

ELECTION PROTECTION

To: Patrick Fernan, Administrator
Wisconsin Dept. of Transportation, Division of Motor Vehicles
Submitted Electronically Only: Patrick.Fernan@dot.wi.gov
From: Atty. Emily I. Lonergan
Wisconsin Election Protection¹
Legal Coordinating Committee
Date: Dec. 16, 2014
Re: Identification Card Rules

We are submitting these comments on the Emergency and Proposed Rules, EmR 1421, relating to Operator's Licenses and ID Cards. In submitting these comments, we in no way retreat from our often-stated, and well-substantiated, position that the photo ID law is burdensome and unnecessary. Nevertheless, we are also concerned that these rules continue to impose improper and unnecessary burdens on voters that might be reduced with modification of the rules.

We note our objections to the failure to solicit input from individuals prior to promulgation of these rules based on the assertion in the introductory section that the rules have no "direct or indirect" financial impact on individuals. This is untrue: having to travel to a DMV office (and, potentially, to other government offices) indisputably has a financial impact. In addition, the rules fail to address the financial impacts on individuals of having to obtain and produce documents other than birth records. As discussed below, it is critical that these rules take all steps possible to avoid and mitigate such impacts.

Summary:

- **DMV should expand the options for acceptable documentary proof for birth verification, identity, residence, name and other information**
- **DMV should make the process for obtaining ID more efficient by requiring only one visit to DMV and providing voters with a receipt that can be used for voting purposes**
- **DMV should facilitate the provision of ID to voters with limited transportation**

¹ WISCONSIN ELECTION PROTECTION is a nation-wide, non-partisan coalition of organizations including the Lawyer's Committee For Civil Rights, American Civil Liberties Union, League of Women Voters, the AFL-CIO, the NAACP, and others. Locally, WISCONSIN ELECTION PROTECTION includes local affiliates of these national groups. The purpose of WISCONSIN ELECTION PROTECTION is to protect voter rights, to expose and prevent voter intimidation, and to preserve access to the polls for all eligible voters.

I. DMV Should Eliminate Excessive Documentary Proof Requirements And Comply With State Law As Written.

DMV requires most voters to produce at least three separate documents to obtain ID, yet this is not mandated by state law. For ID card issuance purposes, state law requires “documentary” proof *only* “that the individual is a citizen or national of the United States [or an authorized immigrant]. . . .” Wis. Stat. § 343.14(2)(es). The DMV’s requirement of this level of documentary proof routinely imposes significant burdens of money and time. Because these burdens are not statutorily required they should be eliminated.²

II. DMV Should Improve Birth Record Verification Process By Expanding Acceptable Documentation, Collecting All Information In One Visit, And Providing A Receipt Upon Application.

- a. Voters who lack birth records should be permitted to provide alternative proof of name, date of birth and/or citizenship *at the time of initial application* – rather than, as Trans. 102.15(5m)(b) currently sets out, only if and after DMV is unable to verify the circumstances of birth. There is no reason that such voters should be required to incur the time and expense of returning to DMV a second (or third) time with that documentation, as required by the current rules. DMV should collect all information available to the voter at the initial visit (which does not preclude the DMV from using the database method in its verification process).
- b. DMV should amend Trans. 102.15(5m)(b)2.h to specify that “other documentation” includes a sworn statement or affidavit of the circumstances of birth, including name and date and location of birth, for voters who lack birth certificates and the alternative documents specified in 2.a-g (some of which also require fees to a government entity, such as a public hospital, to obtain). DMV should create an affidavit form usable for such purposes. Voters should be permitted to submit this affidavit at the time of initial application, to obviate the need for multiple visits to DMV.
- c. Voters whose birth records have names or details that vary from the names on other documents, such as social security records, should be permitted to provide alternative proof of such facts, including but not limited to the use of an affidavit. Under *NAACP v. Walker*, DMV may not require or instruct such voters to file for delayed birth certificates or amended birth records (as has been past practice), as doing so inevitably requires payment of fees to government agencies.

