

Date: December 19, 2023

To: Senator Knodl and members of the Senate Committee on Shared Revenue, Elections and Consumer Protection

From: Janet L. Zander, Advocacy & Public Policy Coordinator, Greater Wisconsin Agency on Aging Resources, Inc. (GWAAR)

Re: **SB 593/AB 572** relating to: absentee voting in certain residential care facilities and retirement homes and court determinations of incompetency and ineligibility to vote.

**SB 631/AB 570** relating to: certain kinds of election fraud, defects on absentee ballot certificates, returning absentee ballots, 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, and providing a penalty.

Thank you for this opportunity to share testimony on SB 593/AB 572 and SB 631/AB 570. According to the Wisconsin Elections Commission's Voter Registration Statistics (October 2023), over 1.9 million Wisconsinites ages 50 and older are registered electors.<sup>1</sup> Voting is a high priority for many older adults. Despite a strong desire to vote, as people age, there are often barriers standing between their desire to vote and being able to vote.

### **SB 593/AB 572 – For Information Only**

#### **Section 3:**

GWAAR has significant concerns regarding Section 3 of the bill related to *requiring* the administrator of a qualified retirement home or residential care facility to provide notice of the dates and times when the special voting deputies will be visiting the home or facility to *everyone* designated as a contact by the occupant who intends to vote by absentee ballot with the deputies. This requirement fails to recognize several detrimental impacts resulting from this practice.

First, this requirement results in discriminatory treatment of people based upon where they live. Voters in care facilities voting absentee via special voting deputies must have notifications sent to all contacts in their file, while people with the same/similar long-term care needs who are receiving care in their own homes and are voting by absentee ballot are not subject to this requirement. Individuals' level of care needs should not automatically imply questionable competence and where/how they choose to have their care needs met should have no relation to their rights to vote.

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<sup>1</sup> Wisconsin Elections Commission (Oct. 2, 2023). October 1, 2023, Voter Registration Statistics. Retrieved on October 30, 2023 from <https://elections.wi.gov/resources/statistics/october-1-2023-voter-registration-statistics>.

Second, as a former nursing home social worker and assisted living facility manager, I can assure you, a few residents had no contacts identified in their files, while others had multiple contacts listed. Often, those with multiple contacts listed, specified the conditions under which each should be contacted; some were notified about health concerns, others were associated with transportation, grocery, laundry, and/or other types of needs. Some contacts were relatives or friends (some who lived far away), others were legal contacts (Power-of-attorney for health care or finances), and some were both family/friend and legal contacts. Resident files also included faith leaders/clergy and other types of contacts. This legislation gives all types of contacts in a resident file the right to be notified of their intention to vote and disregards residents' rights to determine who and when someone is notified about their personal business.

Third, while Senate Substitute Amendment 1 to SB 593 indicates communications sent to each contact from the facility administrator will include a disclaimer that the occupant maintains the right of privacy and that the notice is for information only; the reality is the dynamics in some relationships can make even the presence of certain individuals threatening or intimidating to the voter. Most of us not living in care facilities can vote privately at the polls or by absentee ballot from the privacy of our homes, while voters in care facilities (even those who must vote from their rooms) have no say as to who can observe them cast their vote, including two special voting deputies, any interested contacts who wish to be there, and any observers present. Given the size of the areas where voting occurs, it will be extremely difficult to ensure voter privacy. Residing in a care facility is not synonymous with incompetence and these voters deserve the same level of privacy and independence as any other voter.

#### **Section 1:**

GWAAR supports changes in Section 1 of the bill which address the need for an accurate record of eligible voters and recognizes that voting rights may be lost or restored and adjusts the eligible voters list based on specific actions taken by the courts.

#### **Section 4:**

Lastly, GWAAR appreciates the bill will exempt people who have lost their right to vote through guardianship proceedings (s. 54.25 (2) (c) 1.g.) from Class 1 felony charges if they vote in an election after losing their right to vote.

