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WISCONSIN'S VOTER ID LOOPHOLE:

THE CONTINUING PROBLEM OF INDEFINITELY CONFINED VOTERS

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FOR LAW & LIBERTY

Executive Summary

Laws requiring voter identification have broad support from the American people. A [2024 Pew Poll](#) found bipartisan support for a requirement to show a photo ID to vote, including from 95% of Republicans and 69% of Democrats. Wisconsin has a strong voter ID requirement in place, but there is one loophole that is ripe for exploitation. In Wisconsin, voters can claim they are “Indefinitely Confined,” a status that allows a voter to continually receive an absentee ballot without ever showing an ID. This paper explores how many people are using this status, where they are, and the implications for faith in the 2024 election.

Additionally, we examined the number of voters in situations that should have led to their removal from the Indefinitely Confined list. Per state law, clerks are to remove voters if they vote in-person or do not vote in any election. Those voters must sign and return a form to retain that status. We counted the number of voters in that situation using WEC data, as well as open records requests to examine whether clerks were following the law.

Among the key findings:

- The use of Indefinitely Confined status is still up 116% since 2016.
- 144,347 remained on the list as of July 25th, 2024.
- Voters on the list that should have received a notice of potential removal after the April 2024 election include:
 - 24,800 that did not vote in the April election.
 - 2,788 that have not voted in *any* election since 2020.
 - 2,595 that voted in-person in the April election.
- Milwaukee, Madison, Green Bay, Kenosha, and Janesville have the largest number of voters using indefinitely confined status.
- Among respondents with one exception (Lake Geneva), these requests revealed compliance with removal requirements, however:
 - 2 municipalities have to date failed to respond to the request at all (Janesville, Peshtigo) and 1 has not fulfilled the request (Madison)

What is “Indefinitely Confined” Status?

Wisconsin Statute § 6.86(2) is designed to provide an opportunity to vote for those who are too elderly, sick, or physically unable to get to the polls. Under this statute, voters decide for themselves whether they meet the requirements and can receive an absentee ballot in perpetuity if they continue to vote in every election.

Most critically, voters can receive ballots in this way without providing a photo ID. In Wisconsin, you only need to show a photo ID when you vote—not when you register. For registration, you only have to [show proof of residence](#). The accompanying image (Figure 1) is reproduced from Wisconsin’s online service for requesting an absentee ballot for registered voters. Indefinitely confined status merely requires checking a box when registering to vote [online](#).

[Choose all that apply](#)

The above address and name are mine and correct.

Any person who impersonates a registered elector, poses as another person for the purpose of voting at an election, falsely procures registration or election materials, or otherwise violates the law will be referred for prosecution. [Wis. Stat. § 12.13\(1\)](#), Wis. Stat. Chapters 939-951, and [52 U.S.C. § 20511](#).

I want my ballot mailed to a different address

I am an active military voter

 More Information

I am indefinitely confined due to age, illness, infirmity, or disability and request ballots be sent to me for every election until I am no longer confined or fail to return a ballot

Figure 1 How a Registered Voter may Request an Absentee Ballot

Growth of Indefinitely Confined Status

“Indefinitely Confined” status was relatively unknown outside of those that work with elections and the disabled community prior to 2020. But the COVID-19 pandemic brought it to the forefront of the news when Milwaukee and Madison election officials [issued guidance](#) informing voters that they could utilize Indefinitely Confined status to cast an absentee ballot without showing an ID during the pandemic. The State Supreme Court later ruled that this [guidance was incorrect](#).

Nonetheless, the number of voters using Indefinitely Confined status nearly quadrupled from about 66,611 in 2016 to more than 265,979 in 2020. While no solid evidence of

fraudulent votes cast by such voters has been brought forward to date, the prospect of so many individuals voting without having to show a photo ID was one of the more credible accusations of election problems in Wisconsin raised post-2020.

Efforts to Close this Loophole

In WILL's comprehensive [review of the 2020 election](#), we recommended that legislators work to create a more fail-safe process for obtaining Indefinitely Confined status. Other states like Louisiana, Nevada, and Connecticut require some proof of medical need before being able to vote in this manner.

A number of bills have been brought forward since the 2020 election with the goal of closing this potential election security gap. The most prominent was 2021 [Senate Bill 937](#), which through amendment applied an exceptionally light hand to reform. Among other things, it would have clarified the language about who is eligible for the status (in particular, excluding those living with a communicable disease and removing "age" as a justification), but did not require the presentation of a photo ID.

