

Date: September 11, 2023
Re: Public Comments for Voting Listening Session to Share Barriers Experienced by Voters with Disabilities
To: United States Attorney's Office for the Western and Eastern Districts of Wisconsin and the Department of Justice's Disability Rights Section, Civil Rights Division
From: Barbara Beckert, Director of External Advocacy, barbarab@drwi.org

Thank you for holding this listening session to hear from Wisconsin voters with disabilities and their allies about barriers to participating in the electoral process.

I am speaking today on behalf of Disability Rights Wisconsin and the Wisconsin Disability Vote Coalition.

- Disability Rights Wisconsin (DRW) 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. DRW is charged with protecting the voting rights of people with disabilities and mandated to help ensure full participation in the electoral process for individuals with disabilities (Help America Vote Act, 42 U.S.C. § 15461 (2002)).
- The Wisconsin Disability Vote Coalition is a non-partisan effort to help ensure full participation in the entire electoral process of voters with disabilities. Members include people with disabilities, and over 40 community agencies. The Coalition is coordinated by Disability Rights Wisconsin and Wisconsin Board for People with Developmental Disabilities.

Today we will share our frontline perspective assisting people with disabilities to exercise their voting rights. DRW staffs a Voter Hotline and provides training and support to assist voters with disabilities and older adults, family members, service providers, and others. We have also participated in litigation to protect the rights of voters with disabilities including most recently as a plaintiff in *Teigen v. Wisconsin Election Commission (WEC)*, and *Archambault v. Wisconsin Election Commission*. DRW also played a consulting role in *Carey v Wisconsin Election Commission*. Our deep thanks to the US Department of Justice for your Statement of Interest in the *Carey v WEC* case.

The Disability Gap in Wisconsin

A significant number of Wisconsin voters have a disability. The [CDC](#) estimates that 23% or about 1 in 4 adults in Wisconsin have a disability: 1,055,434 adults. Lack of accessibility and failure to uphold voting rights can be significant barriers to casting a ballot. In Wisconsin, the turnout gap between disabled and nondisabled voters for the 2022 elections is 11.7 %.¹ The disability gap in Wisconsin actually increased from 2018 to 2022 and is large enough to be outside the margin of error.

Wisconsin's Decentralized Voting System

As noted by the National Conference of State Legislatures, Wisconsin's voting system is a "unique case study in elections administration" because it is highly decentralized. Elections are run by 1,852 jurisdictions at the city, town, and village level, rather than on the county level as in most other states. The smallest election jurisdiction in the state has just 45 voters and most have fewer than 1,000. There is wide variation in staff support for voting, depending on the size of the municipality. Many clerks in small towns are part-time and may even work out of their home.

Voters with disabilities experience wide variations at the local level in terms of accessibility, knowledge and enforcement of voting rights and accommodations, and training of election workers. Voting rights should be upheld consistently in every municipality. The voting rights and accommodations for voters with disabilities should not vary depending on where they live. The Wisconsin Election Commission plays an important role in providing guidance and training to clerks. However, WEC has limited ability to require a clerk to change their practices or issue a correction when voters or advocates report that voting rights are not upheld.

These are some of the concerns we continue to hear from voters with disabilities and their allies.

¹ [Disability and Voter Turnout in the 2022 Elections: Supplemental Analysis of Census Voter Turnout Data](#), US Election Assistance Commission and Rutgers University, page 9

Ballot Return Assistance

Under the Voting Rights Act, disabled voters who need assistance may select someone of their choosing to return their absentee ballot. 52 U.S.C. § 10508. Unfortunately, this assistance was prohibited in Wisconsin for two elections in 2022 due to rulings by the Wisconsin Supreme Court and the Waukesha County Circuit Court in *Teigen v. WEC*. In response, a group of voters with disabilities filed a federal lawsuit after *Teigen* to clear this up. That second case is *Carey v. WEC*, 2022 WL 3910457 (W.D.Wis., 2022). *Carey* confirmed that *Teigen* did not limit the protections of the Voting Rights Act: “The court concludes that the [Voting Rights Act] requires that [voters with disabilities] be allowed to choose a person to assist them with mailing or delivering their absentee ballot.” *Carey v. Wisconsin Elections Comm’n*, No. 22-CV-402-JDP, 2022 WL 3910457, at *9 (W.D. Wis. Aug. 31, 2022). After delivering this opinion, the *Carey* court issued a permanent injunction. The language of the permanent injunction reaffirmed the scope of the Voting Rights Act and provided clear protection to voters with disabilities: “voters who require assistance with mailing or delivering their absentee ballot to the municipal clerk because of a disability are entitled to assistance by a person of the voter’s choice.”

