



Date: February 7, 2022

To: Senator Bernier, Senator Darling, and members of the Senate Committee on Elections, Election Process Reform and Ethics

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

Re: **Information Only SB 935** relating to: certain kinds of election fraud, private resources and contracts for election administration, who may perform tasks related to election administration, defects on absentee ballot certificates, returning absentee ballots to the office of the municipal clerk, appointment of election officials, allowing an employee of a residential care facility or qualified retired home to serve as a personal care voting assistant during a public health emergency or an incident of infectious disease, and providing a penalty.

Information Only SB 937 relating to: status as an indefinitely confined voter for purposes of receiving absentee ballots automatically and providing a penalty.

Against SB 939 relating to: absentee ballot applications, unsolicited mailing or transmission of absentee ballot applications and absentee ballots, secure delivery of absentee ballots, canvassing absentee ballots, voter registration requirements, 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 aged 60 and older residing in our service area.

Thank you for this opportunity to provide testimony on SB 935, SB 937 and SB 939. As of Feb. 1, 2022, people aged 50 and older make up 55% of Wisconsin's registered voters.¹ 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. Between 2009 – 2019, the 65 and older population in Wisconsin grew by over 32%. There are over one million Wisconsinites

¹ Wisconsin Elections Commission. February 1, 2022 Voter Registration Statistics. Retrieved Feb. 5, 2022 from https://elections.wi.gov/statistics/voter_reg/feb2022.

aged 65 and older (over 17% of the state's population).² Older Americans are one of the fastest-growing demographics in the country. Within the older population, a large and growing percentage of people are age 85 and older.³ With advanced age people are more likely to have multiple chronic illnesses which can make it harder to get around. Age is also a significant risk factor for admission to a nursing home. Roughly 1% of people aged 65-74 live in nursing homes, compared to approximately 15% of people aged 85 and older. Additionally, AAA reports seniors outlive their ability to drive safely by an average of seven to ten years.⁴

SB 935 – Information Only

GWAAR appreciates the ongoing discussions to improve access to voting for older adults and adults with disabilities. Though GWAAR is unable to support this bill in its current form, specific provisions we support are noted below.

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 contact by phone, email, or letter, all electors with incomplete or missing certificates. Creating a certificate requiring the minimal amount of required information and clear instructions would help to eliminate what are often simple mistakes (e.g., elector lists zip code but forgets to include municipality). In addition, continuing to allow 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 as has been allowed under recent guidance from the Wisconsin Elections Commission, 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.

² Administration for Community Living. 2020 Profile of Older Americans, Publication date May 2021. Retrieved Feb. 5, 2022 from https://acl.gov/sites/default/files/Profile%20of%20OA/2020ProfileOlderAmericans_RevisedFinal.pdf.

³ Administration for Community Living. Projected Future Growth of Older Population, last modified on May 25, 2021. Retrieved on Feb. 5, 2022 from <https://acl.gov/aging-and-disability-in-america/data-and-research/projected-future-growth-older-population>.

⁴ Figueroa IV, D. (2018, August 14). *Seniors outlive their safe driving age by 7 to 10 years, AAA says*. Tampa Bay News. Retrieved February 5, 2022, from https://www.tampabay.com/news/Seniors-outlive-their-safe-driving-age-by-7-to-10-years-AAA-says_170888685/.

GWAAR appreciates the efforts that have been made in this proposal 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. Though the process proposed is more restrictive than we recommended, it does outline a process to be followed when these circumstances occur.

GWAAR also 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. Though some states, like Wisconsin, have programs in place that enable external assistance to come into the facility, regardless of whether this external assistance is available or not, providers are required 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.”⁵ 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.

