

To: Assembly Committee on Campaigns and Elections
From: Disability Rights Wisconsin (Contact: Lisa Hassenstab, Public Policy Manager,
lisah@drwi.org)
Date: October 31, 2023
Re: AB 572 - relating to: absentee voting in certain residential care facilities and retirement homes and court determinations of incompetency and ineligibility to vote

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)). With this responsibility, DRW offers the following comments on AB572.

DRW was consulted by Representative Kitchens, the bill's author, through several drafts of the bill; we are grateful for this partnership and the reception and inclusion of many of DRW's suggestions, particularly in Section 1. Section 1 addresses notification to individuals under guardianship whose right to vote has been removed due to determination of incompetency or whose right to vote has been restored, along with notification to the clerk of that individual's municipality. Providing additional notification and clarification for both the individual under guardianship and their clerk regarding voter eligibility status would be helpful for all involved in this process. When an individual's right to vote has been removed due to determination of incompetency, a simple checkbox is marked on paperwork that is a part of the guardianship process. This is something that can be easily overlooked if one does not know to look for it, so an additional line of communication to confirm this determination can provide clarity for the individual and their guardian. DRW provided a number of suggestions for this section that we are pleased to see incorporated into the legislation being considered today, and we are happy to support this section of AB572.

Section 3 of this bill would amend the statutes to read: "The administrator of a qualified retirement home or residential care facility, or the administrator's designee, shall provide notice by email of the dates and times when the special voting deputies will be visiting the home or facility to each individual designated as a contact by the occupant who intends to vote by absentee ballot with the deputies." While DRW understands the intent of this change is to address the potential that people might take advantage of residents of these facilities, that should not come at the expense of the potential impact of individuals' ability to vote privately, independently, and with dignity.

The requirement to notify contacts is invasive for facility residents. All voters, regardless of their circumstances, should be afforded the right to cast their ballot with privacy, independence, and dignity. In no other setting would somebody be notified about an

individual's intent to vote. Requiring this kind of notification may result in contacts of residents attempting to inject themselves into the voting process of individuals who have the right to cast their ballot in private and without interference - particularly voters with disabilities, who may be more likely to have their right to vote inappropriately scrutinized and even challenged.

Currently, Wisconsin statute indicates a family member can request notification of when a special voting deputy (SVD) will be present in a residential facility. In addition, once the dates and times of SVD visits have been scheduled in a residential facility, the statutes require "(t)he municipal clerk shall give notice of each visit by special voting deputies to a qualified retirement home or residential care facility in the same manner that notices of public meetings are provided by presiding officers under s. 19.84 (1) (b) at least 5 working days in advance of each visit, indicating the date and time of the visit. The municipal clerk also shall post a notice at the home or facility and on the Internet indicating the date and time that absentee voting will take SVD."¹ Wisconsin law already provides opportunity for observation of a voting process in these facilities and for support from family members of residents who may want assistance with the voting process. The determination of desire or need for assistance should only be made by the voter, and a determination of incompetency to vote may only be made by the court. DRW recommends Section 3 be removed from the bill.

Section 4 would exempt individuals whose right to vote has been removed through a determination of incompetency from being guilty of a Class 1 felony if they do vote. As previously mentioned, it can be confusing and unclear whether somebody has retained the right to vote through the guardianship process, and this change would allow for a way to address dealing with the vote cast while not punishing an individual who may be unclear about their rights. Implementation of processes outlined in Section 1 of this bill would very likely reduce the number of circumstances when this might happen.

Thank you for your consideration of these comments, and we would be glad to provide any additional information or answer any questions.