for each and every election, and every form must be accompanied by photo ID or an affirmation, so if you submit the form and required ID for February you must do it again in April. There has been no evidence or public policy reason established which justify such additional hurdles and paperwork for both voters and clerks, except to make it more cumbersome to vote.

The fact that the Madison City Clerk’s office spends thousands of hours walking people through the absentee voting process, including those who continue to send in selfies in an attempt to comply with the photo ID law, attests to the complicated system the Legislature has constructed and seeks to worsen with bills such as SB 937. There are legal processes that are less complicated to complete than absentee voting and it seems the goal of these

bills is to require that all voters must hire attorneys to ensure that they jump through all the hoops necessary to complete the voting process.

The additional burdens added by SB 937 are likely to disenfranchise a significant number of elderly and disabled voters. When we have informed and enabled citizens, like former Lt. Governor Rebecca Kleefisch making mistakes with regard to these provisions, it will certainly be challenging for those who are not as well-informed.

The bill also requires that the municipal clerk remove a voter from the indefinitely confined status list if the voter casts their ballot at the polls in any election. So if a voter is well enough to have someone drive them to a curbside voting in February, they will be removed from the list and unable to vote absentee in April without reapplying. This is another provision that is likely to disenfranchise voters and cause confusion and apprehension.

The bill also 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, creating more burdens for the elderly and disabled. Finally, it is also noteworthy that SB 937 and other statutes would continue to authorize clerks to remove voters from the indefinitely confined list and the voter registration list based upon reliable information, but the Legislature does not trust those same clerks to use equally reliable information to complete minor flaws on absentee ballot certificates and thereby allow qualified individuals to vote. This speaks volumes about how the sponsors of more restrictive voting bills view both voters and local clerks.

SB 939

SB 939 continues the theme of adding unnecessary burdens to both voters and clerks by requiring voters to submit photo identification for each election, and to use a special form for an absentee ballot; a voter can no longer send a letter or email to the Clerk's office to request a ballot. The proposed form requires a slew of information which is already contained in the individual's voter registration record. Curiously, the bill does not require the form to include the most important piece of information which is the address to which the ballot should be sent, which is often different from the absentee voter's home address.

The bill further disrespects voters and clerks by eliminating the option for voters to request absentee ballots for all elections in a single year. This requirement has no justification except to create more red tape and bureaucracy. Further, Sections 7 and 10 of the bill do not clarify whether a photo ID must be submitted for each election even if a voter applies for absentee ballots for both a primary and a general election at the same time.

SB 940

Simply put, SB 940 is a voter disenfranchisement bill disguised as a nonthreatening bureaucratic notice process. It would turn a data-matching exercise into a substantive voter qualification, achieving a goal of some voter suppression advocates since the implementation of the statewide electronic voter registration database in 2006. The Wisconsin Supreme Court rejected this view that an individual is qualified to vote only if their personal information matches in the DMV database and the voter registration database in a lawsuit brought by former Attorney General Van Hollen in 2008. These two databases were not constructed to guarantee that identical information is contained in every field.

Discrepancies between the two databases are simply not a reflection of an individual's qualifications to vote or an indication of voter fraud or irregularities.

The most common reason for information not matching in the DMV and WEC databases is the variation on names that individuals may use for different reasons and at different times. An individual applying for a driver license as "Robert" may, years later, use the name "Rob" when registering to vote. This has no bearing on the individual's qualifications or right to vote as an adult citizen and resident of Wisconsin.

The bill also relies on a notification system that utilizes the U.S. mail. Such processes have been unreliable for ensuring that voters receive adequate notification in the past and will be increasingly unreliable as all of us pay less and less attention to communications that come through the mail, especially anything that looks like a form letter.

As with other bills in this legislative package, an honest assessment of these election processes argues for the Legislature to join state and local election officials in educating the public about the facts related to Wisconsin election processes. The public and local election officials are exhausted and discouraged with the constant misinformation and disinformation that continues to be perpetuated by those who are in office by virtue of the same elections and rules that they wish to question. On behalf of the City of Madison, its voters, election officials and poll workers, I request that the Legislature focus its efforts on legislation informed by the professionals in the field and with the goal of serving Wisconsin voters, not disenfranchising them.