#### **SB 631/AB 570 – For Information Only**

GWAAR is concerned changes to the absentee ballot certificates and their review could result in additional ballots being disqualified (uncounted). The bill requires the completion of 12 different fields of information on the absentee ballot certificate. If all 12 fields are not completed on the certificate, the ballot may not be counted. Like existing law, this bill allows clerks to return the ballot to the voter, if time permits, to allow the voter to complete any missing information. In addition, the bill also creates a requirement for clerks who determine a certificate is improperly

completed or missing to post notice of the defect in the voter’s information page in the online voter registration system (MyVote Wisconsin) and maintains a provision allowing clerks to attempt to notify the voter by other means. GWAAR supports this addition but is concerned that some older voters lack internet access and/or may require additional assistance to identify how the certificate is to be corrected.

It is understood that clerks may not have time to make phone, email, or letter contacts for every elector with incomplete or missing certificates. This makes creating a certificate requiring the *minimal* amount of required information and clear instructions essential to help eliminate what are often simple mistakes (e.g., elector lists zip code but forgets to include municipality). In addition, allowing clerks to correct certain minor errors such as adding a missing element of the witness address for a spouse (witness) residing at the same address as the elector, would prevent minor mistakes on the ballot certificate from keeping otherwise valid ballots from being counted. Under this bill, it would be a crime for clerks to correct even minor errors.

GWAAR appreciates the efforts that have been made in this legislation to expand voting options for electors in residential care facilities and qualified retirement homes. Specifically, we support the creation of statutory language outlining the process to follow to ensure electors in residential care facilities and qualified retirement homes receive the assistance needed to vote when Special Voting Deputies (SVDs) are restricted from conducting visits due to a public health emergency or an incident of infectious disease. For many years, visitors (including SVDs) have occasionally been restricted from visiting due to concerns related to the spread of disease.

GWAAR supports allowing individuals employed at residential care facilities or qualified retirement homes to be appointed as personal care voting assistants when Specialized Voting Deputies (SVDs) are restricted from conducting visits during a public health emergency or an incident of infectious disease. State law currently prohibits these employees from serving as SVDs, while current federal law requires licensed skilled nursing facilities (at all times, not just during public health emergencies) to have a plan in place that ensures residents can exercise their right to vote. Federal law requires providers to provide support to residents to help them vote, including “transporting residents to polling locations or drop boxes, assisting with absentee or mail-in voting processes, and ensuring residents who are otherwise unable to cast ballots in-person retain their right to vote and send in their ballots via State/locality authorized mechanisms.”<sup>2</sup> The authorization and training of personal care voting assistants will help to ensure federal requirements are met for electors in licensed skill nursing facilities, as well as residents in all other residential care facilities and qualified retirement homes impacted by this change.

GWAAR also supports the change in timeline for SVDs to arrange and conduct visits to facilities and the authorization to allow clerks to send absentee ballots to electors who were unable to cast their ballots during the SVD visits. Requiring SVD contacts to be made with facility

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<sup>2</sup> Centers for Medicare and Medicaid Services. Compliance with Residents’ Rights Requirement related to Nursing Home Residents, October 5, 2020. Retrieved on Feb. 5, 2022, from <https://www.cms.gov/files/document/qso-21-02-nh.pdf>

administrators and visits to be scheduled no later than 5 p.m. on the 11<sup>th</sup> working day (instead of the 6<sup>th</sup> working day) preceding an election and requiring SVD visits to be completed *no later than* 5 p.m. on the 6<sup>th</sup> working day preceding the election (rather than the Monday preceding the election) will provide more time for absentee ballots to be sent, completed and returned for electors who were unable to cast their ballots during SVD visits.

The Greater Wisconsin Agency on Aging Resources, Inc. (GWAAR) is a nonprofit agency committed to supporting the successful delivery of aging programs and services in our service area consisting of 70 counties (all but Dane and Milwaukee) and 11 tribes in Wisconsin. We are one of three Area Agencies on Aging in Wisconsin. Our mission is to deliver innovative support to lead aging agencies as we work together to promote, protect, and enhance the well-being of older people in Wisconsin. There are over one million adults ages 60 and older residing in our service area.

Thank you for your consideration of our testimony regarding SB 593/AB 572 and SB631/AB 570. GWAAR supports voting processes that ensure every eligible older adult who wants to vote, can vote, no matter where they live or how they choose to vote. We appreciate the interest in and efforts of policy makers to preserve, protect, and enhance the voting rights of older adults and people with disabilities. We look forward to continuing to work with you on policies that improve the quality of life of older people in Wisconsin.

**Working together to promote, protect, and enhance  
the well-being of older people in Wisconsin.**

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