In spite of Judge Peterson’s order and permanent injunction, some municipalities continued to provide incorrect guidance that only the voter may return their ballot. The DRW Voter Hotline was contacted by voters with disabilities who were denied ballot return assistance. We received examples of information provided to absentee voters that stated “only the voter can return the absentee ballot in person” and also saw this posted at a polling place where I conducted an accessibility review. We heard from voters concerned that the website for their municipality stated that absentee ballots would not be accepted unless delivered by the voter themselves or through the mail. Working with Law Forward, we identified over twenty municipal websites that had incorrect information. Our review was limited to the larger municipalities; we did not have the capacity to review 1850 municipal websites. In addition to the voters who contacted us, we believe that many other disabled voters were not able to access ballot return assistance because they accepted the incorrect guidance on their municipal website or provided by municipal clerks and/ or poll workers that only the voter may return their ballot.

Disabled Wisconsin voters must be able to assert their federally protected right to assistance with any aspect of voting, regardless of where they live.

We have continued to work with the Wisconsin Elections Commission and with Law Forward on addressing these concerns. We have recommended to the Wisconsin Election Commission that they update the Uniform Instructions for Absentee Voting to address ballot return assistance rights of disabled voters, and further recommend mandatory use of the Uniform Instructions by all municipalities.

Problems with Accessible Voting

The Help America Vote Act guarantees all voters the right to a private and independent ballot. It requires jurisdictions responsible for conducting federal elections to provide at least one accessible voting system for persons with disabilities at each polling place in federal elections. The accessible voting system must provide the same opportunity for access and participation, including privacy and independence, that other voters receive.

DRW has significant concerns about the Dominion Image Cast Evolution (ICE) equipment used in 39 of the state's 72 counties. The practices at the polling places we reviewed in November 2022 raise serious concerns that Wisconsin is not in compliance with the requirement to provide disabled voters with an equitable opportunity to vote privately and independently.

These polling places we reviewed in November 2022 used the Dominion ICE equipment. The dual nature of the Dominion ImageCast Evolution presents challenges for voters with and without disabilities. The tabulator can be converted into the accessible voting equipment, but that requires that the machine be temporarily closed for use by voters who wanted to submit their ballots using the tabulator. The dual nature of the machine means it is not identifiable as the accessible voting equipment by voters, or by poll workers with limited training. There is a high probability that voters who need to use the accessible features may not know it is available. See photos provided on the last page of this document.

If a voter with a disability wants to vote using the accessibility function, all other voters must wait to complete voting, as the tabulator feature will not be available

to them. This is not equitable access for the voter with a disability. In addition, because the equipment is part of the tabulator, it would be difficult if not impossible for the voter to cast a ballot privately.

At the sites we reviewed, this equipment was not set up in a way that would make the accessible voting feature (on the back of the tabulator) available. While headphones and touchpad were on the tabulator, they were on the back end and not visible. In many cases, the accessible portion of the equipment was against a wall or blocked off by tables – in no way was it accessible and would require moving furniture and the tabulator for a voter to use the accessible equipment.

When I asked about the accessible voting function at several polling places, I was told repeatedly that no one ever uses it. This is not surprising since it is not visible and is not offered to voters, as recommended by the Wisconsin Election Commission. Most of these polling places had heavy traffic and if a voter did use the accessible voting function, the tabulator function would not be available while they voted. Other voters would not be able to feed their ballots into the tabulator. This puts the disabled voter in an uncomfortable position as they would be very visible voting, while other voters had to wait to feed their ballots into the tabulator. One poll worker told me disabled voters should use the table that is set up for those using a wheelchair or other mobility aids. I pointed out that would not meet the needs of a blind voter and was told they have worked there for years and they have never had a blind person vote there.

DRW also received reports from blind voters who asked to use the equipment and were discouraged from doing so. They were told no one knew how to use the accessible features and instead offered assistance to have someone else fill out their ballot.

As currently implemented, the Dominion ICE equipment does not meet the requirements in federal law for the accessible voting system to provide the same opportunity for access and participation, including privacy and independence, that other voters receive.