WISCONSIN INSTITUTE
FOR LAW & LIBERTY

Testimony to the Senate Committee on Elections, Election Process Reform and Ethics

February 7, 2022

Thank you, Chairwoman Bernier, Vice-Chair Darling, 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 Senate Bills 935, 936, 940 and 941 today. We are also registering in favor of Senate Bills 934, 937, and 943, 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.

Senate Bill 935

First, Senate Bill 935 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.

Senate Bill 935 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.

Senate Bill 936

Senate Bill 936 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.

Senate Bill 940

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%

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

² 52 U.S.C. § 21083

³ 52 U.S.C. § 21083(a)(5)(B)(i)

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. While you must show a photo ID to register in-person, Wisconsin's mail-in registration by indefinitely confined voters could allow registration with only proof of residence, which includes documents that presumably could be easily fabricated.⁴ Because our current DMV check process is not used to determine the eligibility of a voter, any intentional subversion would go largely unnoticed. 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 Senate Bill 940 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 is corrected. This would be especially helpful in any post-election reviews from the public, where personally identifiable information could not be disclosed.

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.

With easily accessible online and same-day in-person registration, Senate Bill 940 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.

Senate Bill 941

Senate Bill 941 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, Chairwoman Bernier and committee members for hearing my testimony today. I would be happy to answer any questions.



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Testimony before the Senate Committee on Elections, Election Process Reform and Ethics

SB 940

February 7, 2022

Thank you, Chair Bernier and members of the Senate Committee on Elections, Election Process Reform and Ethics for holding this hearing on Senate Bill 940, relating to: comparison of voter information on the state's official voter registration list with information maintained by the Department of Transportation. As explained by the Legislative Reference Bureau, SB 940 provides a process to correct discrepancies between official registration data and personally identifiable information maintained by the DOT.

Under current law, the Wisconsin Elections Commission is not required to investigate any discrepancies discovered between a voter's official registration information kept by WEC and the personally identifiable information kept by DOT. This has left local clerks in 'limbo' with regards to resolving these discrepancies, and the voter remains eligible, regardless of the reason for the mismatched information. SB 940 provides a statutory process for WEC to correct simple clerical errors and update the voter's information. However, if multiple discrepancies are found, or is outside of the scope listed, a voter will be mailed a notice of each violation, and will be provided an opportunity to correct their information. Additionally, a voter's status would be changed to ineligible if the discrepancy is not corrected within 30 days.

This Bill seeks to correct the root cause for over 23,000 incidents of voter information discrepancies in the November 2020 election, as reported in the audit conducted by the Wisconsin Institute for Law and Liberty. Many of these incidents could have been administrative errors, but the voter information should be corrected so all data in the WEC voter registration and DOT database match.

Thank you for your kind consideration and support of this important legislation to keep our elections honest, fair, and transparent. It is critical that every eligible voter's vote counts, but the process makes it difficult to cheat.



STATE SENATOR

Eric Wimberger

DISTRICT 30

Testimony on Senate Bill 940

*Senate Committee on Elections, Election Process Reform and Ethics
Monday, February 7, 2022*

Chairman Bernier and Members,

Thank you, Ms. Chairman and members of the committee for holding this hearing on Senate Bill 940. I appreciate your time and attention.

At the heart of the American democracy is the election of public officials. Government of the people, by the people and for the people must, ultimately be accountable to the people. The ability for each of us to change our government and those who lead it is the cornerstone to the greatest democracy in the history of the world.

When the people begin to doubt or even become skeptical that the election process is fair, that their vote is being counted or that a powerful few, or an entrenched bureaucracy are controlling the results of our elections, the very bedrock of our country begins to crumble. It is no secret that recent events have caused many to begin to doubt the integrity of our elections and the actions of our government officials.

Senate Bill 940 is one of several bills introduced to defend the integrity of our electoral process and restore the faith of the people in the validity and importance of their vote.

The rule of one person, one vote is a simple and vital concept, but one that requires effort and oversight to guarantee. Discrepancies in an individual voter's personal information may just be an oversight, but can cause that individual's vote to not be counted and may expose the electoral process to accusations of fraud.

