

**Date** February 7, 2022

**To** Senator Bernier, Chair; Senator Darling, Vice Chair; members of the Committee on Elections, Election Process Reform and Ethics

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

**Re:** Senate Election Committee February 7, 2022 Public Hearing

- Against - [SB-941](#) **Elections Administration** Overseeing the administration of elections
- Information Only - [SB-934](#) **Voter Registration List** Maintenance of the voter registration list, training of municipal clerks, data sharing agreements, pre-election procedures, lines at the polls on election day, and granting rule-making authority.
- Information Only - [SB-935](#) **Election Fraud** Certain kinds of election fraud, private resources and contracts for election administration, who may perform tasks related to election administration, defects on absentee ballot certificates, returning absentee ballots to the office of the municipal clerk, appointment of election officials, allowing an employee of a residential care facility or qualified retirement home to serve as a personal care voting assistant during a public health emergency or an incident of infectious disease, and providing a penalty.
- Information Only - [SB-937](#) **Indefinitely Confined Voters** Status as an indefinitely confined voter for purposes of receiving absentee ballots
- Against - [SB-939](#) **Absentee Ballots** Absentee ballot applications, unsolicited mailing or transmission of absentee ballot applications and absentee ballots, secure delivery of absentee ballots, canvassing absentee ballots, voter registration requirements, electronic voter registration, and providing a penalty.

As the federally mandated Protection and Advocacy system for our state, Disability Rights Wisconsin (DRW) is charged with protecting the voting rights of people with disabilities and mandated to help "ensure the full participation in the electoral process for individuals with disabilities, including registering to vote, casting a vote, and accessing polling places." (Help America Vote Act, 42 U.S.C. § 15461 (2002)). DRW staffs a Voter Hotline and assists voters with disabilities and older adults, family members, service providers, and others.

In coordination with the Wisconsin Disability Vote Coalition, we provide training and educational resources to voters with disabilities, their families, and service providers. The hotline and trainings provide us with a frontline understanding of the barriers experienced by many voters with disabilities.

## **Voters with Disabilities**

A significant number of Wisconsin voters have a disability. The CDC indicates that 26% (1 in 4) of adults have some type of disability. According to the American Association of People with Disabilities (AAPD), approximately 23% of the electorate in November election were people with disabilities. Many older adults have disabilities acquired through aging, although they may not formally identify as a person with a disability.

Historically voters with disabilities are underrepresented at the ballot box. Many experience barriers to voting including the following:

- Polling place and voting documents are not always accessible.
- High percentage are non-drivers and lack access to transportation, especially accessible transportation
- Lack of photo ID and difficulty obtaining it because they don't have transportation to get to DMV, and DMV hours are very limited
- Limited information about their voting rights including disability related accommodations.
- Legally required accommodations such as curbside voting and ballot assistance are not uniformly available; some voters experience discrimination and denial of accommodations.
- Lack of access to the internet and/or devices that connect to the internet, and to equipment to copy photo ID.
- May live in a group home or place with many other people where ability to independently leave, get information, or get online is limited or restricted.

## **Federal Law and Voting Rights**

As referenced in this testimony, the US Department of Justice and other federal agencies issue guidance to protect the fundamental right to voting for all Americans, including specifically addressing the rights of voters with disabilities to have equitable access to the ballot. These rights are protected by federal laws including the Americans with Disabilities Act (ADA), the Voting Rights Act (VRA), the Help American Vote Act (HAVA), and other civil rights law. It is important that that these bills align with the protections afforded to people with disabilities by [federal law](#).

## **SB-941 Elections Administration - Against**

DRW has the following concerns about SB-941:

- Federal civil rights laws, as well as guidance from the US Department of Justice and other federal agencies, protect the fundamental right to voting for all Americans, and [specifically address the rights of voters with disabilities to have equitable access to the ballot](#). These rights are protected by federal laws including the ADA, the VRA, HAVA, and other civil rights laws. It should not be optional to comply. Any state action that would impede the operation of the federal statutes (or regulation) would

raise constitutional issues, and fall under the Supremacy Clause, which establishes that the federal constitution, and federal law generally, take precedence over state laws, and even state constitutions, and prohibits states from interfering with the federal government's exercise of its constitutional powers.

- The bills adds significant reporting requirements for municipal clerks without providing any funding to provide clerks with support to comply with these requirements.
- This bill requires that legal counsel for the commission be partisan and chosen by the legislative leadership of the two major political parties. Under current law staff positions are not partisan and are not selected by the Legislature.