In recognition of the high-level of turnover among staff in these facilities and the reality that not all facilities will have appointed and trained personal care voting assistants, **we are concerned the bill restricts any other facility employee who is not a personal care voting assistant from assisting residents with voting** (other than distributing absentee ballots in their unopened envelopes to residents who requested them). The process for voters in facilities where SVDs are not able to conduct visits and the facility has *not* identified any personal care voting assistants remains unclear under this proposal. We must ensure these voters are not disenfranchised based on where they live. **In addition, we are concerned that the process as outlined under this proposal is also unclear as to how residents/tenants who have recently moved to a residential care facility or qualified retirement home will receive assistance, if needed, with registering to vote** when visits are restricted for SVDs (only some of whom are also Special Registration Deputies). If personal care

⁵ 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>

voting assistants are prohibited from assisting with registering to vote and other facility staff are also unable to assist, how will residents receive the assistance needed?

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 an SVD visit because access to the home/facility was restricted due to a public health emergency or incident of infection disease **are also supported by GWAAR**. Requiring SVD contacts to be made with facility administrators and visits to be scheduled no later than 5 p.m. on the 11th working day (instead of the 6th working day) preceding an election will allow more time for the alternate process, utilizing personal care voting assistants, to be completed should SVD visits be restricted due to a public health emergency or incident of infectious disease. Additionally, requiring SVD visits to be completed *no later than* 5 p.m. on the 6th working day preceding the election (rather than the Monday preceding the election) will provide more time for clerks to send absentee ballots to electors who were unable to cast their ballots during SVD visits due to restricted access to the facility by SVDs resulting from a public health emergency or incident of infectious disease and more time for personal care voting assistants to provide assistance.

GWAAR does not support the changes made under this bill requiring facilities to give notice of the days and times SVDs or personal care voting assistants will be assisting facility residents with voting, to each relative of an occupant/resident for whom the facility/home has contact information. GWAAR also does not support the proposal in this bill indicating relatives may be present in the room where the voting is conducted. Eligible voters, regardless of age, disability, or living arrangement, should have the right to decide who is and is not informed about and/or present during any activity, including voting. Current law, while still concerning, allows relative to request notice of voting dates/times and does not require the information be sent to all relatives.

SB 937 – Information Only

GWAAR appreciates the ongoing discussions to improve access to voting for older adults and adults with disabilities. Though GWAAR is unable to support this bill in its current form, specific provisions we support are noted below.

Use of the indefinitely confined status for voting has been an invaluable accommodation for many older adults (and adults of all ages) who wish to vote but due to physical illness, infirmity or disability are unable to get to their polling sites. As “indefinitely confined” is self-determined, it has become increasingly important to clarify what this term means. This bill removes “age” from the current definition of indefinitely confined (due to age, physical illness, infirmity, or is disabled for an indefinite period) and replaces it with the following language, “an elector who is indefinitely confined and cannot travel independently without significant burden because of frailty, physical illness, or a disability that will last longer than one year.” **GWAAR supports the removal of age from the definition of indefinitely confined, as age in and of itself is not an indication of frailty,**

physical illness, or disability. To provide further clarification, GWAAR recommends changing the name of the status to “permanent absentee voter,” to more accurately reflect the needs of these voters versus a condition of voters.

Under current law, the absentee ballot application provides electors the options available under law for voting absentee, including the option for electors to certify to their indefinitely confined status. Electors in need of being a permanent absentee voter, who may not know about the indefinitely confined voter accommodation can learn about it directly from the absentee ballot application. Recent reports have indicated some voters, in recent elections, checked the box to certify themselves as indefinitely confined unintentionally or without understanding what it meant. **While GWAAR recognizes the importance of preserving this accommodation for those it was intended to serve, our recommendation is to provide additional clarification on the absentee ballot application rather than creating a distinct indefinitely confined status application as proposed in this bill.** Electors in need of an indefinitely confined status may not know to request this application and, therefore, may not receive this needed accommodation.

