



# Preventing Problems at the Polls: Wisconsin

By Billy Corriher and Liz Kennedy | September 26, 2016

Wisconsin has had an admirable record of relatively smooth election administration, thanks in part to its same-day registration rule. There is a danger of problems at the polls this year, however, due to recent restrictions on voters and changes in voting rules, as well as the abolition of the state’s nonpartisan Government Accountability Board, or GAB.

In 2014, the legislature slashed early voting and passed a strict voter identification law that threatened to disenfranchise the 300,000 registered voters who lacked an acceptable form of ID.<sup>3</sup> A recent leak of materials from the Wisconsin John Doe investigation into money in politics in the campaign leading up to the 2012 recall election reveal a political strategist’s suggestion that Republicans “start messaging ‘widespread reports of election fraud’” during a tight 2011 election that was headed toward a recount.<sup>4</sup> Legislators in Wisconsin and elsewhere have justified voter ID laws with similarly misleading claims of voter fraud.<sup>5</sup> While voter impersonation fraud is extremely rare, the denial of voting rights for those who lack the required ID is very real. This year, a federal court’s order that Wisconsin voters who were unable to obtain an accepted form of ID be allowed to cast a ballot upon signing an affidavit was overturned by the 7th U.S. Circuit Court of Appeals.<sup>6</sup> The state has committed to providing free IDs through DMV offices.

On the other hand, cuts to early voting were struck down in July after a federal judge ruled that they intentionally discriminated against voters of color.<sup>7</sup> The judge faulted the legislature for trying to “achieve a partisan objective” by suppressing “the reliably Democratic vote of Milwaukee’s African Americans.”<sup>8</sup> That ruling also struck down measures that had extended the residency requirement from 10 days prior to the election to 28 days, as well as a prohibition on municipalities offering in-person absentee voting at more than one location.<sup>9</sup> Municipalities throughout Wisconsin have announced expanded early voting hours, and some are taking advantage of the opportunity to offer multiple voting locations.<sup>10</sup>

The integrity of elections in the United States demands that every eligible American is able to cast a ballot and trust that it will be counted. Americans have the right to choose their representatives and take part in electoral decision-making. But across the country, thousands of voters have not had their voices heard—either because of targeted voter suppression laws or poor election administration decisions.<sup>1</sup> While the vast majority of Americans will vote without encountering difficulties, in recent election cycles, voters have faced preventable problems and unnecessary hurdles. Failures at the polls may deny individuals their right to participate in the democratic process.

This series of issue briefs assesses potential problems for voters in states that have experienced issues with election administration or recent changes to voting rules. Each brief analyzes steps to improve election performance and the voting experience. Ongoing lawsuits have led to significant changes in recent weeks, as federal judges have ruled that many provisions of new voting laws discriminate against voters of color and collectively burden voting rights for hundreds of thousands of Americans.<sup>2</sup> Understanding the potential burdens that voters may face is a first step toward ensuring that voting is free, fair, and accessible for all Americans.

These new voting laws came after an increase in turnout by black voters in recent presidential election years. Although overall turnout in Wisconsin has varied in the past three presidential races, turnout by black voters grew in 2008 and 2012 to equal that of white voters.<sup>11</sup> Latino voters, however, have continued to lag behind other groups in their rate of voter participation.<sup>12</sup>

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## Problems in the 2016 primaries

The new voting laws contributed to delays during the April primaries at several Wisconsin polling places. Students at Marquette University and the University of Wisconsin–Madison waited in line for more than an hour to vote, compared with an average eight-minute wait across the state.<sup>13</sup> The bipartisan Presidential Commission on Election Administration, formed after long lines plagued polling locations across the country in 2012, recommends that no citizen should have to wait more than 30 minutes to vote.<sup>14</sup> Poll observers for the League of Women Voters of Wisconsin confirmed the problems with campus polling places.<sup>15</sup> The longest waits were reported to be up to between 2 hours and 3 hours long to complete the registration and voting process.<sup>16</sup> The League attributed the problem to confusion over the ID requirement, new rules for showing proof of residence to register, and insufficient staffing of polling places.<sup>17</sup> It also noted 32 polling sites where poll workers were confused “about whether or not a current address was supposed to be on the ID,” showing a lack of sufficient training for poll workers.<sup>18</sup>