**Based on these concerns, we ask you to oppose SB 941.**

### **SB-934 Voter Registration List - Information Only**

Based on DRW's review of the bill, we are very concerned about some provisions in this bill related to maintenance of voter registration lists. We also noted some provision that would be helpful for others with disabilities. For that reason, our comments are for Information Only. The following provisions in the bill merit comment because of their impact voters with disabilities.

- **Changes in status for Voters Who Move.** The bill would require that people who move within a municipality be marked ineligible to vote. Clerks would no longer be allowed to send the voter a confirmation notice and update the information without requiring the voter to re-register.

**Concern:** Many people with disabilities experience housing insecurity and may move often. The current process initiated by the clerk provides a reasonable way for local election officials to maintain current registration information without requiring community members to re-register.

- **The bills would require that information received from ERIC be considered reliable for purposes of changing voter status to ineligible.**

**Concerns:** The accuracy of ERIC data has been the subject of litigation, because of proven error rates in the range of 5 – 10 percent. In addition, ERIC relies in part on DMV data. In most states, the DMV has a role in assisting with voter registration, as required by the NVRA. This is not the case in Wisconsin, so DMV data is not as reliable a source as it may be in other states.

- **Lines at Polling Places.**  
This bill would require chief inspectors to report and document each occurrence of voters waiting in line for at least one hour before voting. It would require that municipalities who report this take all necessary steps, including establishing

additional polling places, to ensure that voters do not wait in line for an hour or more at future elections.

Long lines at the polling place are especially problematic for some voters with disabilities and older adults who are not able to wait in line for a long time. We support provisions in SB-934 to address this barrier.

An additional recommendation regarding long lines would be enforcing the Wisconsin law which requires that curbside voting be available for voters who because of disability are not able to enter the polling place. This accommodation is not consistently available, and we have received multiple reports of voters who have been denied this accommodation and are not able to wait in line. We ask policy makers to also take steps to ensure access to curbside voting.

- **Clerk Training.**

The bill would create additional training requirements for municipal clerks including and requiring a clerk to complete at least three hours of training prior to conducting an election for the first time. We support this provision to address adequate training for clerks. Such training provides important information about voting rights, including the rights of voters with disabilities to have equitable access to voting, and disability related accommodations required by state and federal law.

### **[SB-935 Election Fraud - For Information Only](#)**

DRW has appreciated the ongoing discussion with Senator Bernier to ensure the voting rights of care facility residents. Though DRW is unable to support the bill in its current form, our comments note specific provisions that we support as well as our concerns about SB-395.

#### **Voting In Care Facilities**

- This bill would establish a new process to provide residents of nursing homes and other eligible care facilities with assistance needed to vote when a facility will not admit Special Voting Deputies (SVDs) because of a pandemic or other public health issues (flu, MRSA, etc.). DRW supports the creation of a statutory language to ensure residents receive the needed assistance, although the process proposed in SB 935 is more restrictive than we recommend.
- DRW also supports allowing facility staff to be appointed as Personal Care Voting Assistants who would be trained and certified to conduct in person absentee voting, when SVDs are unable to enter due to public health restrictions. Training facility staff on voting including rights is helpful and will ensure that the assistance they provide is informed by an understanding of residents' rights as protected by Wisconsin and federal law.

- SB 935 moves up the date by which SVDs must make arrangements to visit and requires SVD visits to be completed by no later than the “sixth working day preceding the election” instead of the current Monday, preceding the election.

**Recommendation** While this is an improvement on current law and provides at least a chance for absentee ballots to be sent and returned for those unable to participate in SVD visits, we would urge that SVD visits be completed no less than 10 days prior to an election and that ballots be sent out to those missing the visits the following day. This would provide at least nine days to receive, complete, and return the ballot. The current process does not provide sufficient time for ballots to be mailed to residents, and for residents to complete and return them.

**Concerns:**

**1. Residents Need Assistance with Voter Registration.**

When individuals move to a nursing home, they need to re-register to vote. It is important that they receive this assistance. The personal care voting assistants are not allowed to register voters and most SVDs are not allowed to register voters. Other staff may be afraid to offer assistance with voter registration, as this bill would make it a felony if an employee “coerces” a resident to register to vote. We adamantly oppose any coercion. That being said, “coercion” is not defined and could be more broadly interpreted as offering assistance. Such a severe penalty is likely to result in staff being unwilling to take the risk of providing any assistance with voter registration and leave residents disenfranchised.

[CMS requires](#) nursing homes that receive Medicare or Medicaid funding to affirm and support the residents right to vote. That should include supporting residents with registering to vote if they wish to do so.

