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Wisconsin Disability Vote Coalition Public Comments for Wisconsin Election Commission

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Thank you for the opportunity to share public comments with the Wisconsin Election Commission. These comments are provided on behalf of the Wisconsin Disability Vote Coalition and address the voting rights of people with disabilities and older adults in our state. The comments are informed by our work on the frontline, supporting voters with disabilities to have equitable access to voting.

On behalf of the Coalition, thank you, Commissioners and staff, for your work to ensure our elections provide equitable access to people with disabilities as required by the Americans with Disabilities Act (ADA) and Help America Vote Act (HAVA). Today we will share concerns about recent developments in Wisconsin that are restricting these rights.

Voting Rights of Care Facility Residents

We are concerned about the continuing attacks on the voting rights of people who live in nursing homes and other congregate settings. Residents of long-term care facilities have the same right to vote as any other citizen, whether they are cognitively impaired or unimpaired. People with cognitive disabilities have the same right to vote as other citizens.

The right to vote may only be taken away by a court, usually in a guardianship proceeding, but only if the court decides that the person is "incapable of understanding the objective of the elective process." The opinion of a care provider, family member, friend, or any other person about the competency of a person should not be allowed to prevent that person from registering to vote or from voting if that person has not been adjudicated by a court to be incompetent for purposes of registering to vote or voting. A surrogate decision maker such as a power of attorney does not have the right to decide if someone does or does not vote.

At the March 1st Assembly Committee on Campaigns and Elections hearing, Mr. Gableman showed videos of Erick Kaardal questioning frail elderly residents about voting. Mr. Kaardal stated that these questions are from the "Election Board." We are concerned this gave the misleading impression that these are questions from the Wisconsin Election Commission – Wisconsin's Election Board. Wisconsin does not require or allow voting tests that people must pass in order to vote, nor should they. No voter in Wisconsin is ever asked this type of questions, and voters are never asked to explain why they voted for a particular candidate.

The investigation has also questioned the role of care facility staff in supporting residents to vote. Federal law requires that Medicare/ Medicaid certified long term care facilities affirm and support the right of residents to vote. The US Department of Health & Human Services Center for Medicaid and Medicare Services (CMS) guidance document, [Compliance with Residents' Rights Requirement related to Nursing Home Residents' Right to Vote](#), states that "nursing homes are required to support a resident in the exercise of their right (§483.10(b)(2)) to vote, such as assisting with absentee or mail-in voting, or transporting residents to polling locations or ballot drop-boxes in a safe manner." ... "Nursing homes should have a plan to ensure residents can exercise their right to vote, whether in-person, by mail, absentee, or other authorized process."

Care facility staff have the responsibility to assist residents with voting, as requested by the voter, with their permission. Staff may not influence the resident's decision in any way: The resident has the right to be free of interference, coercion, discrimination, and reprisal from the facility in exercising his or her rights and to be supported by the facility in the exercise of his or her rights. No one should ever be coerced or otherwise influenced as part of exercising their right to vote. If a care facility resident had their ballots improperly completed, due to coercion, that is against the law. Those concerns should be promptly reported when they occur and investigated by the district attorney or other law enforcement.

As a result of these investigations, many care providers are afraid to assist residents with voting. When people move to a nursing homes, they often need to re-register to vote. If staff are not able to assist them with this or to ask if they want to request an absentee ballot, they will be disenfranchised. Most Special Voting Deputies (SVDs) are not able to assist residents with registering to vote. We shared recommendations with you on December 1st to address gaps in the SVD program, and have also shared these with legislators. We ask you to consider adding these recommendations to your legislative priorities.

It is discriminatory and unconscionable to disenfranchise Wisconsin citizens simply because they live in a care facility; their voting rights must be upheld. Instead, policy makers should work together to ensure that nursing home residents and others who live in congregate settings are able to exercise their voting rights, have the opportunity

to register to vote and to cast a ballot, and to request and receive assistance from a person of their choice, without coercion or interference.

Prohibition on Absentee Ballot Return Assistance

The Disability Vote Coalition is united in our concern about a new barrier that is in place for the April 5th elections. Voters are no longer able to receive assistance with absentee ballot return due to the Waukesha Circuit Court's decision that only a voter, and not another person, must mail or deliver the elector's ballot.

Many voters with disabilities and older adults must rely on a friend, family member or care provider to place their ballot in the mailbox or return it to their clerk. We are concerned that the prohibition on absentee ballot return will make it difficult if not impossible for many disabled and elderly Wisconsin voters to return their ballots in the manner they have used for years.

As compared to other states, Wisconsin has many more people with significant disabilities living in the community – not in institutions. Providing our community members with access to community based care is a good thing; however, it requires a commitment to ensure that their voting rights are accommodated as required by the ADA. Wisconsin has over 80,000 individuals enrolled in community based long term care programs. Participants qualify for these programs by meeting a nursing home level of care, meaning their support needs are significant and similar to nursing home residents. Health conditions such as Cerebral Palsy, Multiple Sclerosis, Muscular Dystrophy, and ALS may limit their ability to physically place their ballot in their own mailbox, or to travel to their clerk's office to return a ballot.

Having the right to request that a person of their choice return their absentee ballot is fundamental to exercising their right to vote, and we believe this right is protected by Section 208 of the Voting Rights Act. It provides for voters who need assistance to vote by reason of blindness, disability, or inability to read or write to receive assistance by a person of the voter's choice, other than the voter's employer or agent of the employer or officer or agent of the voter's union.

Here are examples of Wisconsin voters who cannot put their own ballot in their own mailbox.

I have Duchenne Muscular Dystrophy. At 49 this muscular wasting genetic disease has left me unable to move any part of my body. I control my power wheelchair with my mouth. I operate my computer with a mouth control and voice recognition. I have no way to put my ballot in the mailbox or take it to the proper place.

We were contacted by a disabled elderly vote in northern Wisconsin. His mailbox is half a mile from his home. He has significant mobility and chronic pain issues and is unable

to get his own mail. He had applied to the USPS for an accommodation to have his mail box outside his door but was refused. He always votes and is asking for guidance on how he can continue to do so.

As a person with a spinal cord injury who uses a power wheelchair, I am unable to physically put my completed absentee ballot in the mail, requiring assistance from another person to do so.

My mother has struggled with Multiple Sclerosis for almost 40 years and has not stepped onto her own two feet in over 20. While her mind is bright and her spirit full, her body is a hollow shell that has lived in the same bed, same room, for over two decades. She can barely move one arm, but it is still her RIGHT and her JOB as an American citizen to vote. No one should be able to take that away from her just because she can't physically get out of a bed and walk, to specifically place her own ballot, in her mailbox.

I was born with a disability called Tetra-Amelia, which means missing all my limbs. I have home healthcare workers who help me with my activities of daily living. Even if I took the ballot to the mail box I would need assistance to physically put the ballot into the mail box.

We are deeply concerned that this new barrier may disenfranchise many voters with disabilities and frail elders. We ask for your help to protect and defend the voting rights of disabled Wisconsinites and to ensure our elections are more accessible and inclusive – not more restrictive. Thank you for your consideration.

About the Wisconsin Disability Vote Coalition

The WDVC is a non-partisan effort to help ensure full participation in the entire electoral process of voters with disabilities, including registering to vote, casting a vote, and accessing polling places. Members include people with disabilities, and community agencies. The Coalition is coordinated by Disability Rights Wisconsin and Wisconsin Board for People with Developmental Disabilities.