Though GWAAR feels participation in all elections is important, **we support changes made in this bill related to 6.86 (2) (b) specifying an indefinitely confined voter who fails to cast and return an absentee ballot “with respect to a spring or general election” (rather than any election)** will receive notification from the clerk by 1st class letter or postcard that his/her name will be removed from the mailing list unless the clerk receives a renewal of the application within 30 days of the notification. Turnout among all voters is lower for primary elections and this change would prevent indefinitely confined voters from having to reapply to maintain their status due to not voting in a primary election.

In recognition of the challenges electors seeking an indefinitely confined status face in submitting copies of a photo ID or getting to the DMV to obtain an ID, existing law does not require those requesting an indefinitely confined voter status to submit a photo ID when applying for an absentee ballot. While many absentee voters requesting an indefinitely confined status have a valid ID, it can be very difficult for some to submit copies electronically or hard copy. This bill requires any elector who possesses proof of identification to submit a copy of their identification with *each* application for indefinitely confined status. **GWAAR supports changes made in this bill to provide electors applying for an indefinitely confined voter status electronically to use the online system - MyVote Wisconsin - to provide the number of a valid photo ID card, their name, and date of birth (in place of uploading copies of the ID as proof of identity).** We would also recommend this option be made available to electors apply for indefinitely confined status who possess a valid ID and apply using the Wisconsin Elections Commission’s paper application. The application could provide a location for the elector to include this information. Without this option, it will be very difficult for some electors in need of an indefinitely confined status to submit a copy with their application, even when they have a valid photo ID. **This bill continues to provide an option for electors applying for indefinitely confined status who do not possess proof of identification. GWAAR**

supports maintaining this option but recommends changes to the process outlined in this bill.

Among the requirements outlined in the process in this bill are requirements for the elector to submit an affirmation that he/she meets the definition of indefinitely confined, the last four digits of his/her Social Security number, and a statement authorizing the commission to use the last four digits of the elector's Social Security number to verify the elector's identity. GWAAR believes these electors must receive assurance that any Social Security numbers, in combination with other personal data, will be maintained in a confidential manner to protect them from any potential fraud or abuse. In addition, GWAAR believes the above information should be sufficient for the elector's identification to be confirmed. The bill also; however, requires the affirmation of a U.S. citizen that the elector is indefinitely confined and cannot travel independently without significant burden because of frailty, physical illness, or a disability that will last longer than one year. **If a witness signature continues to be required, GWAAR recommends the witness attest to the elector's identity, as is required under current law, and not be required to attest to the elector's health or disability status.** It can be difficult for some absentee voters, especially those who are indefinitely confined, to find individuals eligible to serve as witnesses on absentee ballot applications. This new requirement will make it even more difficult, as many individuals may feel unqualified to make such a determination and may, therefore be unwilling to sign as a witness on the application.

Lastly, the bill requires the Wisconsin Elections Commission to facilitate removal from the indefinitely confined status mailing list any elector who first applied for this status between March 12, 2020 and Nov. 3, 2020. The electors removed from the mailing list will no longer be eligible to automatically receive absentee ballots unless the elector reapplies. As is the case every year (not just during a public health emergency), a number of older adults and adults with disabilities who determined they qualified for this status, will have applied for this status during this time period. Under this bill, all individuals added to the list during this time, will be removed. This will result in many voters who are qualified for this status being removed from the mailing list. **GWAAR is concerned the bill does not outline how these electors will be notified they have been removed from the list and further, how these electors will be supported to reapply given how difficult this process can be for voters with significant "frailty, physical illness, or disability."**

SB 939 – Against

Absentee voting is generally more heavily utilized by older voters.⁶ This bill proposes significant changes that would make it much more difficult for electors to apply for and return absentee ballots. Under existing law, an elector who previously submitted a copy of their photo ID when applying for an absentee ballot, and who has not changed their name or address, is not required to submit a copy of their photo ID again when reapplying each year. This bill would eliminate that

