



1-844-DIS-VOTE
www.disabilityvote.org

Date: February 2, 2023

Re: Public Comments for the February 2nd WEC meeting

To: Wisconsin Election Commission

From: Wisconsin Disability Vote Coalition

Barbara Beckert, Disability Rights Wisconsin, barbarab@drwi.org

Thank you for the opportunity to provide public comments on behalf of the Wisconsin Disability Vote Coalition (WDVC) and Disability Rights Wisconsin (DRW).

- The WDVC is a non-partisan effort to help ensure full participation in the entire electoral process of voters with disabilities. Members include people with disabilities, and over 40 community agencies. The Coalition is coordinated by Disability Rights Wisconsin and Wisconsin Board for People with Developmental Disabilities.
- DRW is the federally mandated Protection and Advocacy system for Wisconsin, and is charged with protecting the voting rights of people with disabilities and mandated to help "ensure the full participation in the electoral process for individuals with disabilities, including registering to vote, casting a vote, and accessing polling places." ([Help America Vote Act, 42 U.S.C. § 15461 \(2002\)](#)).

We appreciate your consideration of our recommendations today to increase the accessibility and inclusion in Wisconsin election, and to ensure that protections in federal and state law are in place statewide. Disability affects many individuals and families – if we live long enough it is likely to affect each of us. We all have a vested interest in ensuring that our elections are accessible and inclusive of people with disabilities as required by federal and state law.

Ballot Return Assistance Recommendation

In our November 30th public comments, we asked Commissioners to take action to update the *Uniform Instructions for Absentee Voters* to include the rights of disabled voters to have assistance with completing and/or returning their ballot. This request

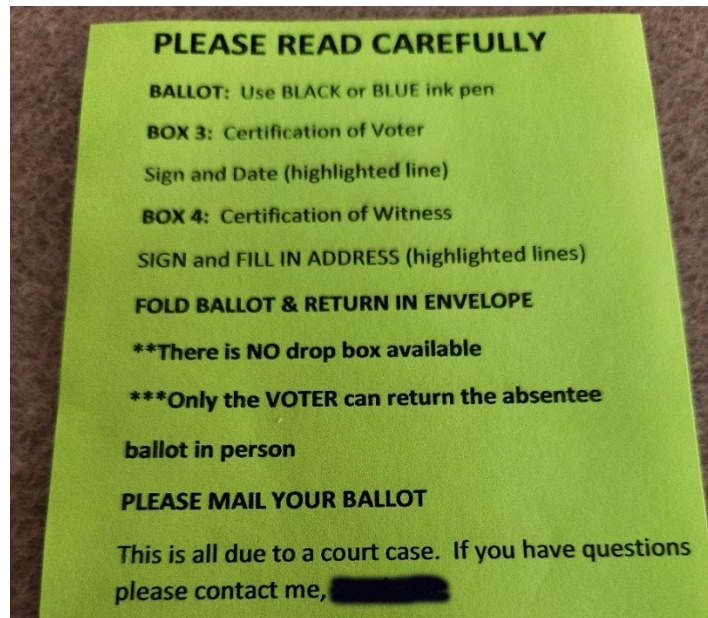
disabilityrights | WISCONSIN



*The Wisconsin Disability Vote Coalition is a project of
Wisconsin Board for People with Developmental Disabilities and Disability Rights Wisconsin*

was based on our concern that Wisconsin voters with disabilities continue to encounter barriers to asserting their federal rights to ballot return assistance and that some clerks were restricting this right in violation of [Judge Peterson's August 30th Order](#).

These concerns continue. On February 1st, I was contacted by a disabled voter who received her absentee ballot with a notice from her clerk stating that *"only the VOTER can return the absentee ballot in person... . This is all due to a court case."* I have included the notice below but removed the clerk's name and title. I was contacted by another voter last month who also heard from her clerk that "only the voter can return the absentee ballot, with no exceptions for disabled voters". Our November 30th Public Comments included other examples. This must not continue.