Accessible Absentee Ballot

Wisconsin voters with print disabilities do not have equitable access to absentee voting, and must find a trusted person to complete their absentee ballot and the certificate envelope. Wisconsin should provide equitable access to absentee voting by creating a screen reader accessible, Americans with Disabilities Act (ADA) compliant absentee ballot. This will allow voters with blindness, vision loss, or other disabilities that restrict them from physically marking an absentee ballot to use assistive technology to vote privately and independently. The ballot is electronically sent to the voter, who can then complete the ballot using appropriate assistive technology, then electronically and securely submit the ballot to the municipal clerk. Wisconsin should join other states in providing equitable access to absentee voting for voters with print disabilities. DRW has previously raised the issue of an accessible absentee ballot in litigation, but the judge declined to address our ADA claims.

Polling Place Accessibility

DRW continues to receive some contacts regarding inaccessible polling places. When this occurs, we encourage callers to file a complaint with the Wisconsin Election Commission (WEC). We also report the concerns to WEC staff with a recommendation that the polling place be added to the list to be reviewed during the next election.

WEC uses several strategies to address polling place accessibility including their Polling Place Accessibility Review Program which reviews polling places on election day. DRW is a partner in this program, and our staff are among the reviewers. In 2022 – 2023, the polling place accessibility review program reviewed 551 polling places in 47 counties. There were 3,062 non-compliant findings, averaging 5.6 per polling place.

Disability Rights Wisconsin has been a partner in this program since it began, providing staff time to conduct polling place reviews. Additional information about the program is available in this Wisconsin Election Commission 2023 report: [Barriers Faced by Elderly Voters and Voters with Disabilities](#).

The WEC program is a very good one, but additional staff support is needed to increase the pace of polling place review and related oversight. DRW and the Disability Vote Coalition have advocated for additional funding so the program can be expanded. Given the 3000 polling places in Wisconsin and our aging population, there is an urgent need for additional funding to support more staff time to support and expand the Polling Place Accessibility Review program.

Photo ID Requirements

Since its passage in 2011, Wisconsin has one of the most restrictive photo ID laws in the nation. Access to photo ID can be a barrier for many citizens with disabilities because so many are non-drivers and do not have a driver's license, the most common form of photo ID.

Wisconsiners with disabilities who are non-drivers must obtain or renew a Wisconsin photo ID to vote. While renewal of the photo ID is available on the Wisconsin Department of Motor Vehicles website, people must appear at the DMV to apply for the initial ID and periodically for the renewal.

The initial application for a Wisconsin photo ID is challenging for some people with disabilities who do not have the needed documentation. The application process requires supporting documentation including proof of name and date of birth (certified US birth certificate, valid passport, or certificate of naturalization) Proof of Identify documents, Proof of Wisconsin residency, proof of U.S citizenship, and the voter's social security number. Individuals often struggle to obtain the documents needed to apply photo ID.

Getting to the DMV to obtain a state ID for voting may be challenging for some people with disabilities due to lack of accessible transportation, limited DMV hours and locations, as well as not having the required documents.

- Affordable transportation for non-drivers is extremely limited due to a lack of funding, making it difficult to impossible for people with disabilities and older adults to obtain a ride to the DMV or other governmental offices.
- Many volunteer driver programs lack accessible vehicles, adding a further barrier for people using mobility devices.
- In rural areas, the travel time to a DMV office may be 45 to 60 minutes each way.

- DMV sites have limited hours and days of operation. Very few sites have weekend or evening hours.
- Some DMV sites are not accessible. We have recommended that DMV put in a place a plan to review all locations for accessibility and address concerns.

All these factors combine to make it very difficult for some people with disabilities to obtain the identification required to vote. We have frequently heard from voters, family members and service providers about the struggle to obtain photo ID.

There are provisions in Wisconsin law that provide exceptions to the photo ID requirement for some disabled voters, although voters are often unaware of this. Wisconsin law allows a person who is “indefinitely confined because of age, physical illness or infirmity or is disabled for an indefinite period” to become a permanent absentee voter “by signing a statement to that effect.” This law has been on the books for more than 30 years. Voters who are indefinitely confined or who reside in nursing homes or other residential facilities, are NOT required to provide a Photo ID. They may have their witness verify their identity instead of submitting a copy of their photo ID.

The “indefinitely confined” provision is an essential protection for the voting rights of significantly disabled Wisconsinites. We have often heard from voters or their assistors who are not aware of this provision and who do not have photo ID and believed they were not able to vote. In addition, the “indefinitely confined” provision may be at risk; it has been under attack by some policy makers and community groups based on unproved allegations of voting fraud.