A League of Women Voters’ report documented several troubling stories of voters who could not satisfy the voter ID requirement.<sup>19</sup> The state now requires a state-issued driver’s license, a state ID card, a military ID, a U.S. passport, a veteran’s ID, an ID from a federally recognized Indian tribe, or a photo ID issued by an accredited Wisconsin college.<sup>20</sup> One disabled veteran was able to register using an expired driver’s license, but he was then denied a ballot because the license had expired shortly before the 2014 cutoff.<sup>21</sup> The League observer noted that the veteran left in tears.<sup>22</sup>

If students vote using a college ID, state law now requires them also to bring proof of enrollment, such as a class schedule or tuition receipt.<sup>23</sup> If students are unaware of this additional requirement, they may be barred from voting unless they have another form of identification that meets Wisconsin’s strict standards. Colleges and universities should assist students in overcoming this burden by sending every enrolled student a receipt or schedule before Election Day.

Given the recent changes to voting rules, the state needs to engage in significant, coordinated outreach to train all of Wisconsin’s poll-workers. Unlike other states, Wisconsin administers elections at the municipal level, meaning that each of the state’s 1,830 cities

and towns are responsible for administering elections.<sup>24</sup> And the state must follow through on its public education efforts to communicate what forms of voter ID are required so that voters will know what they need to bring with them in order to cast a ballot that will be counted come November.

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## What to watch for at the polls

### New voting restrictions

Wisconsin's unnecessarily restrictive photo ID law will be in effect in November, and a judge has ordered the state to spell out exactly how it will inform voters of the ID requirement.<sup>25</sup> Although the state agreed to provide a free ID to any voter who asks for one, a recent court decision found the ID petition process to be unconstitutional.<sup>26</sup> The judge said that the process was “pretty much a disaster” and a “wretched failure” because it failed to offer adequate protection for voters who tried to obtain proper identification.<sup>27</sup> The state is implementing an emergency rule to mail free temporary IDs to voters who ask for them while waiting for their new IDs to arrive.<sup>28</sup> Additionally, the fact that the IDs will be mailed to applicants could pose problems for voters seeking IDs in the days before an election, as their IDs may not be delivered in time. The state has indicated that it will attempt to expedite the process in the final days before the November election.

The 7th Circuit recently reinstated the new voter ID law, overruling a lower court's ruling that would have allowed voters who lacked the required ID to vote after filing an affidavit testifying that they had made a “reasonable effort” to secure an ID.<sup>29</sup> The 7th Circuit said that this did not comply with the U.S. Supreme Court's rulings on voter ID laws, and it noted that Wisconsin had agreed to make it easier for voters to obtain the required ID.<sup>30</sup> The court also said that its decision is dependent on the state complying with this agreement and informing the public of its offer to provide free IDs.<sup>31</sup> A federal judge will monitor the state's compliance with its own emergency rule and promised efforts to assist voters in obtaining IDs.<sup>32</sup>

The state legislature also attempted to slash the number of early voting days and limit the number of early voting locations per municipality, but a federal judge struck down these changes as violations of the U.S. Constitution and the Voting Rights Act.<sup>33</sup> Another recent change to a voting law will eventually eliminate “special registration deputies”—trained citizens who are empowered by state law to register other citizens to vote.<sup>34</sup> While this recent legislation also allows online voter registration for the first time, it is unnecessary and inequitable to cripple person-to-person voter registration drives.<sup>35</sup>

## Voter registration

Wisconsin voters continue to benefit from same day registration, or SDR, which allows people to register to vote and cast a ballot on the same day. Thirteen states and Washington, D.C., have SDR programs; California, Hawaii, and Vermont have enacted but not yet implemented SDR, and Utah is running an SDR pilot program.<sup>36</sup> SDR helps boost participation rates: States with SDR average turnout rates 10 points to 12 points above states that do not allow eligible citizens to register and vote on the same day.<sup>37</sup> In Wisconsin in 2012, more than 300,000 voters cast their ballots using SDR.<sup>38</sup>

Wisconsin law requires that voting rolls be purged of inactive voters every four years between the time of the general election and the following July.<sup>39</sup> This means that Wisconsin has not seen the kind of pre-election statewide voter purges that other states have experienced. In 2004, however, Republican officials used software from the U.S. Postal Service to analyze the addresses of more than 300,000 registered voters in heavily Democratic Milwaukee.<sup>40</sup> The state Republican party challenged the registration of more than 5,000 of those voters, but the state's election board rejected the challenge.<sup>41</sup> The city and the party agreed that the voters would be asked for identification, but even the head of the state GOP admitted there were “few reports of trouble” in the end.<sup>42</sup> A Republican strategist told *The New York Times* that this was a political ploy to distract Democrats in the days before the election.<sup>43</sup>