Senate Bill 940 establishes rules to be followed by the Elections Commission, the government agency charged with overseeing the integrity of our elections, to assure each of us are properly registered as legal electors in our state. If we discover individual discrepancies after an election is complete, it is too late and raises the level of concern and skepticism by the public. That is why this legislation expands upon current law which requires the Elections Commission and the Department of Transportation to enter into an agreement to match personally identifiable information and cross reference it with individual voter registration.

Under this bill, no later than 10 days after the date of each original voter registration or a change to a voter's registration, the Elections Commission must compare the voter's personally identifiable information with the personally identifiable information maintained by DOT. To achieve this, the agreement with the Elections Commission must require DOT to provide the commission access to that information.

If a discrepancy is found by this process, the Election Commission must take each of the following steps:

1. Correct the discrepancy if it is a single item of information and can easily be corrected based upon reliable information.
2. Mail a notice to the voter that informs them of each discrepancy identified and, if there are two or more items of information that cannot be corrected, that their voter registration will be suspended unless the voter corrects the information within 30 days after the date the notice is mailed, and
3. Change a voter's registration from eligible to ineligible if the voter has not corrected each discrepancy identified within 30 days of the notice being mailed.

As we enter another contentious campaign season, I know we will all agree that the integrity of our election must be a high priority. I urge your support for this important legislation.

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Caroline Fochs
City Clerk, City of Mequon
February 4, 2022

To the State Senate on Elections, Election process reform, and Ethics

Senators and staff,

The City of Mequon administered a Special School Board Recall Election on November 5, 2021. During our in-person absentee voting, a woman produced her driver's license for photo ID for voting purposes. When I attempted to find her voter registration record and could not, I asked her if she was registered. When she stated that she was not a US citizen but wanted to vote I explained that she was not eligible. She understood and promptly left the polling location. However, had she not been forthcoming of her status I would have registered her to vote and given her an absentee ballot. This shocked me and made we wonder why is there no indication on a driver's license that they are not a US citizen?

My second encounter with this issue happened on election day. After the election we begin entering the election day registrations into Wisvote (the statewide voter registration software). This is when we discovered that a non-US citizen did vote in the election. During the police investigation on this matter, it was determined that the voter used a valid Wisconsin driver's license as proof of residence to register and for photo ID to vote.

On the technical side, Wivote conducts a nightly verification with the DMV to ensure that the driver's license information election officials input while entering new voter registrations, matches the driver's license number, name, and date of birth the DMV has on file. Those that do not match in some fashion are sent back to the municipality to determine the proper action (whether it was a typo, etc.). The DMV has data as to citizenship of each licensee, so they have the systems in place to check citizenship today. The Wisconsin Election Commission (WEC) should be required to add this function and check citizenship along with name, date of birth and driver's license number. This would not however, help on election day when voters register at the polls, so that is why we also need an indication on their driver's license to specify citizen status.

I have been involved in election administration for 15+ years, and in local government for 20+ years. It is unfortunate that this has been going on for years with likely hundreds of non-US citizens on our polls books. I respectfully ask that should this bill advance that the WEC should also be required to retroactively run this check on every existing voter and inactivate those that return as non-US citizens.

Thank you for your consideration.



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**Testimony of Jay Heck,
Executive Director of Common Cause in Wisconsin**

Monday, February 7, 2022

**Wisconsin State Senate Committee on Elections, Election Process
Reform and Ethics**

Common Cause in Wisconsin (CC/WI) is the state's largest non-partisan political reform advocacy organization with more than 9,000 members and activists residing in every county in Wisconsin. We strongly support free and fair elections in this state and nation and oppose attempts to make voting more difficult and burdensome.

Much to the disservice to Wisconsin voters, the measures being considered by this State Senate Committee on Elections today were formulated without bipartisan cooperation or consultation, without any collaboration or consultation with CC/WI, or with little to no input from other non-partisan voting rights organizations in Wisconsin.

