

 **Wisconsin Council of the
Blind & Visually Impaired**

Date: September 26, 2023

Re: Informational Hearing on Wisconsin Elections Commission June 2023 report: "*Barriers Faced by Elderly Voters and Voters with Disabilities.*"

To: Chairman Dan Knodl and Members of the Shared Revenue, Elections and Consumer Protection Senate Committee

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Thank you, Chairman Knodl, and members of the Committee for inviting us to speak at this informational hearing regarding the Wisconsin Election Commission June 2023 report: [Barriers Faced by Elderly Voters and Voters with Disabilities](#). We appreciate the opportunity to be a resource and thank the committee for prioritizing this important report and the opportunity to support accessible elections for older adults and people with disabilities.

About Disability Rights Wisconsin

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. Our mission is to advance the dignity, equality, and self-determination of people with disabilities. DRW is charged with protecting the voting rights of people with disabilities. We are mandated to help ensure full participation in the electoral process for individuals with disabilities (Help America Vote Act, 42 U.S.C. § 15461 (2002)). DRW staffs a Voter Hotline and provides training and support to assist voters with disabilities and older adults, family members, service providers, and others.

DRW co-leads the [Wisconsin Disability Vote Coalition](#) in partnership with the Wisconsin Board for People with Developmental Disabilities. The WDVC is a non-partisan effort to support full participation in the entire electoral process of voters with disabilities. The coalition includes voters with disabilities, and over 40 community [agencies](#). DRW staff also serve on the Wisconsin Election Commission Accessibility Advisory Committee.

About the Wisconsin Council of the Blind and Visually Impaired

The Wisconsin Council of the Blind & Visually Impaired (WCBVI) is a 501c3 nonprofit, founded in 1952 to promote the dignity and empowerment of the people of Wisconsin living with vision loss through public policy advocacy, education and vision rehabilitation services. Approximately 110,000 Wisconsinites live with significant vision loss. Older adults are the most rapidly growing population due to diseases like macular degeneration, diabetic retinopathy and glaucoma.

WCBVI's advocacy priorities include transportation, access to quality health and long-term care services and voting access. Since vision loss is a print-related disability, voters with blindness experience barriers to accessing the ballot when voting absentee or at the polling place. As non-drivers, people with blindness experience additional barriers to obtain necessary identification for voting and in accessing their polling places. To reduce these significant barriers, WCBVI serves on the Wisconsin Election Commission's Accessibility Advisory Committee and is a member of the Wisconsin Disability Vote Coalition.

Purpose of the Report

In 1999, Wis. Stat. 5.25(4)(d) was amended to require the state elections agency to submit a report to the Legislature regarding barriers to voting faced by the elderly and voters with disabilities. The report is due no later than June 30 in odd-numbered years. The statute also requires the Wisconsin Elections Commission to consult with appropriate advocacy groups representing the elderly and disability community when preparing this report.

The goal of this report is to provide policy makers with information regarding the accessibility of Wisconsin polling places and the work that has been done to improve accessibility. We are pleased to share

with you today the positive work to address accessibility under the leadership of the Wisconsin Election Commission, in partnership with our agencies and others, and to share opportunities for continued progress that this committee can advance.

About the Disability Vote

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

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

This is a diverse group of voters. It includes people who are blind and low vision, deaf and hard of hearing, with intellectual and developmental disabilities, physical disabilities, mental health disabilities, complex medical needs, and chronic health conditions. Many older adults have disabilities acquired through aging, although they may not formally identify as a person with a disability.

The majority of voters with disabilities live in the community. Some voters with disabilities live in congregate settings including nursing homes, group homes, adult family homes, and institutional settings such as psychiatric facilities or state centers. Because of their isolation, access to voter registration, to absentee voting, and to assistance with the voting process is especially important to disabled Wisconsinites who live in residential settings. Access to voting is an important resident rights issue.

Although our focus today is on accessible polling places, it is important to note that voters with disabilities and older adults have a higher utilization of absentee voting. Many are non-drivers with limited access to transportation. In addition, polling place accessibility issues and/ or disability-related or health concerns may limit their ability to vote in person. We would also welcome the opportunity to be a resource for this committee on best practices for absentee voting.