**Recommendations:**

- Give personal care voting assistants and SVDs the training and authority to register voters, as clerks can do at in-person absentee voting.
  - Include voter registration as part of the intake process. New residents should be asked if they need assistance with registering to vote, and if they wish to request an absentee ballot. This process would also help to ensure more of the smaller care facilities meet the requirement to participate in the SVD program.
- 2. Limiting assistance with voting to only the two assistants** may restrict the residents from getting the support they need to register to vote, to complete an absentee ballot, to return a ballot.

[Federal law](#) requires election officials to allow a voter who is blind or has another disability to receive assistance from a person of the voter’s choice (other than the voter’s employer or its agent or an officer or agent of the voter’s union). In addition,

Federal law requires that Medicare/ Medicaid certified long term care facilities affirm and support the right of residents to vote. “nursing homes are required to support a resident in the exercise of their right (§483.10(b)(2)) to vote, such as assisting with absentee or mail-in voting, or transporting residents to polling locations or ballot drop-boxes in a safe manner.”

**Recommendation.** Align Wisconsin law with the federal law to permit people with disabilities, including nursing home residents, to receive assistance from a person of their choice with completing their ballot, and to allow staff to assist residents with voting, as requested by the resident.

3. The bill would provide notice of the times and dates of absentee voting to each relative for whom the facility has contact information. Such notifications must be respectful of resident rights to privacy, and should only be done with the residents consent.

**Recommendation:** Ensure notification of relatives and any observation of the voting process complies with the residents’ rights and protections. Residents should have to consent to notification of family members or others.

### **Use of Private Resources for Election Administration**

- The bill would prohibit municipalities from applying for or accepting donations or grant moneys for purposes of election administration. Grant funding has provided support for some municipalities to improve accessibility concerns at polling places. In addition, during the pandemic, grant funding helping to address health and safety concerns at polling places. We heard positive comments from community members about the safety precautions taken using grant funding.
- **Recommendation:** If grant funding is not allowed, the Legislature should allocate funding for municipalities to address polling place accessibility, curbside voting, health and safety concerns, and other election administration expenses.

### **Absentee Ballot Certificates**

- This bill would prohibit a municipal clerk from correcting a defect on the completed absentee ballot certificate envelope. Under current law, if the witness certificate is missing certain address information, the clerk receiving the ballot may complete that address information if known. Alternatively, the clerk may return the ballot to the voter so they may contact the witness and correct the defect if time permits.

Under the bill, if a clerk received an absentee ballot with missing information, the clerk would be required to return the absentee ballot to the voter. This would be required regardless of how much time remains to correct the issue or to cast a different ballot before polls close. The clerk would also be required to post a

notification of the defect on the voter's voter information page on MyVote Wisconsin.

### **Concerns about SB 935**

- We are concerned about the harmful impact on some voters with disabilities and older adults. The certificate envelope has very small print, is crowded, and **is not accessible** for many voters who have some vision loss. It's not a surprise that there are often mistakes in completing it correctly.
- Based on the experience of voters we assist, it has been very helpful for clerks to correct a defect on the absentee ballot certificate envelope, such as completing the witness address, and honoring the voter's intent. If this process changes and clerk must return the ballot to the voter, it is highly probable that there will not be enough time for the voter to correct the problem and return the ballot. While posting information on MyVote may be helpful for those with internet access and who see the posting, it would result in inequitable access as many voters do not have ready access to the internet and to device. In addition, unless MyVote sends a notification to the voter, they are not likely to be aware of the post.
- **Recommendation:**
  - Redesign the certificate envelope with guidance from national usability and accessibility experts. Provide more public education, conduct usability testing on the instructions for absentee voters, and include older adults and voters with disabilities in the usability testing.
  - Allow clerks to complete witness address information when possible.

### **SB-937 Indefinitely Confined Voters - For Information Only**

DRW has appreciated the ongoing discussion with Senator Bernier about changes to update the Indefinitely Confined Voter Status and to protect this important option for disabled voters. Though DRW is unable to support the bill in its current form, our comments note specific provisions that we support as well as concerns.

**Background.** This bill makes changes to the Indefinitely Confined Voter Status. Wisconsin's indefinitely confined statute has been on the books for decades and provides an important safeguard to ensure that many voters who are disabled, or have chronic health conditions can cast a ballot. An indefinitely confined voter is a person who, because of age, physical illness, or disability, has difficulty voting at their polling place, and always wants to cast an absentee ballot. The Wisconsin Supreme Court affirmed that "indefinitely confined" status is for the voter to determine – it is not a medical diagnosis.

