

Testimony to the Assembly Committee on State Affairs

February 21, 2022

Thank you, Chairman Swearingen, Vice-Chair Vorgapel, and members of the committee for hearing my testimony today. My name is Kyle Koenen and I am the Policy Director at the Wisconsin Institute for Law and Liberty. While we are supportive of much of this package, I will focus my comments on aspects of Assembly Bills 996, 997, 1003 and 1004 today. We are also registering in favor of Assembly Bills 1002, 1005, and 1006 but do not have prepared testimony. Thank you to the authors for bringing this important reform package forward for consideration.

This past December, WILL released [“A Review of the 2020 Election”](#), a comprehensive examination of said election. A team of WILL researchers and attorneys spent 10 months submitting over 460 records requests to conduct in-depth statistical and legal analyses. As part of the process, we examined over 65,000 pages of documents, including 20,000 ballots and 29,000 absentee ballot envelopes. Our work has been cited extensively nationwide, with a recent Wall Street Journal editorial calling the review, [“The Best Summary of the 2020 Election.”](#) I have submitted a summary of the report and would be happy to present our findings with my colleagues at a later date if the committee has interest.

Assembly Bill 1004

First, Assembly Bill 1004 would create an alternative process for absentee voting in residential care facilities and qualified retirement homes during a pandemic or an incident of infectious disease.

Wisconsin Statutes provide that two voting deputies will be dispatched to qualified retirement homes and residential care facilities by the municipal clerk or board of elections in the community where the facility is located. ¹

Despite this, on three separate occasions in 2020, WEC issued guidance that ran contrary to this statute, advising communities that they were not required to dispatch special voting deputies. We won't question the commission's motivations, and acknowledge the difficulty of the situation. However, it is abundantly clear that the advice was contrary to the letter of the law and had an effect on how clerks operated. Our report reviewed records from a sample of 35 communities that were required to appoint special voting deputies and found that only 2 communities

¹ Wis. Stat. 6.875(4)(a)

actually did so. We believe that the process laid out in the bill represents a reasonable alternative to the special voting deputy process in the event of a pandemic or infectious disease.

Assembly Bill 1004 also prohibits governmental entities from accepting grant money, equipment or materials from private sources for the purposes of administering an election. Last year, WILL released an in-depth report on how grants from the Center for Technology and Civic Life (CTCL) were administered in Wisconsin. Our review found that \$10.3 million was distributed to 196 communities, with approximately 86% of that funding going to the five largest cities in the state (Milwaukee, Madison, Green Bay, Kenosha and Racine). We also found disparities in funding on a per-capita basis, with cities like Racine and Green Bay receiving \$36 and \$53 per 2016 voter respectively. For comparison, Appleton and Waukesha only received \$0.51 and \$1.18 per 2016 voter respectively. Lastly, a statistical analysis found that CTCL grants had a potential electoral impact of approximately 8,000 votes in the direction of Biden. Government administration of elections should be impartial and fair, and the infusion of private dollars from various sources threatens that dynamic. This bill correctly remedies this problem by prohibiting private dollars from being used for election administration, period.

Lastly, our review found significant variation in how mistakes on absentee ballot certificates are handled. Despite records levels of absentee voting, absentee ballot rejection rates were considerably lower than usual in the Fall 2020 election than other recent elections, with 0.2% of ballots rejected. For comparison, the rejection rate was 1.35% for the Fall 2016 general election and 1.57% for the Spring 2020 election.

We also surveyed a sample of 50 communities, asking the extent in which they “cured” defective or incomplete absentee ballot certificates. Of the 21 responses we received, 13 indicated they took action to cure mistakes, while 8 said they did not. Consequently, we reviewed nearly 29,000 absentee ballot certificates from around the state to practically see how communities handled defective absentee certificates. We found that practices varied considerably, with some communities ignoring mistakes, some correcting them and others rejecting ballots outright. A consistent standard and practice is needed to ensure that a voter has an equal chance of having their ballot counted regardless of where they live. This bill accomplishes just that by defining what constitutes a complete absentee ballot certificate, and bars clerks from making corrections.

Assembly Bill 1003

Assembly Bill 1003 makes changes to the complaint process at the Wisconsin Election Commission that we believe are prudent. Currently, the commissioners have delegated their responsibility to decide complaints to the Chair and

Administrator. This delegation results in citizens who have filed complaints with the commission, as permitted by statute, having their complaints to essentially be decided by staff and not by the commissioners. These complaints should be handled in a timely manner and decisions should be made by the full commission at a public meeting. Another provision allows complaints against WEC to bypass the standard complaint process and go straight to circuit court, thus potentially allowing for a timelier disposition of a case. The need for timely resolution of election disputes is important to ensure that laws are properly followed and the rules are set prior to an election.