Furthermore, these measures were devised and made public only late last week and are being subjected to a "fast track" process in which the outcome has already been preordained. These measures have hardly been able to be viewed, digested and understood by the public and additionally by important, trusted election administrators like municipal and county clerks whose jobs are directly related to the bulk of the issues addressed in these bills have not been consulted nor had time to review these bills in this timeframe. Yet they are expected to be passed along party lines and sent to the full State Senate for a vote, as soon as this Wednesday, February 9. Such a process is disrespectful of the voters of Wisconsin who have a right to expect a fairer and more transparent legislative process.

Additionally, CC/WI believes that the following measures being considered today would have a detrimental effect on voter participation in Wisconsin and make it more difficult and burdensome to vote in a state that already has among the most extreme and restrictive voting laws of any state in the United States today.

Accordingly, CC/WI strongly opposes the following measures up for consideration in this committee today. We urge a “No” vote against them and further expect and will encourage Gov. Tony Evers to veto them should they be advanced and passed through the Wisconsin Legislature.

Senate Bill 935: This “catch all” measure purports to address certain kinds of election “fraud” and prohibits private resources and contracts for election administration without providing public resources, restricts who may perform tasks related to election administration, restricts the ability to correct minor mistakes/defects on absentee ballot certificates, restricts returning absentee ballots solely to the office of the municipal clerk, appointment of election officials, imposes restrictions on 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 imposes severe penalties.

Why CC/WI is opposed: This measure is a vast overreach. It imposes unnecessary restrictions on providing assistance to voters who are residents of nursing care facilities, reduces resources available to provide safe voting without providing additional public resources, restricts ability for election clerks to make common sense address corrections to absentee ballot envelopes which will result in qualified ballots not being counted, imposes unreasonable restrictions on who can be a poll worker and provides for unreasonably severe penalties. It will result in the disenfranchisement of voters for minor, technical mistakes.

Senate Bill 937: This measure severely restricts who can be considered or who qualifies to be an “Indefinitely Confined Voter” for purposes of receiving absentee ballots automatically and provides severe penalties for non-compliance.

Why CC/WI is opposed: It should be up to each Wisconsin voter to determine whether or not they want to receive an absentee ballot in the mail to utilize and not up to a partisan politician. This measure does not even consider a global pandemic, whether it be COVID or similar pandemics in the future, to be a sufficient reason to request an absentee ballot as an indefinitely confined voter. It would also require voters to apply for an absentee ballot for every election instead of just once, for subsequent elections as is now the case. The penalties for “violation” of this unnecessary measure are ridiculously and unreasonably punitive.

Senate Bill 938: This measure provides for the utilization of information from the Wisconsin Department of Transportation to verify U.S. citizenship and would require the designation: “not to be used for voting purposes” to be stamped on state issued driver’s licenses and other state issued photo ID.

Why CC/WI is opposed: This measure is completely unnecessary and xenophobic. Currently, only U.S. citizens may vote in elections and this additional classification is completely unwarranted and divisive. Furthermore, this measure will potentially disenfranchise qualified electors and relies on unreliable sources for citizenship information.

Senate Bill 939: This measure severely restricts the absentee ballot application process, restricts and prohibits the unsolicited mailing or transmission of absentee ballot applications and absentee ballots, restricts the secure delivery of absentee ballots, restricts the canvassing for absentee ballots, further restricts voter registration requirements, electronic voter registration, and provides unreasonable penalties for “violation.”

Why CC/WI is opposed: This unwarranted measure makes the entire process of voting by absentee ballot much more onerous and difficult. Absentee voters would need to provide proof of identification for every election. Under this bill, a voter must submit a separate application for each primary and the election associated with that primary for which the voter wishes to receive absentee ballots automatically. It would require the WEC to prescribe the form and instructions of the absentee ballot application and also unnecessarily require the absentee ballot application to be separate and distinct from the certificate envelope in which voters must seal and submit absentee ballots, the outer portion of which includes certifications of both the voter and a witness. Additionally, the bill requires that the application requires the voter to certify facts establishing that he or she is eligible to vote in the election and must include excessive and unnecessary information. In short, this measure discourages voting by absentee ballot, even for voters who have relied on this method of safe and lawful voting for years.