⁶ Charles Stewart III, MIT. Some Demographics on Voting by Mail, March 20, 2020. Retrieved on Feb. 6, 2022 from <https://electionupdates.caltech.edu/2020/03/20/some-demographics-on-voting-by-mail/>.

exemption and would require all electors to submit a copy of their photo ID with each application. In addition, electors wishing/needing to vote by absentee ballot will no longer be able to apply to receive ballots for every election in a calendar year but will now be required to complete an application for each primary and the election associated with that primary. These changes will pose significant barriers for voters who do not drive; it can be challenging to obtain needed copies of a photo ID due to transportation barriers, limited access to technology, and/or limited ability to use available technology. Requiring this application renewal process for every primary and general election pair, when there has been no change in the voter's status, is unnecessary and places additional barriers that will make it more difficult for some older adults to vote.

Though GWAAR feels participation in all elections is important; the reality is, turnout among all voters is lower for primary elections. This bill penalizes absentee voters who do not vote in the primary by prohibiting municipal clerks from mailing an absentee ballot for an election to any elector who fails to return the absentee ballot mailed to the elector for the primary specified in the elector's application. There are many reasons a voter may not be able to, or may choose not to, vote in a primary election. The elector's decision regarding voting in a primary should not impact their ability to vote absentee in a general election.

GWAAR heard from older voters who found it very confusing to receive multiple absentee ballot applications in the mail from third parties and outside groups (some legitimate and some not). **GWAAR is concerned that adding 6.86 (8) to the current statutes**, as proposed in this bill, would only further magnify the confusion. As proposed, no municipal or county clerks or municipal or county board of election commissioners, and no person acting on behalf of the commission, may send or transmit an absentee ballot application (or and absentee ballot) to an elector for voting in an election unless the elector applies for the application (or ballot). Yet, the bill states candidate committees, legislative campaign committees, political parties, etc., may not send or transmit absentee ballot applications to a voter that contains a return address on the application other than the address of the municipal clerk where the voter is registered. **This change prohibits the entities electors would expect to send them voting and elections materials from sending absentee ballot applications but *permits* third parties and outside groups to send absentee ballot application if the return address is the address of the municipal clerk where the voter is registered.**

Third parties and outside groups often do not coordinate with state or local election officials resulting in electors receiving multiple applications. It is easy for voters to become confused about whether their absentee ballot applications were processed and is not surprising that some voters submit multiple applications while waiting for their absentee ballot to arrive. Multiple applications from a single voter cause confusion for voters and additional work for local election offices.

This bill will also make it more difficult for some older adults to vote by limiting who can return an absentee ballot to the voters themselves, a member of their immediate family, a legal guardian, or any registered voter they designate in writing (with additional restrictions). While some older

voters are perfectly capable of returning their own ballots, others find it much more difficult to do so. In the past year or two, voters have expressed concern about returning absentee ballots by mail, especially when the election date is near, as ballots may or may not arrive in time to be counted. While this bill does authorize the use of for-profit commercial delivery for return of an absentee ballot envelope; voters who are low-income may find this cost prohibitive and not an option available to them. Most older adults (or voters of any age) do not have legal guardians and some do not have any immediate family members, or at least none within close proximity, available to assist them. While this bill does allow an elector to designate, in writing, one person who is registered to vote in this state to deliver the return envelope containing the absentee ballot, it is unclear how the designation process works and it may be difficult for electors to know in advance who may be available to help them return their ballot, whether the individual is a registered voter in the state, and whether they have delivered more than two envelopes for any election for persons who are not members of the person's immediate family. Some electors, with extremely limited social contacts, may only have regular contact with in-home, paid providers. These providers often serve multiple individuals and may be asked to assist with returning an absentee ballot by more than one client. Restricting who can return absentee ballots will result in confusion and will negatively impact older voters and voters with disabilities.

For the reasons noted, **we ask you to oppose SB 939.**

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. Thank you for your consideration of these comments on SB 935, SB 937, and SB 939. 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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