## Voter challenges

There has been a lot of rhetoric this year about enlisting volunteers to watch the polls for potential fraud. These efforts—usually targeted at communities of color—can endanger voters' rights through outright intimidation or other disruptive behavior. This raises the specter of bullies at the ballot box, taking it upon themselves to challenge their fellow Americans' right to participate in the democratic process.<sup>44</sup>

Wisconsin's laws on challenging voters are very broad and allow challenges for a variety of reasons. On Election Day for example, any registered voter may challenge another voter's qualifications but only if the challenger “knows or suspects” that the voter is not qualified to vote.<sup>45</sup> Election officials will ask the challenger under oath why he or she believes the voter is not qualified through several specific, state-approved questions about the voter's qualifications.<sup>46</sup> State law says that “any elector who abuses the right to challenge ... may be subject to sanctions.”<sup>47</sup> Hopefully this form of accountability will deter groundless voter challenges.

The state also requires inspectors at polling places to challenge any voter who they “know or suspect” is not qualified.<sup>48</sup> Then the challenged voter must answer questions under oath.<sup>49</sup> While requiring knowledge is appropriately protective of a voter’s rights, allowing challenges on the basis of suspicion leaves much to the discretion and judgment of poll workers, who could potentially abuse this authority. It further underscores the paramount importance of proper poll worker training.

Voters whose qualifications or registration are challenged only lose their right to vote if elections officials determine “beyond a reasonable doubt” that they are not qualified.<sup>50</sup> This standard protects voters’ rights by placing the burden on the challenger. Voters challenged at the polls will be placed under oath and asked about their qualifications.<sup>51</sup> If they refuse to take the oath or “fully” answer the questions, then they cannot receive a ballot.<sup>52</sup> If the challenged voter’s answers “indicate that the person meets the voting qualification requirements, the person’s vote shall be received.”<sup>53</sup> While the laws are broad, the state’s same-day registration has mitigated the impact on voters.<sup>54</sup>

Voters can also challenge another voter’s registration, however, by filing an affidavit and appearing for a hearing on the issue.<sup>55</sup> Challenged voters are mailed a notice of their hearing, and if they do not appear, an elections official can make a decision without them.<sup>56</sup> Being required to show up at a hearing—and potentially having to take time off from work or find child care—can impose a significant burden on voters.

## Voter intimidation

State law prohibits the use of fraud or threats to “compel any person to vote or refrain from voting.”<sup>57</sup> State law also says that no one can “compel, induce, or prevail upon an elector” to vote for or against any candidate.<sup>58</sup> In 2012, however, the GAB said it received “disturbing reports ... about unacceptable, illegal behavior by observers.”<sup>59</sup>

During Gov. Scott Walker’s (R-WI) recall election, *The Atlantic* reported that activists “streamed into poor black and Latino precincts around Racine, hunting for evidence that people were cheating.”<sup>60</sup> No evidence of fraud was found after an official investigation, but there were many reports of voter intimidation.<sup>61</sup> The League of Women Voters reported receiving more than 50 reports complaining that volunteers from True the Vote, a self-appointed ballot security group, “hovered over registration tables and aggressively challenged voters’ eligibility.”<sup>62</sup> Many students reported that they were challenged by True the Vote and mocked by the group on social media.<sup>63</sup> There were also reported sightings of “poll watchers tailing vans that were transporting voters to the polls, snapping photos of voters’ license plates, even directing voters to the wrong polling places.”<sup>64</sup> Critics charged that activist poll watchers intended to intimidate voters in the 2012 election.<sup>65</sup>

In 2014, Wisconsin enacted a law that allows observers to be within three feet to eight feet of voters inside polling locations as voters announce their names or register to vote.<sup>66</sup> In November, poll workers will need to ensure that any poll watching operations do not slide into illegal voter intimidation.<sup>67</sup>

## Election administration budgets and plans

Wisconsin used to be a model of nonpartisan election administration.<sup>68</sup> The GAB was created by Wisconsin's legislators in 2007 in an overwhelmingly bipartisan vote after representatives from both parties went to jail for misusing public funds.<sup>69</sup> It enforced campaign finance laws and ethics rules, and it administered elections in a fair, nonpartisan manner.<sup>70</sup> The GAB was set up as a “single, strong, independent, and completely nonpartisan” agency with “the funding and independent authority to investigate and prosecute violations of the public trust.”<sup>71</sup> It was the only nonpartisan election administration model of its kind in the country, led by six former judges who were chosen by four sitting judges, appointed by the governor, and confirmed by the state Senate to oversee elections and ethics issues.