Wisconsin has been a leader in expanding community based long term care; over 80,000 people with disabilities and older adults are enrolled in community based long term care programs. Participants qualify for these programs by meeting a nursing home level of care, meaning their support needs are significant and similar to nursing home residents. The increasing number of individuals with long term health conditions such as Cerebral Palsy, Multiple Sclerosis, Muscular Dystrophy, ALS, and quadriplegia who live in the community rather than in a nursing home has increased the need for the indefinitely confined voter provision.

### **SB 937 addresses the following:**

1. Further defines what it means to be “indefinitely confined.” An elector.....“who cannot travel independently without significant burden because of frailty, physical illness, or a disability that will last longer than one year.” Advocates have supported the need to clarify the language. The bill removes “age” as age in and of itself should not qualify someone – it requires frailty, physical illness, or disability.

Although this language provides some clarification, we continue to believe the term “indefinitely confined” is problematic. Voters who need this accommodation have shared that they are hesitant to apply because the terminology infers that they are “bed-bound” and unable to leave their home. We recommend the language used in some other states of *Permanent Absentee Voter Due to Disability*.

2. Provides a way for some (but not all) indefinitely confined voters who have photo ID to meet the requirement by providing the number of their driver’s license or state ID. This is a helpful accommodation, but it is unfortunately limited to voters who can provide this electronically using MyVote Wisconsin.
3. Provides that a voter who fails to vote a ballot the voter receives as a result of his or her indefinitely confined status may be removed from the indefinitely confined status list only if he or she fails to vote the ballot at the spring or general election. Turnout among all voters is lower for primary elections and this change would prevent indefinitely confined voters from having to reapply to maintain their status due to not voting in a primary election.

### **Concerns about SB 937**

1. Voters who have a photo ID and do not have access to the internet and to MyVote are NOT provided with an accommodation to meet the photo ID requirement. They are expected to provide a copy - no accommodation is made to their status as an indefinitely confined voter for whom this can create an undue burden. DRW does not support this provision.

**Recommendation:** allow these voters using a paper application to provide their ID numbers on the application, the same standard as used for voters who have access to MyVote.



2. Voters who do not have photo ID are required to provide the last 4 digits of their social security number to verify their identify. This could be an effective way of verifying their identity. However, the bill also requires the voter to provide an affirmation of a US citizen 18 or older that the elector is indefinitely confined and cannot travel independently without significant burden because of frailty, physical illness, or a disability that will last longer than one year. DRW does not support this provision.

**This requirement is problematic for two reasons:**

- The purpose of the signature should be to affirm the person's identify – not their health status. The Wisconsin Supreme Court has determined it is up to the voter to make this determination – it is not a medical diagnosis. Because of the subjective nature of this status, other citizens may feel unqualified to make such a determination and be unwilling to sign an affirmation. This requirement does not appropriately accommodate the voter and creates a different higher standard for those who do not have a drivers license or state ID.
- The legislation establishes a new crime for anyone who "Falsely make any statement for the purpose of qualifying as indefinitely confined". The new crime could be interpreted as applying to the person who makes the makes the affirmation and make them unwilling to sign.
- The requirement for another person to sign their application form may put the voter at risk for fraud because it will include the last 4 digits of their social security number.

**RECOMMENDATION:** Require these voters provide the last 4 digits of their SSN on their absentee ballot application. This information along with their birthdate should suffice to affirm their identify. This information should be sufficient to confirm the voter's identity. In addition, voters must receive assurances that that social security numbers will be guarded in a manner that will protect the voter from fraud or abuse.

3. Requires the Elections Commission to facilitate the removal of the indefinitely confined status of each voter who received that status between March 12, 2020, and November 6, 2020. A voter whose indefinitely confined status is so removed must submit a new application for indefinitely confined status in order to continue receiving absentee ballots automatically.

This requirement should not be needed as municipals clerks were already asked to contact indefinitely confined voters after the 2020 election and advise voters who are not indefinitely confined to update their status.

**Recommendation:** Rather than remove these voters, they should receive

notification that clarifies the requirements for indefinitely confined status and states their responsibility to update their status if they do not qualify. This will minimize confusion and ensure that those who qualify for this status do not need to re-apply. The process of reapplying can be difficult for voters with significant disabilities.

**4. Requires a separate application form from the absentee ballot application.**

The absentee ballot application is widely available and well known. If a separate form is required, it will decrease awareness of the Indefinitely Confined voter status for citizens who need this status. Electors in need of an indefinitely confined status may not know to request this application, At a minimum, the absentee ballot application should continue to include language about the indefinitely confined voter status and direct voters to the other form.