We ask Commissioners to act today to charge staff to update the Uniform Instructions for Absentee Voters for use by clerks for the April election. In addition, we ask you to authorize staff to protect the rights of disabled voters in the 2023 elections by taking immediate additional action, such as the following:

- Develop a standard notice about ballot return assistance to be posted by clerks at each polling place on election day.
- Include information about ballot return assistance, including the rights of disabled voters, in the Absentee and General Reminders document sent to Clerks in advance of each election, and in clerk trainings.
- Include education about ballot return assistance and disability rights for all poll workers from chief inspector to anyone working at the polls. This should be included in the poll worker training resources on the WEC website.
- Include information about ballot return assistance in social media posts.

Polling Place Accessibility Audits

In 2022, the WEC Polling Place Accessibility Audit program was revitalized, after a pause during the pandemic. 464 polling places were reviewed in 2022, exceeding expectations. DRW has been a partner in this program since it was established, and I have regularly participated in the audit program. Our thanks to WEC staff for the excellent work to administer this program.

Given the estimated 3000 polling places in Wisconsin, and the growing importance of accessibility with our aging population, additional staff support is essential to allow WEC to maintain and expand accessibility efforts. DRW supports the Wisconsin Election Commission budget request which would provide the staff capacity needed to expand the number and scope of polling place accessibility audits; expand the number and scope of post-election voting equipment audits, pre-election tests, testing and certification programs; fund the Accessibility Equipment Program, and respond to public inquires; and ensure election laws are being followed.

The report staff provided to you today lays out concerns reviewers saw such as poor parking access for disabled voters, no signage to mark the accessible entrances, doors that required more than 8 pounds of force to open and no signage for curbside voting. The most significant barriers we saw were related to accessible voting machines.

Accessible Voting Equipment

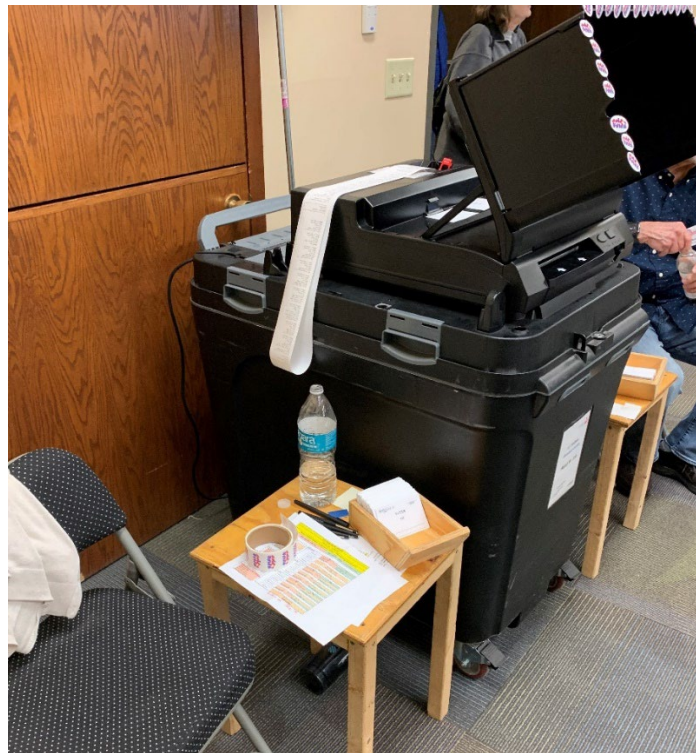
The Help America Vote Act guarantees all voters the right to a private and independent ballot. It requires jurisdictions responsible for conducting federal elections to provide at least one accessible voting system for persons with disabilities at each polling place in federal elections. The accessible voting system must provide the same opportunity for access and participation, including privacy and independence, that other voters receive. The practices at the polling places we reviewed raise serious concerns that Wisconsin is not in compliance.

