



Date: April 27, 2021

To: Representative Brandtjen, Representative Sanfelippo, and members of the Assembly Committee on Campaigns and Elections

From: Janet L. Zander, Advocacy & Public Policy Coordinator

Re: **Against AB 179** relating to: absentee voting in certain residential care facilities and retirement homes and providing a penalty.

Information Only AB 198 relating to: defects on absentee ballot certificates, certain kinds of election fraud, and providing a penalty.

Against AB 201 relating to: absentee ballot applications, unsolicited mailing or transmission of absentee ballot applications and absentee ballots, canvassing absentee ballots, electronic voter registration, and providing a penalty.

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 age 60 and older residing in our service area.

Thank you for this opportunity to share informational testimony on AB 198 and against AB 179 and AB 201. In 2020, nearly 25% of the electorate were age 65 and older¹. Voting is a high priority for many older adults, resulting in older voters forming a much larger share of all voters than their share in the electorate (64% in the 2018 election)². Despite a strong desire to vote, as people age, there are often barriers standing between their desire to vote and actually being able to vote.

Older adults are the fastest growing demographic of our state's population³. Within the older population, a large and growing percentage of people are age 85 and older. And the older people

¹ Cilluffo, A. & Fry, R, Pew Research Center, An Early Look at the 2020 Electorate (Jan 2019). Retrieved April 14, 2021 from <https://www.pewresearch.org/social-trends/2019/01/30/an-early-look-at-the-2020-electorate-2/>.

² Brandon, E., U.S. News, Why Older Citizens are More Likely to Vote (Oct. 2020). Retrieved April 14, 2021 from <https://money.usnews.com/money/retirement/aging/articles/why-older-citizens-are-more-likely-to-vote>.

³ 1. U.S. Census Bureau (2020, June 25). 65 and Older Population Grows Rapidly as Baby Boomers Age. Retrieved March 16, 2021, from <https://www.census.gov/newsroom/pressreleases/2020/65-older-population-grows.html>.

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get, the more likely they are to have multiple chronic illnesses which can make it harder to get around. Additionally, many older adults no longer drive. Some parts of Wisconsin, particularly in the sparsely populated north, many people have a long way to go to vote and many communities do not have public transportation options widely available. For these reasons, it is not surprising that absentee voting is generally more heavily utilized by older voters.⁴ In the November 2020 General election, two-thirds of the indefinitely confined absentee ballot applications came from voters over age 65.⁵

AB 179

It is critical that all eligible voters have equal access and opportunity to participate in our electoral process, this includes voters in residential care facilities and retirement homes. The Wisconsin legislature has previously recognized that people living in residential care settings (nursing homes, community-based residential facilities [CBRFs], retirement homes, residential care apartment complexes [RCACs], and adult family homes) might have more difficulty accessing their polling place on Election day. To address the difficulties voters in care facilities may experience, laws were put in place to ensure greater access by requiring Special Voting Deputies (SVDs) to conduct in-person absentee voting. The use of SVDs to conduct absentee voting in certain facilities should in no way impede voters' rights to vote privately and independently. Under current law, once arrangements have been made for SVDs to visit a facility, notice of the date and time of the SVDs' visit is posted in the facility, provided to news media, and placed on the local municipality's website (if applicable). In addition, upon the request of a relative of an occupant of the facility, the administrator *may* notify the relative of the date/time SVDs will be conducting absentee voting and permit the relative to be present in the room where the voting is conducted. AB 179 *requires* a facility administrator to provide notice of the dates and times when SVDs will be visiting the facility to each relative of a resident for whom the facility has contact information if the resident intends to vote by absentee ballot with the SVDs. This requirement provides residents no choice of whom or if they wish to have family members observe their voting (in addition to the SVDs and approved political party observers). Though these family members may not assist the resident with voting unless requested to do so by the voter (resident), the requirement to notify family members without permission from the resident implies voters in care facilities are less than qualified voters due to their age or infirmity and is discriminating.

Additionally, AB 179 would make it a felony for any employee of a residential care facility or qualified retirement home who influences an occupant of the home/facility to apply or not apply for an absentee ballot or cast or refrain from casting a ballot. It is unclear what is meant by influencing. Is informing residents that an election is coming up and asking if they wish to vote considered influencing? Is it considered influencing to assist a resident with securing,

⁴ Stewart, C., III. (2020, March 20). Some Demographics on Voting by Mail. Retrieved April 13, 2021, from <https://electionupdates.caltech.edu/2020/03/20/some-demographics-on-voting-by-mail/>.

⁵ Wisconsin Elections Commission (2021, February 3), November 3, 2020 Election Data Report. Retrieved April 13, 2021, from <https://urbanmilwaukee.com/wp-content/uploads/2021/01/D.-November-2020-Election-Data-Report.pdf>.

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completing, or returning a ballot if requested, even if the resident was unavailable during either of the two SVDs' scheduled visits, but still wants to vote? Who would be able to provide assistance during health outbreaks (influenza, COVID-19, etc.) when all outside visits (SVDs, family members, etc.) are restricted? How do the provisions in AB 179 align with federal law that requires Medicare and Medicaid certified long-term care facilities to affirm and support the right of residents to vote? No one, whether providing requested assistance or not, should attempt to influence an occupant's/resident's decision for whom to cast a ballot; therefore, GWAAR would support the bills provision making it a Class I felony for an employee of the home/facility to influence an occupant's *decision for whom to cast a ballot*.