**Recommendation:** Continue to have one form to ensure that voters who need this accommodation are aware of it. The current form clearly states that anyone who makes a false statement may be fined or imprisoned. This language is right next to the box that a voter must check to self-certify as “indefinitely confined” and is very visible.

### [SB-939 Absentee Ballots - Against](#)

Absentee voting is heavily utilized by disabled voters because so many have barriers to voting in person including lack of transportation, polling place accessibility issues, and/or disability related or health concerns that limit their ability to vote in person. Many also have limited access to technology and to the internet or disability-related barriers to using technology.

SB-939 would create the new restrictions listed below that would make it more difficult for many disabled Wisconsinites to cast a ballot.

- Absentee voters would need to provide proof of identification for every election. Under existing law, a voter who submitted a copy of their photo ID when applying for an absentee ballot once, and has not moved nor changed their name, need not submit a copy of their ID again when they apply.

**Concern:** The voters we assist often struggle to provide a copy of their photo ID on My Vote or My Mail. Requiring this be mailed or uploaded to My Vote for every election would be a significant burden.

- Reduce the number of elections a voter can apply to receive ballots for with a single application to a single primary and general election pair. Under existing law, a voter can apply to receive ballots for every election in a calendar year.

**Concern:** A high percentage of voters with disabilities vote absentee and request absentee ballots for the year. Because of limited access to technology, and in many cases limited mobility, it would be a significant burden for many disabled voters to have to repeatedly reapply to vote absentee. Having to repeatedly complete and resubmit absentee ballot applications will create a burden for voters who disabilities such as blindness, MS, spinal cord injuries, cerebral palsy that make it difficult to complete forms either by hand or online.

- Require all in person absentee voters to complete an absentee ballot application, even if they already have such a request on file.

**Concern:** Requiring voters who already have an absentee ballot request on file to complete the form again is unnecessary, inefficient, and will lead to longer waiting times. In addition, many individuals with disabilities may require assistance to complete the absentee ballot application, and will require election officials to provide this accommodation.

- Prohibit clerk from sending absentee ballot applications to anyone who has not requested them.

**Concerns:** Sending absentee ballot applications to registered voters provides equitable access to absentee voting for all voters, including those who do not have access to the internet or a device to complete the form online or to download and print it. This restriction is especially troubling because the bill requires voters to repeatedly complete and submit their absentee ballot request. Many voters with disabilities will struggle with these new restrictions. It is truly a public service for our municipal clerks or the Wisconsin Election Commission to mail the absentee ballot applications to voters, as so many voters with disabilities and older adults are isolated and not able to easily obtain or print an application.

### **Absentee Ballot Return**

Many voters with disabilities rely on a person of their choice to return their absentee ballot. Because of disability they may be unable to place their completed ballot in a mailbox, in a secure drop box, or return it to their clerk. Existing law does not restrict who may deliver a ballot for a voter. This bill would restrict who a voter may choose to return their ballot and create a felony to punish a person who return a voter's ballot in violation of these restrictions.

## Concerns

While less restrictive than a 2021 proposal, there are several provisions which are very concerning.

- No one can return more than two ballots not their own for anyone that is not immediate family per election.
- The person cannot be compensated to return the ballot.

Our concerns include the following:

Many people with disabilities and older adults live in a congregate setting. This includes Adult Family Homes (AFH), community based residential facilities (CBRF), supported housing, or apartment buildings. Because of lack of transportation, mobility restrictions, as well as unreliable mail delivery, many residents rely on paid staff to return their ballot. Those paid staff often assist multiple residents. In addition, volunteers often assist residents with voting including ballot return.

In addition to those living in congregate settings, these restrictions would impact many disabled and elderly individuals who live independently in their own home or apartment. Many are isolated and do not have access to family or other community members to assist them. They rely on paid staff to assist them with activities of daily living, including voting, and in many cases to assist with absentee ballot return.

If paid staff are no longer able to assist with absentee ballot return, it will disenfranchise many people with disabilities and older adults. Federal law allows any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union.

## **For the reasons noted, we ask you to oppose SB 939.**

DRW welcomes the opportunity to work with policy makers to ensure that every eligible disabled voter has the opportunity to register to vote and cast a ballot, no matter where they live or how they vote. We are committed to ensuring that that Wisconsin elections are accessible and inclusive, and protect the rights of Wisconsinites with disabilities and older adults.

- For additional information or questions, please contact Barbara Beckert at [barbara.beckert@drwi.org](mailto:barbara.beckert@drwi.org) or 414-292-2724.

*Disability Rights Wisconsin is the federally mandated Protection and Advocacy system for the State of Wisconsin, charged with protecting the rights of individuals with disabilities and keeping them free from abuse and neglect.*

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