But in 2015, legislators eliminated the GAB in favor of two boards made up of Democrats and Republicans appointed by partisan elected officials, including the Wisconsin Elections Commission.<sup>72</sup> The GAB—in addition to running smooth elections—also held politicians accountable for violating campaign finance laws.<sup>73</sup> The legislature replaced it with the Elections Commission and the Ethics Commission.<sup>74</sup> The bill was passed on partisan lines after the GAB began investigating potential illegal coordination between Gov. Walker's campaign and pro-business interest groups supporting him, including the Wisconsin Club for Growth.<sup>75</sup>

The GAB was a big reason why elections in Wisconsin were so well-run for nearly a decade. A 2012 article in *The American Prospect* noted that the GAB made a variety of common-sense decisions that in many other states would have gotten tangled up in political fights.<sup>76</sup> It allowed poll workers to accept electronic documents to prove residence.<sup>77</sup> It sent guidance on the rules for poll watching to groups that were organizing such activity, such as True the Vote.<sup>78</sup> The GAB also created a five-year elections administration plan for elections through 2014 and successfully pushed for funding to educate the public on the new voter ID law.<sup>79</sup>

Like the gridlocked Federal Election Commission in Washington,<sup>80</sup> the new Wisconsin commissions are composed of three Democrats and three Republicans.<sup>81</sup> Commissioners have already disagreed over how to implement the voter ID law, in light of the recent court rulings.<sup>82</sup> Most of the commission's website says that it is still under construction, and with mere weeks to go before the election, it relies almost exclusively on links to the GAB website for guidance on voting.<sup>83</sup>

## Provisional balloting

Historically, Wisconsin has had relatively low rates of provisional ballots and rejections of those ballots.<sup>84</sup> But the new voting requirements could lead to much higher rates of provisional voting this year, and voting rights advocates fear that many of those ballots will be rejected.<sup>85</sup> Ann Jacobs of the Wisconsin Elections Commission worries that voters who do not have an ID on Election Day will not have their vote counted.<sup>86</sup> Jacobs notes that even if voters cast a provisional ballot, they must satisfy the ID requirement by the Friday after the election, even though the ID likely would not arrive in the mail until the following week.<sup>87</sup> This is obviously a design flaw, and the deadline for people who vote with a provisional ballot to return with the required ID should be extended if the state has not provided them with an ID in a timely fashion.

The League of Women Voters' report noted that during this year's primary, "There were times noted by observers when a provisional ballot should have been offered to the voter and was not," including at some Milwaukee polling places where voters who did not have an ID were not offered a provisional ballot as the law requires.<sup>88</sup>

## New elections programs and technologies

Many Wisconsin voters will cast their ballots using old machines and outdated software. A 2015 report from the Brennan Center for Justice found that most of Wisconsin's municipalities are using voting machines that are at least a decade old, which is "perilously close to the end of most systems' expected lifespan. Old voting equipment increases the risk of failures and crashes—which can lead to long lines and lost votes on Election Day—and problems only get worse the longer we wait."<sup>89</sup> The League of Women Voters of Wisconsin documented at least 39 polling places in which machines malfunctioned during the 2016 primary election. The League's report mentioned one voting machine in Milwaukee County that could not be repaired, and a disabled voter was not able to cast a ballot due to the malfunction.<sup>90</sup> The integrity of American elections requires well-maintained electoral infrastructure and modern machines that also create paper receipts.

Wisconsin statutes authorize electronic poll books, which are electronic lists of registered voters that can be updated to show who has voted in real time, if approved by the GAB.<sup>91</sup> But in 2014, the board conducted a study and decided not to approve their use, pending further study.<sup>92</sup>



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## Conclusion

Wisconsin has a long history of good government reforms, but recent laws have made it harder for citizens to cast a ballot. New rules for voting caused confusion and delays in this year's primaries, especially on college campuses. Changes to voting laws as a result of court rulings since the primaries may ease some of these concerns, but when problems occur, the new partisan Ethics Commission may have a harder time agreeing on how to handle them than the nonpartisan Government Accountability Board.

State officials should encourage and facilitate voter participation, not deter it. Taking away an individual's right to vote for partisan gain is not fair play. Wisconsin has a rich tradition of good government and robust civic participation, but the new voting laws and a growth in disturbing practices could jeopardize that legacy.

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