² In the Department of Transportation’s analysis, the DOT compares the requirements to obtain ID cards to Illinois, Iowa, Michigan and Minnesota. Of note, only *one* of these states—Michigan—requires photo ID for voting. Moreover, Michigan has an extensive affidavit exception to the photo ID law that does not exist in Wisconsin. Strict requirements in those states do not have the effect of disenfranchising voters, and as such do not provide a fair comparison.

- d. Voters who lack birth records should be given a receipt, valid for voting, at the time they apply for ID utilizing the petition process. *NAACP v. Walker* made it clear that the purpose of its expanded interpretation of the petition procedure is to get ID into the hands of voters who lack supporting documents. However, the current practice is to mail receipts to voters only after verification is obtained. And while DMV will attempt to complete the verification process in less than 7 business days, it may take longer, especially for voters born out of state. Refusing to issue a receipt at the time of application to voters who lack birth records will disenfranchise many such voters, especially if those voters are unaware of the ID rules or unable to get to DMV until close to the time of an election.

Additionally, if voters are provided with a receipt, those who do not learn of the ID requirement until Election Day will be permitted to have their votes counted. Voters who do not provide an ID card at the polls will be required to vote provisionally and provide the substantiating documentation by the Friday after Election Day. Wis. Stat. § 6.97(3)(b). The DMV turn-around time would not permit voters to obtain the ID card in time to have their provisional ballots cast. If, however, voters are issued a receipt upon application, they will be able to “cure” their provisional ballots with the receipt.

III. DMV Should Improve Processes to Verify Other Data By Addressing Name Changes, Transgender Persons, and Naturalized Citizens Who Lack Documents.

Although the proposed rules mention extraordinary proof of “name,” they only address “name” in the context of *birth* records. DMV should expand the rules to encompass name changes for other reasons, including marriage, divorce, name change, or gender change. They also should allow alternative proof of citizenship for reasons other than birth (*i.e.*, naturalization) and have DMV verify such information.

- a. DMV requires applicants who have changed their names through marriage or divorce to verify those name changes. Those records normally require the applicant to pay a fee. *See, e.g.*, Wis. Stat. § 69.22(1)(a) (\$20 fee for a copy of a vital record). *NAACP v. Walker* makes it clear that DMV cannot condition ID issuance on any documents that require such fees. Thus the rules should be amended to require DMV to verify marriage and divorce information in Wisconsin and other jurisdictions, and/or to provide for alternative forms of proof (including but not limited to affidavits) for persons who lack marriage or divorce records and would have to pay fees to obtain them.
- b. Similarly, DMV requires applicants who have changed their names for other reasons to produce records to verify those changes. There is a statutorily set fee of \$1.25 per page for obtaining civil court records in Wisconsin, and an additional \$5 per document for certified copies. Wis. Stat. §§ 814.61(5), 814.61(10)(a). Because DMV cannot condition ID issuance on payment of such

a fee, it must develop alternatives, such as an affidavit, to encompass such circumstances.

- c. The rules similarly should be expanded to explicitly encompass transgender persons, to the extent that DMV requires such persons to produce amended birth or court records for ID issuance.
- d. The rules also should be expanded to require DMV to verify naturalization status and establish U.S. citizenship for voters who lack such documents, as voters have to pay money to a government entity to obtain naturalization records. <http://www.uscis.gov/n-565>

IV. DMV Should Facilitate Verification of Identity and Residency By Expanding Permissible Proof.

As previously discussed, the Wisconsin statutes do not require documentary proof of these items. Because obtaining such proof often costs money, and because it is not required by statute, DMV can and should develop alternatives to its current rules and procedures to reduce unnecessary burdens on voters.