Federal and State Laws Protecting the Rights of Voters with Disabilities

Voting is one of our nation's most fundamental rights and a hallmark of our democracy. Far too often, people with disabilities have experienced barriers to exercising their right to vote. To help ensure fairness and accessibility for citizens with disabilities, policy makers have established federal and state laws to protect the fundamental right to vote for people with disabilities.

The WEC report provides an overview of the "Legal Environment" including some of the most significant federal and state laws that protect the rights of disabled voters. Time constraints do not allow us to review all the important federal and state laws noted in the WEC report; we will note a few highlights that were especially relevant during the reporting period. In addition, the documents linked below provide more information regarding relevant federal and state laws.

Voting Rights Act

In 1965, Congress passed the Voting Rights Act (VRA). The VRA authorized voting assistance for voters with disabilities who would otherwise have difficulty casting a ballot, provided the assistor is not the voter's employer or agent of the voter's employment union. This requirement was subsequently codified at the state level in Wis. Stat. § 6.82. 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. 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, *Carey v. WEC* in July 2022 with the United States District Court for the Western District of Wisconsin. *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 Commission, August 30, 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." [The opinion and injunction are posted here.](#)

Help America Vote Act

The Help America Vote Act of 2002 (HAVA) instituted more rigorous requirements for polling place accessibility than previous laws. HAVA required that at least one accessible voting system for persons with disabilities be provided at each polling place to permit all individuals to vote privately and independently. 42 U.S.C. 15481. For many voters with disabilities, this new generation of voting equipment enabled them to vote for the first time without assistance from another person. WEC was awarded a yearly HAVA grant for accessibility programming at roughly \$200,000 for several years. Most of these funds were spent by the end of FY2018. At that time WEC requested and received state funding of approximately \$48,300 and continues to allocate \$48,300 annually for accessibility. The reduction in funding has limited the opportunity to sustain and expand accessibility programming; we will address funding needs in recommendations later in this hearing.

Additional Information about Federal and State Laws

Additional information about federal and state laws protecting the rights of voters with disabilities is available at these links.

- **The Americans with Disabilities Act and Other Federal Laws Protecting the Rights of Voters with Disabilities, U.S. Department of Justice:** www.justice.gov/file/69411/download
- **List of Wisconsin Accessibility Provisions, Disability Vote Coalition:** disabilityvote.org/wp-content/uploads/2021/04/State-Statutes-Related-to-Accessibility-acc.pdf

Accessibility Program Overview

The Wisconsin Elections Commission has developed and implemented a robust program to ensure voters with disabilities have the ability to cast a ballot privately, independently and securely. There are four pillars to the program:

- **Polling Place Reviews** conducted on Election Day to identify access barriers that may exist in the polling place. A written report is issued for all reviewed polling places, indicating any access barriers and offering ways to remedy the issues.

- **Supply Program** makes materials such as magnifying glasses, doorbells for curbside voting, traffic cones and accessible parking signage, signature guides, etc. available to municipalities at no charge to assure accessible voting.
- **Accessibility Advisory Committee** comprised of disability advocacy organizations from around the state to offer guidance and advisement to WEC staff.
- **Clerk Support** provides training on polling place accessibility through memos, webinars, and other communication methods, including completing a polling place accessibility survey when establishing new polling places.

Polling Place Accessibility Review Program

To share the basics of polling place accessibility, we will begin with a short video produced by the Wisconsin Disability Vote Coalition in partnership with the Wisconsin Election Commission:

- Link to video: www.youtube.com/watch?v=UnNxZ7L8Qdc

Background

The polling place review program began in 2009. Over the past 14 years, polling place reviews have been conducted in a vast majority of municipalities and in all 72 counties in Wisconsin. Polling place reviews historically have been conducted by WEC staff, temporary staff, and volunteers from Disability Rights Wisconsin.

DRW staff have participated in reviews since the program was established. In 2022, WEC was able to work with the Wisconsin Coalition of Independent Living Centers for the first time to assist with polling place accessibility reviews. There are eight Independent Living Centers across the state each with assessors trained in Title II of the Americans with Disabilities Act (ADA). Their expertise in ADA compliance has been a tremendous asset to the program and a key factor in the ability review additional polling places.

These on-site reviews take place on Election Day and allow trained reviewers to assess a polling place using a survey that breaks down the parts of a polling place a voter needs to use.