Indefinitely Confined Status Today

The number of people in Wisconsin with Indefinitely Confined status in the past three presidential election years is depicted in Figure 2. Prior to the COVID-19 pandemic in 2016, there were 66,611 individuals with the status. That number grew nearly 300% in 2020. Since then, the number of voters on the list has declined by about 120,000. However, the number with the status is still 116% higher than it was in 2016.

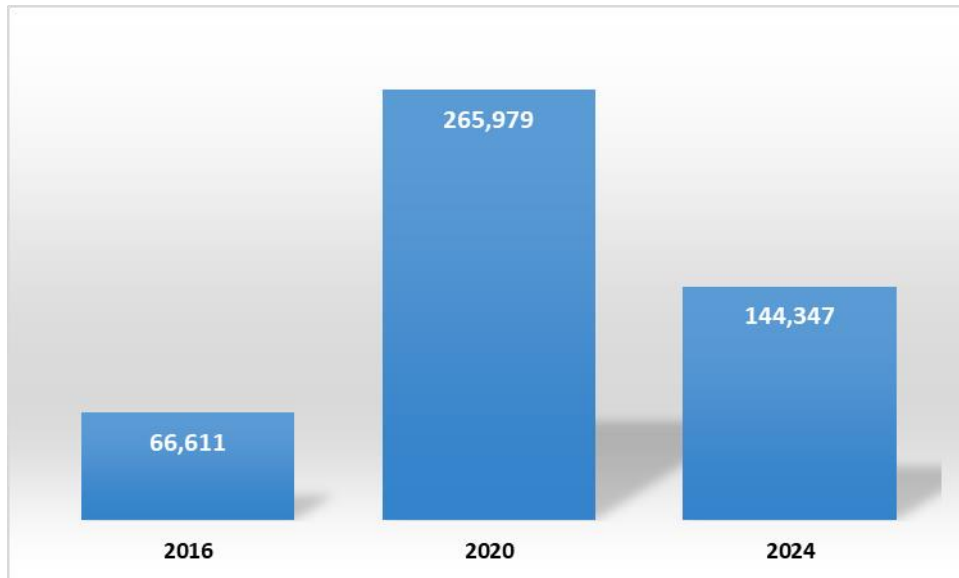


Figure 2. Wisconsin Indefinitely Confined Voters over Time

Based on matched voter ID numbers, approximately 89,327 people that had the status in 2020 still have the status today. This represents 61.88% of the total number of individuals with Indefinitely Confined status.

Where are these Voters?

As would be expected, the largest percentage of voters with this status are found in Wisconsin’s largest cities. Table 1 lists the top five cities with the highest number of Indefinitely Confined voters. These numbers represent a small share of the overall voting population in each city—but could be consequential in a close election like Wisconsin often experiences and is likely to experience again.

Table 1. Top Five Cities with Most Indefinitely Confined Voters

City	Number of Indefinitely Confined
Milwaukee	13,015
Madison	7,841
Green Bay	3,232
Kenosha	2,743
Janesville	2,384

In 2020, [the Wisconsin Elections Commission \(WEC\)](#) reported that 78.0% of those with the status had shown a photo ID at some point in the past. To assuage concerns, WEC should update that number for those currently utilizing the status in 2024.

We took a look at all of the municipalities with more than 500 indefinitely confined voters to see which municipalities had seen the biggest and smallest changes in these numbers since 2020. The highest percentage of removals were in West Bend, Milwaukee, Whitefish Bay, and Suamico where the list has shrunk by more than 50% since 2020. The smallest declines were in Oconomowoc, Muskego, and Hartford where the list had declined by less than 20% since 2020.

Table 2. Areas with Largest & Smallest Change in Indefinitely Confined, 2020-24

Most Removals				Least Removals			
Municipality	2020	2024	Decline	Municipality	2020	2024	Decline
C West Bend	1832	731	-60.10%	C Oconomowoc	1166	1042	-10.63%
C Milwaukee	29452	13015	-55.81%	C Muskego	1207	985	-18.39%
V Whitefish Bay	659	302	-54.17%	C Hartford	500	405	-19.00%
V Suamico	560	279	-50.18%	C Middleton	607	469	-22.73%
C S Milwaukee	1281	639	-50.12%	V Bellevue	601	454	-24.46%
C Wauwatosa	3084	1547	-49.84%	C Janesville	3162	2384	-24.60%
C Fort Atkinson	519	261	-49.71%	V Allouez	673	498	-26.00%
C West Allis	3462	1817	-47.52%	C De Pere	1086	790	-27.26%
V Germantown	966	508	-47.41%	C Menominee	542	394	-27.31%
C Racine	3245	1715	-47.15%	C Stoughton	879	637	-27.53%

Should any of these Voters be Removed from the Status?