- a. DMV should expand the forms of permissible proof of identity, and should permit verification by affidavit (and/or through the SSOLV system) if other documents are unavailable. The rules should also explicitly state that, for persons who have had an ID card or Wisconsin license in the past, DMV will seek to verify identity through its digital look-up system.

For voters who lack proof of identity, many of the proof of identity documents on DMV's existing list cost money to obtain. As the *Frank v. Walker* federal district court noted, "to obtain a Social Security card, a voter must show 'convincing documentary evidence of identity.' 20 C.F.R. § 422.10(c). Such evidence 'may consist of a driver's license, identity card, school record, medical record, marriage record, passport, Department of Homeland Security document, or other similar document serving to identify the individual.'" Many of these documents cannot be obtained without payment of fees, including fees to government entities.³ As such, DMV should permit applicants to provide alternative proof if they lack the designated forms of proof of identity.

- b. Existing rules are clear that DMV "may" rather than "must" obtain proof of residency. Trans. 102.15(4m). Therefore, for adult voters who lack proof of residency, DMV should allow verification by affidavit or, alternatively, allow sworn corroboration by a person who has personal knowledge of the residence of the voter. In addition, DMV should establish a procedure that allows ID cards to be mailed to P.O. Boxes or other secure mailing addresses designated by voters. This will obviate problems with mailing of ID cards for homeless or

³ As DMV is aware, obtaining a Social Security card also routinely poses "Catch-22" problems, where Social Security offices routinely request photo ID in order to issue Social Security cards.

transient voters, or voters who cannot safely and securely receive mail at their homes.

V. DMV Should Facilitate ID Issuance for Voters with Limited Transportation.

In many cases voters must pay fees – including to government entities, such as transit or para-transit providers (as in the city of Madison) or public shared-ride taxi providers (as in Washington County)– in order to get to DMV, while for others no such services exist. <http://www.dot.wisconsin.gov/travel/maps/docs/transit-systems.pdf> Many voters without ID also live in relatively remote rural areas, and/or are elderly or disabled and may require specialized, and often costly, transportation.⁴ DMV therefore should establish alternative procedures and locations for such voters to apply for ID.

- a. For example, in Mississippi, voters who lack a ride to the ID issuance location can call a government toll-free number to arrange to be picked up and taken to that location. <http://msvoterid.ms.gov/Pages/VoterIDHowtoGetID.htm>
- b. Other jurisdictions, such as Florida, <http://www.flhsmv.gov/offices/FLOW.htm>, and Monroe County, NY, <http://www2.monroecounty.gov/clerk-mobile.php>, use mobile DMVs, which can travel to different locations and facilitate ID issuance. Rhode Island officials will travel to organizations and events to issue ID cards. <http://sos.ri.gov/elections/voterid/schedule/> Virginia’s mobile DMVs travel to places like libraries, retirement communities, and homeless shelters, and the state even encourages the public to invite the mobile DMV to events. https://www.dmv.virginia.gov/general/dmv_2go.asp
- c. Alternatively, DMV should amend its rules to allow home-visit ID processing, and/or to allow local public entities – such as municipal clerks’ offices, schools and libraries – to process IDs, or to accept ID applications and copy documents and then provide these materials to DMV for processing. Alabama, for example, issues ID cards at county board of (voter) registrars’ offices and the Department of Senior Services. http://blog.al.com/wire/2013/10/secretary_of_state_issues_fina.html. We urge DMV to expand the locations and methods of ID issuance in order to ensure that voters are not financially or otherwise burdened or precluded from obtaining ID.

We appreciate your consideration of these issues.

⁴ In contrast, other states completely exempt elderly and/or disabled persons from the voter photo ID requirement. Texas, for example, completely exempts persons with disabilities, even when they vote in person. <http://votetexas.gov/register-to-vote/need-id/> Indiana allows all elderly persons and persons with disabilities to vote absentee without ID. Ind. Code § 3-11-10-24(a)(4), (5). No such exemption exists in Wisconsin.