All reviews are conducted using the Polling Place Accessibility Survey that was developed with the assistance of the WEC Accessibility

Advisory Committee. The survey asks approximately 100 questions based upon the requirements outlined in the Americans with Disabilities Act, the Americans with Disabilities Act Accessibility Guidelines (ADAAG), the ADA Checklist for Polling Places, the ADA Guide for Small Towns, and Wisconsin Building Codes. WEC staff worked with the Accessibility Advisory Committee to assign a low, medium, or high severity ranking to each question.

Reviewers are given a two-and-a-half day training to understand the survey and to learn how to complete the surveys quickly and accurately. The training includes a mock polling place review.

Surveys are conducted using tablets to save results electronically and simplify the process of sharing the surveys with clerks. In 2023, the WEC purchased upgraded Windows Surface tablets for use in 2024. These tablets provide reviewers with higher photo quality, increased battery life, and improved features to simplify the reviewing process and increase the quality of the data collected.

The survey is organized into five distinct polling place zones and categories within each zone. The five zones include:

- **Parking:** Includes off-street parking, drop-off zones, and on-street parking.
- **Pathways:** Includes general pathway information, curb cuts, and ramps. General information includes the width of pathways, obstacles/hazards in pathways, and lighting.
- **Accessible entrance:** Includes doors, ramps, and threshold ramps
- **Interior route:** Includes corridors, doors, ramps, elevators, and wheelchair lifts.
- **Voting area** including notices, accessible setup, and accessible voting equipment.

Sharing Polling Place Review Findings with Municipalities

After the election, Commission staff report the review findings to each municipality for each polling place visited. The report details the problems identified in the review and provides suggested resolutions. Commission staff work with the Municipal Clerk on a plan of correction. Clerks are required to file a Plan of Action with WEC to address each of the concerns in the review report.

WEC staff reviews each Plan of Action and works with each municipality to ensure concerns are addressed. This may include ordering accessibility supplies paid for by the state. These supplies can include signature guides, page magnifiers, wireless doorbells, cones, and signage for parking areas, pathways, and accessible entrances.

WEC staff have developed an electronic platform for reporting review results to local election officials. It allows clerk users to view reports online, file their Plan of Action electronically, and access reference materials to explain and support polling place accessibility efforts.

Polling place review findings are also used to update training materials and identify areas needing improvement throughout Wisconsin.

Report Findings

We are pleased to share that the June 2023 report reflects a significant increase in the number of polling places reviewed and a decrease in the number of non-compliant findings.

In the 2022-2023 election cycle, 551 polling place reviews were conducted across 379 municipalities in 47 counties. There were 3,062 non-compliant findings at the 551 polling places averaging 5.6 non-compliant findings per polling place with a median of 5 non-compliant findings per polling place.

The average is down from 7 non-compliant findings per polling place in 2020. As noted in the report, "data shows there tend to be more non-compliant findings in years with presidential elections. Higher voter turnout causes polling places to be more crowded, and reduced space negatively impacts accessibility for voters with mobility aids, like wheelchairs and walkers. Less room to maneuver can also decrease privacy at accessible voting booths and accessible voting equipment." (p 10)

Of the 3,062 total non-compliant findings, 29% (896) were low severity, 27% (668) were medium severity, and 44% (1095) were high severity.

Highlights of Findings

Table 1: Ten Most Common Non-Compliant Findings at Polling Places Reviewed 2022-2023*

Source: [Barriers Faced by Elderly Voters and Voters with Disabilities](#), p. 13

Rank	Finding	Severity	Count
1.	The accessible entrance was not clearly marked at the door.	High	266
2.	The off-street parking area did not have enough van-accessible spaces and accessible spaces for the number of total parking spaces.	Medium	224
3.	The accessible parking sign in the off-street parking area was not posted high enough.	Low	222
4.	Required election notices and instructions were not posted in at least 18-point size font.	High	169
5.	The accessible entrance door required more than 8 pounds of force to open.	High	108
6.	The accessible voting equipment was positioned in a way that, if a person was seated or standing at the machine, others might see how the voter was marking his/her ballot.	High	100
7.	The accessible pathway (including any grating surface) had breaks, cracks, or edges where the difference in height was over 1/2".	Medium	87
8.	The Type D Polling Place Hours and Location Notice was not posted.	Low	87
9.	The accessible booth or table in the voting area was not set up to ensure voter privacy. It was positioned in a way that other voters or visitors to the polling place could see how a voter at the table was marking their ballot.	High	83
10.	The accessible parking spaces in the parking area were not on level, firm, stable and slip-resistant ground.	Medium	80