Additional information about the struggle to obtain photo ID for voting is available in this report, [*Getting There is Half the Battle: Wisconsin's Photo ID Law, Access to DMV Services, and the Fight for Our Freedom to Vote*](#), a publication of All Voting is Local, Disability Rights Wisconsin, and the League of Women Voters.

Guardianship and Voting Rights

In Wisconsin, individuals who have a guardian retain the right to vote unless that right is expressly removed by the court. If an individual has lost the right to vote, they can ask to have the right restored by filing a petition in court and proving they are capable of understanding the purpose of an election.

DRW continues to hear that guardians and individuals who have a guardian are often not aware that the right to vote was revoked. At this time, guardians and wards do not consistently receive the Determination and Order Form; this is the form that documents which rights are retained and revoked. As a result, individuals are not aware that their right to vote has been revoked and a number of people who have lost that right have voted. Under current law, an individual who votes at an election but who does not have the right to vote is guilty of a Class I felony.

It is imperative that information on the Determination and Order Form be communicated consistently and clearly to the guardian and to the ward, and that both guardian and ward receive documentation stating which rights are retained and revoked.

We have also heard concerns from some family guardians who are upset that their family members right to vote was revoked. Family members are concerned that the courts may not have sufficient insight regarding the capacity of people with significant disabilities, including those who are non-verbal, but who are very much capable of understanding the purpose of the of an election. it is important that decisions about revoking such an important right be grounded in an understanding of disability and of alternative means of communication.

To increase awareness about voting rights and guardianship in Wisconsin, DRW has developed these resources:

Guardianship and Voting Resources:

- DRW [Guardianship and Voting Resources page](#): includes information on the basics about guardianship and voting, how to keep the right to vote, and how to get the right to vote back if lost in a guardianship case.
- Guardianship and Voting – [Resources for Attorneys](#)

Voting Rights for Care Facility Residents

Care facilities that meet statutory requirements must provide in-person absentee voting conducted by two Special Voting Deputies (SVD) who are appointed by the Municipal Clerk. This applies to facilities that have 10 or more residents, at least 5 residents registered to vote, and at least one resident with an absentee ballot request on file. DRW supports the intent of the SVD program to provide in-person absentee voting; however we are concerned that some aspects of the program are too restrictive.

Wisconsin has restrictive language around voting rights for residents of care facilities that limits their federal rights to have assistance with voting from a person of their choice. See [Wisconsin Legislature: 6.875](#) - *6.875 Absentee voting in certain residential care facilities and retirement homes.*

If residents wish to vote absentee, they are required to vote with Special Voting Deputies (SVDs) during the period that SVD voting takes place and are not allowed to have other assistance with the exception of a family member who is present during SVD voting. Wisconsin statute states: *No individual other than a deputy may witness the certification and no individual other than a deputy or relative of an elector may render voting assistance to the elector.*

If a resident does not wish to complete their absentee ballot with SVDs or is not available when SVDs visit, the absentee ballot cannot be sent directly to the resident until after SVDs have visited twice – and that visit can be as late as the Friday before the election. Given the federally protected rights for voters with disabilities to have assistance from a person of their choice, participation in the SVD program should be voluntary. Residents should retain the right to have their absentee ballot mailed to them at the same time as it is mailed to other voters. If a resident needs assistance completing the ballot, they should have the right to request assistance from a person of their choice.

During the pandemic, SVDs were not allowed to visit care facilities. The Wisconsin Election Commission provided training for care facility staff to conduct in person absentee voting. DRW supported that decision and also facilitated staff training sessions and provided resource materials. The use of care facility staff to assist residents has been attacked by some policy makers based on unproven allegations of staff coercing residents and inappropriately influencing them to

vote. DRW deplores any coercion of voters; such practices are already against the law. We support the need to train staff who provide voting related assistance on the voting process and resident rights. We have received contacts from facility staff who have received threats from family members because a resident was allowed to vote. As a result, they are afraid to provide assistance with voting. Without assistance from staff, it is unlikely that residents will be registered to vote or request an absentee ballot. It is essential that care facility staff assist residents with voting as requested by the resident; this assistance must not be criminalized.

We have identified some other opportunities to improve the SVD program.

