



Date: September 2, 2022

To: Wisconsin Elections Commission Staff – Attn: Jim Witecha, Staff Attorney

Submitted via electronically to: james.witecha@wisconsin.gov

Re: Comments relating to implementation of the court order issued in the matter of *Carey v. WEC*

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 estimated to be nearly 1.2 million adults aged 60 and older residing in our service area.¹ GWAAR is a member of the Wisconsin Disability Vote Coalition, and I am a member of the Wisconsin Elections Commission’s Accessibility Advisory Committee.

Thank you for this opportunity to provide comments regarding implementation of the court order issued in the matter of *Carey v. WEC*. Many older adults with disabilities do not identify as having disabilities. Yet, “more than 30 percent of Americans over age 65 have some kind of disability, and over 50 percent of those over age 75.”² The ruling in the *Carey v. WEC* case states (among other things):

- Under the Voting Rights Act, 52. U.S.C. §10508, voters who require assistance with mailing or delivering their absentee ballot to the municipal clerk because of a **disability** are entitled to assistance...”

To ensure older adults with disabilities are able to “identify” as covered by this ruling and receive any assistance needed with mailing or delivering their absentee ballots, GWAAR recommends “disability” be defined as it is under the Voting Rights Act (VRA):

“Any voter who requires assistance to vote **by reason of blindness, disability, or inability to read or write** may be given assistance by a person of the voter’s choice, other than the voter’s employer or agent of that employer or officer or agent of the voter’s union.”³

¹ Wisconsin Department of Health Services, Aging: Demographics in Wisconsin, [County Population Projections Through 2040, P00138A](https://www.dhs.wisconsin.gov/aging/demographics.htm); retrieved on Aug. 26, 2022 from <https://www.dhs.wisconsin.gov/aging/demographics.htm>.

² ADA National Network, *Aging and the ADA*, 2018; retrieved on Sept. 2, 2022 from <https://adata.org/factsheet/aging-and-ada>.

³ Cornell Law School, Legal Information Institute, retrieved on Sept. 2, 2022 from <https://www.law.cornell.edu/uscode/text/52/10508>.

The statutory protection is not limited to physical disability, and we do not believe Judge Peterson's order is either.

Additionally, GWAAR recommends:

- Any WEC guidance issued to municipal clerks should not limit the protections of the Voting Rights Act. For example,
 - Limiting how many ballots an assistor can return may prevent a voter from using the assistor of his/her choice because their chosen assistor is already at the cap for returning ballots.
 - The Voting Rights Act also does not say that the disability must definitively prevent the person from returning the ballot themselves.
- As noted by Law Forward, the proposed additional Certificate language suggested by the Wisconsin Institute for Law & Liberty (WILL) would violate other federal laws including the ADA. ...”Pursuant to federal regulation, the Commission and the municipal clerks may not ‘impose or apply eligibility criteria that screen out or tend to screen out’ people with disabilities from ‘fully and equally enjoying’ the programs, services, or activities of state and local governments. 28 C.F.R. § 35.130(b)(8). WILL’s proposal requiring voters with disabilities to find witnesses who, in addition to the requirements of Wis. Stat. § 6.87(4)(b), would also swear to the nature and extent of the voter’s disability, would in fact impose and apply eligible criteria that may screen out or tend to screen out people with disabilities from fully participating in their right to vote. This additional requirement will make it much more difficult for voters with disabilities to identify and access people willing to provide the assistance needed and is likely to turn people away (out of fear and concern) from agreeing to be an assistor. Assistors could be neighbors, housekeepers, service providers, etc. and should not be required to attest to someone else’s level of disability.

Thank you for your consideration of these comments regarding implementation of the court order issued in the matter of *Carey v. WEC*.

**Working together to promote, protect, and enhance
the well-being of older people in Wisconsin**

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