**Examples are provided in the Powerpoint slides*

Findings Regarding Accessible Voting Equipment

When reviewing the accessible voting equipment, 63% of polling places reviewed were in compliance, indicating that the equipment was readily available for voters. This includes making sure that the headphones and tactile marking device are plugged in and easily accessible for the voter to use without assistance.

When not in compliance, issues of high to medium severity included:

- Not placed to ensure privacy for the voter (17%).
- Not set up (10%).
- Not clearly available to voters (6%).
- Not functioning (3%).
- Not turned on (1%).

In the report, *2022-23 Barriers to Voting for Elderly Voters and People with Disabilities*, the Wisconsin Elections Commission noted that dual purpose equipment that serves as both tabulator and accessible ballot marking equipment cannot be used by the voter without assistance. This dual-purpose equipment is the Dominion Image Cast Evolution (ICE) and is used in 39 of Wisconsin's 72 counties.

Because the equipment serves as a tabulator, it is placed in a high-traffic area in the polling place, leading to a lack of privacy for a voter using the accessible components of the equipment to mark their ballot. Additionally, the dual nature of the equipment makes it difficult for voters to know that there is accessible equipment available for their use.

Lastly, to transition the equipment from tabulator to accessible marking device requires that voters wishing to place their ballots in the tabulator must wait while the accessible voting session is in progress, leading to a halt in the voting process in the polling place. Voters with blindness and other users of the accessible equipment have reported being discouraged by poll workers to use the equipment because of the impact on the voting process in the polling place.

According to the manufacturer, to address these concerns, counties can purchase a secondary monitor and a long cord to remedy these issues. The second monitor serves as the accessible marking device and the long cord allows for it to be placed in a more private area in

the polling place. Advocates from the disability community have not yet tested this remedy to assure that it provides for the privacy and independence of the voter.

Recognizing that this second monitor and cord are additional expenses for the municipality, the WEC has established a time limited grant program, using federal funds, for municipalities to purchase this equipment or make other choices from the list of certified equipment options. Grants are under \$1,000 and are reimbursed to the municipality after they purchase the equipment. Eighty-one municipalities have already requested funds, with twenty applying for funds last week after receiving a reminder from WEC. To date, \$57,000 has been distributed.

Supply Program

As a result of observing common accessibility problems in polling places, the Wisconsin Elections Commission developed the polling place supply program to provide needed equipment and tools to municipalities to increase accessibility. The program is particularly beneficial for rural municipalities with limited funding. Orders are placed with WEC staff and clerks receive items at no cost to the municipality.

Commonly requested items include: orange cones for marking indicating pathways, accessible parking signs, accessible entrance signage, curbside voting signs with writeable space to add phone numbers or instructions, doorbells to signal for curbside voting, page magnifiers/magnifying glasses and signature guides. In 2022-23 there were 154 orders placed by 140 municipalities.

Accessibility Advisory Committee

The Wisconsin Elections Commission hosts the Accessibility Advisory Committee (AAC) comprised of representatives from disability and aging advocacy organizations from around the state. The AAC meets quarterly in open meetings held on Zoom to enhance accessibility for all members and reduce transportation barriers commonly experienced by people with disabilities. The purpose of the AAC is for the WEC to receive advisement from people with both lived and professional experience with disability and aging issues to guide the accessible voting program.

WEC staff partner with AAC members to offer live webinars to clerks giving the clerks the opportunity to interact directly with voters with disabilities. Two webinars were offered in 2022; one on polling place set-up to assure accessibility compliance and the other focused on the accessible voting equipment. Additionally, AAC members advise WEC on the accessibility and usability of the MyVote website, provide perspective on issues such as ballot return assistance and serve as a conduit between the expressed needs of the disability and elderly community regarding voting access.

Members of the AAC serve on the Voting Equipment Review Panel. This body reviews all new or updated equipment from vendors seeking certification in the state. Findings from the review panel are shared with the Election Commissioners for consideration in their decisions about whether to certify the equipment.

