

WISCONSIN ELECTIONS COMMISSION

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INTERIM ADMINISTRATOR MEAGAN WOLFE

MEMORANDUM

DATE: For the March 11, 2019 Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Meagan Wolfe
Interim Administrator

Prepared and Presented by:
Michael Haas

SUBJECT: Commission Legislative Agenda

At the meeting of December 3, 2018, the Commission adopted a legislative agenda for the 2019 - 20 legislative session which included recommendations related to over 70 items. Commission staff has met with legislative staff and Legislative Reference Bureau drafting attorneys and expects a significant share of those items to be addressed in legislative proposals.

Commission staff is requesting feedback regarding the following three additional items for the legislative agenda.

1. Voter Name and Address Requirement: Wis. Stat. § 6.79(2) states that before receiving a ballot at the polling place, each voter must state their name and address. Periodically we have heard from voters with disabilities who are unable to verbally state their name and address. Given that the Americans with Disabilities Act requires governmental services to be provided to all qualified voters, Commission staff has advised that a voter who is unable to speak their name and address due to a disability should still receive a ballot. In practice, this means that the name and address are verified and stated in another way, such as the election inspector reading the information from a photo ID card, other document, or poll list, or another individual assisting the voter by stating the name and address. These alternatives accomplish the statutory goals of the voter confirming their name and address and permitting election observers to hear that information for each voter.

Several statutes specify that voters may obtain assistance during various stages of the voting process, including completing a registration application, requesting an absentee ballot, and marking a ballot. Also, Wis. Stat. § 5.36 states that an individual with a disability may notify their municipal clerk to request a specific type of accommodation at the polling place. The statutes do not specifically address assistance with the requirement to state a voter's name and address, especially without notifying the municipal clerk in advance.

The Commission discussed this issue with its Accessibility Advisory Committee at its meeting on February 27, 2019. The Advisory Committee consists of representatives of organizations which work with and advocate on behalf of persons with disabilities. Committee members expressed concerns with the potential that an election inspector may strictly apply the requirement for a voter to state their name and address and deny a ballot to a voter who is unable to verbalize that information, or at least to discourage individuals from voting in the first place. Some members of the Committee advocated for completely removing the requirement for all voters. After discussion regarding the right of election observers to hear the voter's name and address and transparency in the voting process, the Committee adopted a motion requesting that the Elections Commission request a change in the statutes to specifically address the requirement. The Committee passed the following motion:

The Accessibility Advisory Committee requests that the WEC support legislative changes to allow voters with disabilities to receive assistance from an election inspector or another individual to satisfy the statutory requirement to state the voter's name and address before receiving a ballot, and work with the Accessibility Advisory Committee and the Legislature to enact such legislation.

2. Ballot Harvesting Statutes: Media attention on absentee voting improprieties in a North Carolina Congressional election has generated discussion regarding whether Wisconsin Statutes adequately address potential issues with "ballot harvesting." The practice of ballot harvesting involves an individual collecting marked absentee ballots from voters and returning them to the local clerk. In North Carolina a political operative allegedly did not return some absentee ballots collected from voters and also altered votes on some collected ballots.

Wisconsin Statutes do not prohibit the return of absentee ballots by individuals other than the voter. Commission staff is not aware of efforts of any political campaign or other organization systematically contacting absentee voters to collect marked ballots and offering to return them to the clerk. However, given that the Statutes require the Commission to offer a subscription service providing continually updated information about the issuance and return of individual absentee ballots, a greater potential may exist for absentee voters to be contacted and asked if they need assistance in returning their ballot.

Wis. Stat. § 12.13(3)(m) prohibits fraudulently changing a ballot of an elector so the elector is prevented from voting for whom the elector intended, and violations are punishable as a Class I felony. This addresses one of the risks of ballot harvesting. Several provisions of Section 12.13 may be interpreted to prohibit failing to return a marked absentee ballot collected from another voter but contain general language which may not be clearly on point. The Commission could request that the Legislature insert language into Section 12.13(3)(m) to clearly prohibit failing or refusing to deliver a marked ballot collected from another voter to the municipal clerk or polling place, and to classify violations as a Class I felony.

3. Certification Deadline in Absence of a Potential Recount: Following the completion of the official canvass at the local, county, and state levels, the appropriate filing officer issues a

certificate of election to the winning candidates. Whether at the level of a municipality (Wis. Stat. § 7.53(4)), school district (Wis. Stat. § 7.53(3)(a)), county (Wis. Stat. § 7.60(6)) or state (Wis. Stat. 7.70(5)), the filing officer may not issue the certificate of election until the expiration of the time for filing a recount, which is three days after the official canvass is completed. When a recount petition is filed, the certificate of election is not issued until the completion of the recount or any court action resulting from the recount.

Legislation was enacted in 2017 to limit the right to request a recount to an “aggrieved party,” which is defined as a candidate who lost by no more than 40 votes when the total votes cast for the office was 4,000 or fewer, or a candidate who lost by no more than one percent of the total votes cast for the office when that total exceeds 4,000. That legislation did not amend the timeline for issuing a certificate of election when the initial canvass results indicate there is no aggrieved party that may request a recount. In some cases, clerks and even the Commission would benefit from being able to issue certificates of election sooner when there is no candidate qualified to request a recount. The Commission could request that the Legislature update the relevant statutes to permit certificates of election after completion of the official canvass when there is no aggrieved party.

Recommended Motion:

The Commission adopts the additional items outlined above to be included in its legislative agenda and directs staff to work with the Legislature to enact appropriate statutory changes.