There are several instances where a voter should be removed from the indefinitely confined list. Under Wisconsin Statute § 6.86(2)(b), if a voter does not return an absentee ballot after receiving one, the municipal clerk must send a first-class letter or postcard notifying the voter that they will be removed from the absentee mailing list unless they renew their application within 30 days. If the voter does not renew within that period, their name is removed from the list.

Additionally, a voter's name may be removed upon their own request or if the clerk receives reliable information indicating that the voter is no longer eligible for the service. Perhaps the most prudent example of this would be a voter casting a ballot in-person, which would clearly indicate they are not indefinitely confined. In cases where removal is not initiated by the voter, the clerk is required to notify the voter of the removal within five days, if possible.

Registrants are to be removed from indefinitely confined status if they do not apply for renewal after not voting in an election. While we cannot see whether voters applied for renewal in every instance without statewide open records requests (we did do more limited requests described below), we do have access to the voter information for those who failed to vote in an election and would thus have been subject to this provision.

Of the 144,347 voters in indefinitely confined status, 2,595 voted in-person in the April election. Another 24,800 did not vote in the April election. Both subsets of voters would need to have submitted a renewal application to remain in the status.

Looking at a longer time frame, 7,910 voters in the status have voted in-person in an election since 2020. 2,788 voters on the list have not cast a ballot at all since 2020. All of this information is depicted in Figure 2. We cannot tell from the available data if these individuals were removed from the list and reapplied, mailed back a reply to notice of removal, or were simply never removed by municipal clerks—our open records requests will help illuminate that.

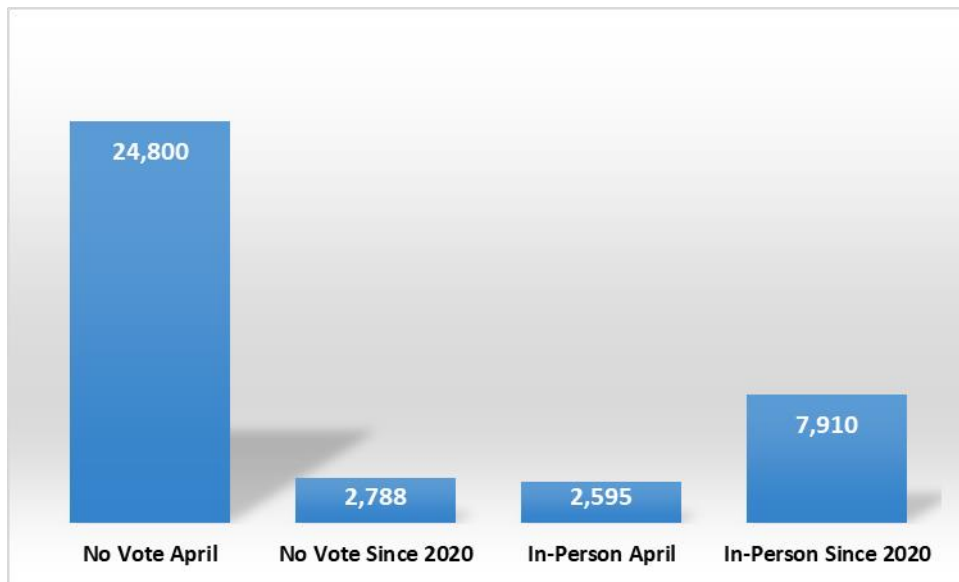


Figure 3. Indefinitely Confined Voters with Status-Changing Events Since 2020

Records Requests

In order to investigate whether requirements for removing individuals from the indefinitely confined list were being followed, we sent open records requests to 15 communities around the state. This included the five municipalities with the largest number of voters in the status, as well as 9 randomly selected cities identified using a random number generator.¹ Our specific request is included below:

“As required by Wisconsin Statute § 6.86(2)(b), the voter ID numbers, names, and mailing addresses for voters mailed a notice regarding their removal from the indefinitely confined list following the April 2nd 2024 election, the voter ID numbers of those who submitted a renewal application, and the list of voter ID numbers removed from the indefinitely confined list following this election.”

We will update this section of the report if more responses come in. To this date (August 22, 2024), 3 of the municipalities had acknowledged our request, while 7 additional municipalities had completed it. The municipalities that have not responded at all are:

- Peshtigo
- Janesville

A follow-up request was sent to these communities on August 26th. Madison acknowledged the request, but as of the date of publication had not provided any data.

Helpfully, Sun Prairie included copies of the actual letters sent to voters and the response from the voter. An example of this with the name redacted is included as Figure 4.