In addition to WEC staff serving on the AAC, they engage with the disability community by attending and presenting at meetings and conferences hosted by disability advocacy organizations state-wide.

Key concerns raised by AAC members include:

- Barriers to ballot return assistance.
- Access issues with the dual-purpose voting equipment (noted in the polling place review section of this document).
- Lack of accessible absentee balloting for voters with blindness and print-related disabilities. Wisconsin does not have an Americans with Disabilities compliant absentee ballot.
- The confusing layout and tiny font size of the absentee ballot certification envelope.

Clerk Support

Support for Wisconsin's municipal clerks is a key success factor in addressing accessibility. 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 some work out of their home.

The Wisconsin Election Commission plays an important role in providing guidance and training to clerks on accessibility and disability voting rights. Wisconsin law requires one certified chief inspector to be present in every polling place on Election Day while the polls are open and mandates that all municipal clerks attend a state-sponsored training program at least once every two years. The Wisconsin Elections Commission, pursuant to Wis. Stats. §§ 7.31 and 7.315, develops curriculum for the training and certification of chief inspectors and municipal clerks.

This is an important role to support more consistency and compliance with accessible voting requirements across Wisconsin's 3000 plus polling places. Voters with disabilities report experiencing wide variations at the local level in terms of accessibility, knowledge and enforcement of voting rights and accommodations, and training of election workers.

Clerk training includes the Polling Place Accessibility Survey that clerks are required to fill out for new polling places, webinars, memos, curbside voting information, and other accessibility-focused training materials.

As noted previously, in 2022, WEC collaborated with members of the Accessibility Advisory Committee to present two webinars for clerks and local election officials, one on polling place set-up to assure accessibility compliance and the other focused on the accessible voting equipment.

Since running a polling place on Election Day is the responsibility of the Chief Inspector and not the clerk, WEC staff created fact sheets that cover basic best practices for accessible voting equipment to be used by election inspectors. Webinars and associated materials can be found on the [Polling Place Accessibility page of the WEC's website](#).

Recommendations

Disability advocates strongly support the efforts of the Wisconsin Election Commission summarized in this report to ensure Wisconsin elections are accessible and inclusive of voters with disabilities, as required by [federal](#) and [state](#) laws. We respectfully ask for your consideration of the following recommendations to ensure compliance with these requirements and support increased accessibility of the voting process for Wisconsin voters with disabilities and older adults.

- **Allocate additional funding to expand staff support to administer the Wisconsin Election Commission Accessibility programs.** Currently the accessibility program is one of many responsibilities for an Elections Administration Specialist. Expanding staffing to two dedicated staff positions would make it possible to increase the number of polling places reviews, schedule follow-up reviews to ensure barriers are successfully addressed, provide one to one consultation with clerks on accessibility issues post review, and provide additional training and support for clerks and election inspectors on accessibility issues. Given that past national elections have reported over 3600 polling places (3640 in 2016) and that new polling places are regularly established, more capacity is needed.
- **Provide dedicated funding to support and expand the Accessibility Supply Program** which provides cost effective solutions to address accessibility issues at polling places. Additional funding could be especially helpful in rural areas where the options for accessible facilities are often very limited. With additional funding, municipalities could apply for grants to assist with the cost of a ramp or other modifications to make a building more accessible. This Under federal and state law, all polling places must be fully accessible to older adults and voters with disabilities.
- **Enhance Training for Election Inspectors (Poll Workers) and Special Voting Deputies (SVDs).** There is wide variation in the content and amount of training election inspectors and SVDs (who conduct absentee voting in person at residential care facilities and qualified retirement homes) receive. Wis. Stat. § 7.315(1)(b) requires 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, change the state statute 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 and to require use of a standard curriculum provided by the election commission. Topics should include accessibility, voting rights and accommodations, and disability awareness and etiquette.

- **Assure all certified voting equipment be accessible, allowing voters with disabilities to cast a ballot fully privately and independently.** If additional devices are required to make the equipment fully accessible, such as a secondary monitor, these additionally devices should be included in the certification.
- **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.

Thank you again for the invitation to speak with you about polling place accessibility. We welcome the opportunity to address questions today and invite you to follow up with us for further discussion.

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