Assembly Bill 997

The Help America Vote Act (HAVA) was passed by Congress in 2002 and made sweeping reforms to the nation’s voting process following the 2000 Presidential election. Among the provisions of this law, is a requirement for states to implement a centralized voter registration database that includes a “system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”² To identify registrants that are eligible to vote HAVA requires, among other things, that a state’s chief election official shall enter into an agreement with the Department of Motor Vehicles to “verify the accuracy of information provided on applications for voter registration.”³ Wisconsin fulfills this requirement under Wis. Stat. § 85.61.

As part of our review, WILL obtained records from WEC showing the extent of mismatches between the voter registration file and DMV records. Those mismatches are reflected in the table below for prior to the 2020 election.

DMV Mismatch Reasons – 2020 Pre-November Only

| Reason | Count | Percentage |
|-------------------------------|--------------|-------------------|
| 2 – Name and DOB Do Not Match | 274 | 1.17% |
| 3 – Name Does Not Match | 15,260 | 65.32% |
| 4 – DOB Does Not Match | 1,061 | 4.05% |
| 5 – No Record of DL # | 4,885 | 20.91% |
| S – Invalid Data Submitted | 66 | 0.03% |
| Z – No Matches Found | 1,815 | 7.77% |

² 52 U.S.C. § 21083

³ 52 U.S.C. § 21083(a)(5)(B)(i)

Practically speaking, what does this mean? It means that over 23,000 people cast ballots despite having a mismatch between their voting registration record at WEC and their DMV record. While many of these mismatches may be the result of common variations in a name (Ex. Bill vs. William, or Jim vs. James.) or clerical transcription errors, it is impossible for WEC or clerks to verify the extent of these mismatches. The LAB audit confirmed as much in their review, stating “DOT does not provide WEC with any personally identifiable information, such as names or dates of birth.”

At some point in the process, WEC asks municipal clerks to send a letter to mismatched voters asking them to clarify the discrepancy. However, WEC informs the clerks that regardless of the results of the DMV check, it does not affect the voter’s eligibility, and the clerk has met their responsibility to verify the information once the letter has been sent. Whether the individual responds or not, nothing more is done. As a result, mismatches continue to exist in the system. This result renders the HAVA check meaningless. Why check for a mismatch if there is no consequence when one is found?

This lack of follow-through presents a potential weakness in Wisconsin’s electoral security. Here’s one hypothetical situation that could prove problematic. Voters do not need to present an ID to register in person or by mail. They must only show proof of residency, which includes a list of documents that could be rather easily fabricated⁴. Because HAVA checks are not uniformly used to remove ineligible voters, a person could use a faulty registration, then claim indefinitely confined status and cast a ballot without ever showing an ID. We cannot say whether this happens, because as stated above clerks and WEC are unable to see the extent of these mismatches. That is where Assembly Bill 997 comes in.

First, the bill requires that DOT provide WEC the personally identifiable information (Name, DOB, DL#) needed for election officials to determine the source and extent of a mismatch. Second, the bill lays out a multistep process for election officials to correct errors resulting from a DMV mismatch. If the discrepancy is the result of a single piece of minor information being inaccurate, it empowers the commission to correct the discrepancy on the basis of reliable information. Third, if an election official is unable to obtain reliable information, or there are multiple discrepancies, they must mail the elector notifying them of the discrepancy. If the elector does not correct the mistake within 30 days, election officials would then change the voter’s registration from active to inactive.

The responsibility of fulfilling this process lies with WEC. However, the bill allows WEC to delegate any step of this process to municipal clerks. Lastly, to ensure full transparency, the bill requires election officials to document how each discrepancy

⁴ While approved ID’s are accepted to prove residency, utility bills, bank/credit card statements, paystubs, and residential leases can be used to verify residency.

is corrected. This would be especially helpful in any post-election reviews from the public, where personally identifiable information could not be disclosed.

With easily accessible online and same-day in-person registration, Assembly Bill 1003 would be a prudent move towards ensuring accuracy in our voter rolls. It rightfully prioritizes correcting innocuous errors and removes a weakness in our current system.

Assembly Bill 996

Assembly Bill 996 increases both transparency and accountability in the voting process.

In the process of conducting our review, WILL had issues obtaining records on a number of occasions. I'll give you one example. In February 2021, WEC released a report that analyzed data from the November 2020 election. WILL requested data to recreate some of WEC's analyses, but were told that due to the dynamic nature of the voter registration list, we would be unable to receive the necessary data. This bill would fix this issue by requiring WEC to keep monthly snapshots of the voter file. It would also expand the information clerks are required to report to WEC following an election, making it easier for election watchers to spot potential issues to follow-up on.

Lastly, introducing bi-partisan legal counsel at WEC would be a prudent move towards ensuring a diversity of legal viewpoints are heard by commissioners. On a number of occasions leading up to the 2020 election, WEC issued legally questionable guidance to clerks, something that bi-partisan counsel could have prevented. A similar approach is taken by other states, most notably New York, who has bi-partisan Co-Executive Directors at the State Board of Elections.

Thank you, Chairman Swearingen and committee members for hearing my testimony today. I would be happy to answer any questions.