Many, but not all care facilities, are eligible to have SVDs dispatched by the municipal clerk to conduct in-person absentee voting. However, even eligible facilities are at times unable to utilize SVDs. Additionally, it is unclear if facilities and clerks have been able to identify all residents/occupants who wish to vote. This raises an important question; are all care facility residents, including those in care facilities served and not served by SVDs (permanently or temporarily), receiving the assistance they need to vote? Some residents need no assistance, other residents request help from family members (unless visiting restrictions are in place), but others may not have anyone to ask for assistance. To further strengthen the support available to voters in residential care facilities, GWAAR supports training for facility staff to ensure voters' rights are protected and they receive assistance, as needed, with voter registration and voting (in-person at the polls, in-person at an alternate site, or absentee).

AB 198

According to the Wisconsin's Elections Commission's November 3, 2020 Election Data Report, the percentage of absentee ballots returned and rejected was very small at 0.2% (4,270 ballots). Over one-third (1,475) of those absentee ballots were rejected due to insufficient certification or a compromised certificate envelope. Under current law, a municipal clerk who receives an absentee ballot with an improperly completed certificate or no certificate *may, but is not require to*, return the ballot to the voter whenever time permits so that the voter may correct the defect. While the number of returned and rejected ballots related to problems with the certification are small, they still impact thousands of voters (many of whom are likely older adults). Current law does not require municipal clerks to consistently respond to these errors leaving some voters able to fix the defects while others are not. **GWAAR appreciates that some errors are minor (part of witness address is missing, etc.) and have been easily fixed by clerks contacting voters to gather missing information without needing to return the absentee ballot. GWAAR supports a consistent approach to responding to absentee ballot certificate errors or missing certificates but is concerned about the process outlined in AB 198.**

AB 198 indicates clerks *shall* return the ballot to the elector (it would no longer be may), it also indicates the clerks *shall post a notification of the defect on the elector's voter information page on the Internet site used by electors for original registration (MyVote Wisconsin)* and further indicates *the municipal clerk may not correct a defect in the certificate*. Removing the clerk's

ability to correct even minor administrative errors (on otherwise valid ballots) and requiring notifications of defects to be posted online (instead of communicated more directly) will likely increase the number of absentee voters whose ballots are returned and rejected. Many voters are unable to use online resources and would not understand why their absentee ballots have been returned or that corrections are needed to the certificate. Additionally, there may be insufficient time to return the ballot to the voter, for the voter to learn of the defects and make corrections, and to resubmit the ballot in time to be counted. We encourage policymakers to explore alternatives that would allow clerks to consistently respond to improperly completed or missing certificate information in a manner that is timely and requires voters to be notified of the defects and corrections needed by means other than solely online.

AB 201

AB 201 will make it more difficult for some older adults to vote. Some older indefinitely confined voters seek this designation as a means of indicating their wish to be a permanent absentee voter. Sending an absentee ballot to these voters for every election ensures they will not miss voting on issues impacting them and other citizens of their voting ward whether it is a national or local election. AB 201 proposes to eliminate the sending of absentee ballots to indefinitely confined voters and instead proposes sending them absentee ballot applications. The bill also proposes to eliminate the option for other absentee voters to apply to receive absentee ballots for all elections occurring in their voting municipality during the year of application. Under AB 201 all absentee voters other than military voters would need to complete an absentee ballot application (which would automatically be sent to indefinitely confined voters) for every separate election.

Some older voters face significant challenges completing the absentee ballot application. These challenges include, but are not limited to, not knowing how to request an absentee ballot application, not having the necessary required identification, and submitting proof of their identification. It can be difficult, particularly for those who do not drive, to get to the Department of Motor Vehicles to obtain a photo ID. Even for those who have photo IDs it can be challenging to obtain needed copies due to limited access to technology and/or limited ability. AB 201 would require indefinitely confined voters and most absentee voters to submit proof of identification for every election even if they received an absentee ballot from the municipal clerk by mail for a previous election, provided proof of identification with the previous ballot, and have not changed their name or address since providing that proof of identification.

During the COVID-19 pandemic many older voters (and voters of all ages) decided for health and safety reasons to vote by absentee ballot. For many this was a new experience, as they had always preferred to vote in-person at their local polling site. To help make this process a little easier for those who were unfamiliar, the Wisconsin Elections Commission mailed absentee ballot applications (thereby eliminating the confusion of how to apply) to all eligible voters who did not already have an absentee ballot application on file. AB 201 prohibits any municipal/county clerk or municipal/county board of election commissioners, and any person acting on

behalf of the Wisconsin Elections Commission from sending/transmitting an absentee ballot application to anyone who has not requested one.

The proposed absentee voting application process, photo ID requirements, and laws regarding unsolicited mailing/transmission of absentee ballot applications (regardless of the circumstances – including a national public health emergency) included in AB 201 will make it more difficult for some older absentee voters, including those who request indefinitely confined status, to vote.

Thank you for your consideration of our informational comments on AB 198 and testimony against AB 179 and AB 201. GWAAR supports voting processes that ensure every eligible older adult who wants to vote, can vote, no matter where they live or the means by which 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.

Contact:

Janet Zander

Advocacy & Public Policy Coordinator, MPA, CSW

Greater Wisconsin Agency on Aging Resources

janet.zander@gwaar.org

(715) 677-6723 or (608) 228-7253 (cell)