These sites used the Dominion ICE equipment; this equipment is used in over 30 counties. The dual nature of the Dominion ImageCast Evolution presents challenges for voters with and without disabilities. The tabulator can be converted into the accessible voting equipment, but that requires that the machine be temporarily closed for use by voters who wanted to submit their ballots using the tabulator. The dual nature of the machine means it is not identifiable as the accessible voting equipment by voters, or by poll workers with limited training. There is a high probability that voters who need to use the accessible features may not know it is available.

If a voter with a disability wanted to vote using the accessibility function, other voters must wait to complete voting, as the tabulator feature will not be available

for them to submit their completed ballots. This is not equitable access for the voter with a disability. In addition, because the equipment is part of the tabulator, it would be difficult if not impossible for the voter to cast a ballot privately as other voters watch and wait to use the tabulator to submit their ballots.

At the sites we reviewed, this equipment was not set up in a way that would make the accessible voting feature (on the back of the tabulator) available. While the headphones and touch pad might be out, they were on the back of the unit so not visible. In many cases, the accessible portion of the equipment was against a wall or blocked off by tables – in no way was it accessible. When I asked about plan for use of the machine, I was told repeatedly no one ever uses it, and was not offered to voters, as recommended by WEC. Here is a November 2022 photo of a Dominion ICE tabulator with a table on either side and the accessible equipment against the wall where it cannot be seen or accessed.



As currently implemented, the Dominion ICE equipment does not meet the requirements in federal law for the accessible voting system to provide the same opportunity for access and participation, including privacy and independence, that other voters receive.

- **Recommendation:** We recommend that Commissioners ask the staff to work with the WEC Accessibility Committee to develop accessible voting alternatives in counties that use the Dominion ICE equipment to ensure the right of disabled citizens to vote privately and independently.

Rules for Election Observers

Disability Rights Wisconsin and the Disability Vote Coalition support having clear rules for election observers because it will help improve the transparency and security of Wisconsin's election process. Voter and public confidence will increase when there are clear standards that protect the rights of voters (such as their privacy while filling out their ballot), ensure reasonable access for observers, and protect election workers.

We support the proposal discussed at the November 2022 WEC meeting to form an Advisory Committee to offer guidance for the rule making process. DRW has contacted staff to express our interest and willingness to serve on the committee. Here are some initial recommendations:

- **Rules should ensure that the basic needs of election observers are being met**, such as access to bathrooms and disability-related accommodations. Official rules can ensure these protections by offering a clear roadmap for clerks and chief inspectors running polling places around the state.
- **There must be a balance between providing adequate access to election observers while also ensuring the voting process is not disrupted.** Election observers should be able to watch the full election process (i.e. observing the clerk in their office, watching voters announce who they are, etc.) so the process is transparent to the public. However, it is essential that the rules ensure that the activity of election observers should not be intimidating or deterring to voters. **Rules must make it clear that observers must be respectful of the voters right to privacy and be free of intimidation and interference.** Observers should not directly challenge a voter and there must be a clear process for them to report any concerns to the Chief Inspector or their designee.
- The rules should address how observers can observe the other aspects of the election process beyond election days including Special Voting Deputies and In Person Absentee Voting.

Thank you for your consideration of our recommendations. We stand ready to work with you to address these voting rights and accessibility concerns.

Federal and State Law Protecting the Rights of Voters with Disabilities

- **The Americans with Disabilities Act and Other Federal Laws Protecting the Rights of Voters with Disabilities**, U.S. Department of Justice:
<http://www.justice.gov/file/69411/download>
- **List of Wisconsin Accessibility Provisions**, Disability Vote Coalition:
<http://disabilityvote.org/wp-content/uploads/2021/04/State-Statutes-Related-to-Accessibility-acc.pdf>

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 over 40 community agencies. The Coalition is coordinated by Disability Rights Wisconsin and Wisconsin Board for People with Developmental Disabilities.