¹ These were: Green Bay, Janesville, Hartford, Kenosha, Lake Geneva, Madison, Mequon, Milwaukee, Peshtigo, Prescott, Spooner, Sparta, and Sun Prairie.

CITY OF SUN PRAIRIE - DANE COUNTY
Elena Hilby / Municipal Clerk
300 E MAIN ST
SUN PRAIRIE, WI 53590-2227
608-825-1148

April 30, 2024



Dear [Redacted]

Our records indicate that we did not receive an absentee ballot from you for the 2024 Spring Election and Presidential Preference Vote on 04/02/2024. Our office is responsible for comparing the list of permanent absentee ballot voters to those voters who cast and returned an absentee ballot during this election. Wis. Stat. § 6.86(2)(b).

It is our responsibility to notify you your name will be removed from the list of permanent absentee voters, unless you submit the renewal request below to our office within 30 days of date of this notification. Failure to do so within the 30-day period will cause your name to be removed from the list of permanent absentee voters. Please note, the removal of your name from this list does not affect your voter registration.

If you have moved since you last filled out an absentee application you will need to re-register and provide proof of residence, along with a new absentee application.

If you have any questions regarding this notice, please contact our office at 608-825-1148, or ehilby@cityofsunprairie.com. Thank you!

Sincerely,

Elena Hilby
Municipal Clerk

Request for Renewal of Permanent Absentee Ballot

I request an absentee ballot be sent to me as provided by Wis. Stat. § 6.86 (2)(a), and I certify I am a United States Citizen, age 18 or older, and I have resided at my legal voting address for at least 28 days.

I further certify I am indefinitely confined because of age, illness, infirmity or disability. I request an absentee ballot be automatically provided for every election until such time as I notify you or until such time as I fail to return an absentee ballot.



(Signature of Absentee Elector)



8172934



Figure 4. Example of Municipal Letter

The reader can see the requirement that permanent absentee voters participate in every election is clearly laid out here, as is the resulting removal if the person fails to respond. The person need only sign and return the bottom part of the form in order to remain on the list. For municipalities that responded, it appears that—by and large—removals were occurring for voters that did not return the request to continue. This includes the City of Milwaukee after the receipt of a follow-up letter. Records obtained from the city election

commission show about 2,078 names removed from the list this year, and we were able to spot-check this against our list of indefinitely confined voters.²

Another community—Lake Geneva—responded to our request but claimed to have no responsive records. Lake Geneva had 37 voters that did not vote in the most recent elections that are ostensibly to have been sent letters notifying them of potential removal from the status. After emails with Lake Geneva’s Deputy Clerk, we learned that 4 of the voters with the status were in residential care facilities serviced by Special Voting Deputies and would not be required to receive a letter, 3 made the request for Indefinitely Confined status after the most recent election, 2 were deactivated after the Election due to moving or death, and 1 returned a ballot for the Spring election too late to be counted.

The remaining 27 voters should have been sent a letter, but according to their email to us:

“Our office has routinely complied with the Indefinitely Confined maintenance requirements. Due to turnover in the City Clerk position, our office was not able to send the Indefinitely Confined Notice Letters before the August 14, 2024, Partisan Primary Absentee Ballots were required to be mailed out.”

Hartford responded two days before the release of the paper and claimed to have no responsive records. After a follow-up email we were told that the reason for this was:

“The City of Hartford has not had to send any notices about removal from the indefinitely confined list since the most recent election because there haven’t been any that have not responded.”

Our open records request covered only a small share of municipalities in the state, but we uncovered on instance of non-compliance, and five instances of districts not replying to our request in a timely manner. In an era where concern about election integrity remains high, this does little to improve Wisconsin’s faith in the process.

Conclusion

WILL’s 2020 election report concluded that there was no evidence to suggest President Biden’s victory in the state was a result of fraud. However, Americans—and Wisconsinites—continue to have low faith in our democratic processes and institutions. With a few exceptions like Lake Geneva, it is a good thing that removals from the indefinitely confined list do appear to be happening across municipalities large and small.

² In this case, spot-checking entailed picking several random names from the list of voters provided by the municipality in both the “returned a request to remain” and “did not return a request to remain” categories. In no instance did we find a name on the WEC list of indefinitely confined voters that was not listed as having returned a request.

But the underlying problem of this loophole to not show and ID continues to exist. This does nothing to improve election confidence. The potential 142,000 voters using indefinitely confined status in the 2024 election will doubtless be used to sow seeds of doubt about the outcome of the upcoming election, and responsible politicians on both sides of aisle should work to fix this glaring issue in the future.