- Residents of a nursing home or group home typically need to re-register after moving to a care facility as their address has changed. Most SVDs are not authorized to register voters and they may visit during the time period when voter registration is no longer allowed. DRW has recommended that all SVDs have the ability to assist with voter registration and that they have the authority to do throughout the time period for SVD voting.
- Practices for voting in care facilities need to respect resident privacy. Under current practices, elections observers may go into a residents' bedroom to observe voting. DRW opposes this. If voting occurs outside of the common areas of a facility served by Special Voting Deputies, observers should not be permitted to enter a voter's private room, however, the observers shall be permitted to observe such voting from a common area. No election observer needs to nor should have access to the private residence of a voter, especially to a bedroom.

Relatives may ask to be notified when SVD voting is taking place so they can come and observe - without the consent of the resident. DRW recommends that resident consent be required to share voting information. Family members sometimes believe that they have the authority to take away their family member's right to vote. In Wisconsin, only the courts can take away that right; a power of attorney for healthcare or finance does not include the authority to restrict voting rights.

- DRW supports policy changes to ensure the process for allowing relatives of residents to be notified of and/or observe the voting process (Wis. Stat. § 6.875(6)(c)2) complies with federal Residents' Rights Requirements related to Nursing Home Residents' Right to Vote and other federal laws regarding voting rights.

Training for Election Inspectors and Special Voting Deputies (SVDs)

Wisconsin does not require that election inspectors and Special Voting Deputies (who conduct absentee voting in person at residential care facilities and qualified retirement homes) complete a standardized training curriculum. There is wide variation in the content and amount of training election inspectors and SVDs receive regarding disability rights and accommodations, and accessibility. As a result, voters may experience significant inconsistency in polling place accessibility and voting rights.

For example, in our work reviewing the accessibility of Wisconsin polling places, we often find that poll workers are not familiar with the accessible voting machine. Equipment may not be turned on or offered to voters. It may be positioned in a manner that it is not accessible or visible. In addition, DRW periodically assists voters with disabilities who are denied a needed accommodation such as curbside voting or assistance with completing their ballot.

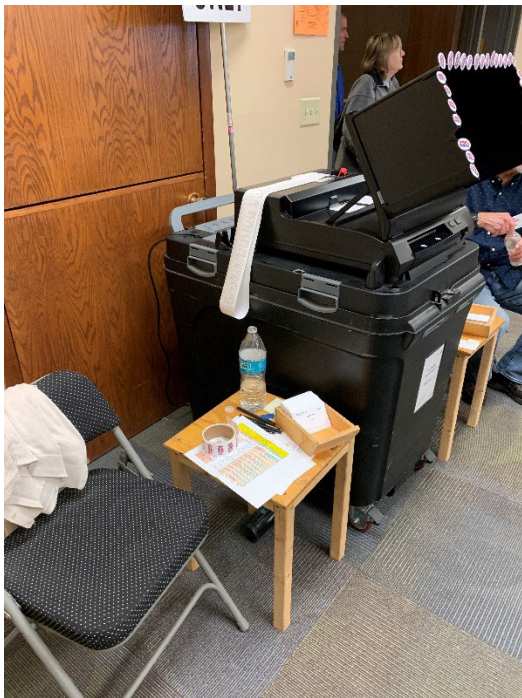
Wisconsin Stat. § 7.315(1)(b) requires that all election inspectors and SVDs receive training at least once every two years. To ensure election inspectors have current information on voting regulations and voter rights, we recommend a change to state statutes to require new election inspectors and SVDs to complete training on core competencies (including disability related content) before serving and a minimum of one training program annually, thereafter. Topics should include accessibility, voting rights and accommodations, and disability awareness and etiquette.

The Wisconsin Election Commission has developed solid training materials, but municipalities are not required to use the WEC training materials for poll workers. Requiring use of the training modules developed by the Wisconsin Election Commission could provide greater consistency and ensure that all poll workers receive training on accessibility and disability rights. Note: WEC does provide the training for municipal clerks and chief election inspectors.

Special Voting Deputies (SVDs) could benefit from specialized training to support them to assist voters with cognitive disabilities and communication related disabilities. A helpful resource for this training is [*Assisting Cognitively Impaired Individuals with Voting: A Quick Guide*](#), prepared by the American Bar Association Commission on Law and Aging and the Penn Memory Center, September 2020.

Thank you for your consideration of our comments and for providing this opportunity for community members to share their experiences. Our voting staff are available to provide additional information and address any follow up questions.

Dominion ImageCast Evolution unit serves as a tabulator and can be converted into the accessible voting equipment



The Dominion ICE tabulator is placed between two tables with the accessible equipment against the wall, and not accessible for use by voters.



An additional example of Dominion ICE tabulator with accessible equipment against the wall, and not accessible for voter use.