

DRW Statement on [AB-1004](#) / [SB-935](#) Election Fraud
February 20, 2022

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 education 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 for people with disabilities provided by [federal law as summarized in the linked document](#).

[AB-1004/ 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 AB-1004/ 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 then 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.
- [AB-1004](#) 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 about [AB-1004/ SB 935](#):

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. Our Voter Hotline has already received calls from staff who are fearful of assisting residents with any voting related support.

The federal Centers for Medicare & Medicaid Services ([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. Failing to provide such assistance could put facilities at risk for losing Medicare and Medicaid funding.

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.

Section 208 of the [Voting Rights Act](#) 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. Municipalities do not have adequate funding to ensure accessible elections as required by the ADA.

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 these restrictions

- 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, and conduct usability testing on the instructions for absentee voters, and including older adults and voters with disabilities in the usability testing.
- Allow clerks to complete witness address information when possible.

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 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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