Senate Bill 940: This measure would require the Wisconsin Elections Commission to identify and seek a correction to any new or changed voter registration that contains any information different than what is contained by information compiled by the Department of Transportation within ten days by mailing a notice to the voter.

Why CC/WI is opposed: This measure is unreasonable and could result in the disenfranchisement of many voters because of a simple error or discrepancy in the information compiled by the DOT and on a voter registration form.

Senate Bill 941: This measure dilutes and diminishes the role of the non-partisan professional staff of the Wisconsin Elections Commission and provides for micromanagement of election-related decisions by partisan legislators. It would forbid WEC staff from taking any action to implement federal election guidance and procedures without the approval of partisan state legislators who are on the Joint Committee for the Review of Administrative Rules (JCRAR) with some exceptions.

Why CC/WI is opposed: This measure is very possibly illegal under federal law and it is nothing less than a power grab by partisan legislators seeking to seize control of the decision-making process from WEC staff and Commissioners. It also injects more partisanship into basic questions of election administration in the state.

Senate Bill 942: This measure requires the Wisconsin Elections Commission to submit an annual report to the Legislature's Joint Committee on Finance (JCF) detailing "all failures" of WEC and the Department of Transportation, Department of Corrections and Department of Health Services to comply with "certain election-related activities." It would abolish one or more full time positions in each of those agencies and lapse up to \$50,000 per day for "non-compliance" or for providing "erroneous guidance" as determined by JCF.

Why CC/WI is opposed: This measure is completely unreasonable and extremely punitive in both the reporting requirements and the penalties imposed by highly partisan legislators seeking to control the financial and policy-making process involved in Wisconsin elections. It is a power grab of the very worst kind and it is completely unwarranted.

Senate Bill 943: This bill requires the Elections Commission to weekly submit to the Joint Committee for Review of Administrative Rules all documents and communications from the commission that the commission issued in the previous week that are applicable to municipal clerks generally and qualify as guidance documents. If JCRAR determines that such a document or communication satisfies the definition of a rule under current law, JCRAR must notify the commission of that determination and the commission must notify the municipal clerks that the document or communication is withdrawn and no longer applicable.

Why CC/WI is opposed: This measure is micro-management in the extreme by partisan legislators over the everyday operations of the non-partisan WEC staff and is tantamount to a complete state legislative takeover by partisan legislators of Wisconsin elections.

Senate Bill 934 and Senate Bill 936: While CC/WI finds there are portions of these bills that are legitimately good ideas, they nevertheless are attached to other measures that fail to improve Wisconsin election law. For example, in SB 934, there are good provisions on security and list maintenance, but these are rolled into a bill that requires WEC to treat ERIC data that someone moved as 'reliable', when in 2019 the data proved to be unreliable and this treatment of voter registration information will result in a purge of eligible voters. The audit provision in SB 936, while not a Risk Limiting Audit as CC/WI supports, is an improvement on current statutes by requiring the audit to be pre-certification and done by hand. While there are reasonable provisions and fixes in some of these bills, they are attached to measures that harm voters, do nothing to further election integrity, and continue to erode confidence in our elections and democracy. For these reasons, CC/WI is opposed to SB 934 and SB 936.

Senate Joint Resolution 101: This constitutional amendment, proposed to the 2021-22 legislature on first consideration, does all of the following:

1. Provides that no state agency or officer or employee in state government and no political subdivision of the state or officer or employee of a political subdivision may apply for or accept any donation or grant of private resources for purposes of election administration.

2. Prohibits the use of a donation or grant of private resources for purposes of election administration.
3. Prohibits any individual other than an election official designated by law from performing any task in election administration.

A constitutional amendment requires adoption by two successive legislatures and ratification by the people before it can become effective.

Why CC/WI is opposed: This measure would prevent any city, town, village or municipality from applying or accepting any private donation for the purpose of mitigating the effect of COVID such as for masks, cleaning products, plastic shields, hiring poll workers or for any other reason even if there are insufficient public resources available for the purpose of making voting safe and free from possible infection and disease. There is no provision in this measure to provide increased public resources to replace private support for safe voting practices and would likely result in decreased voter participation.

Thank you for your respectful consideration of our views.