

Wisconsin

If enacted in its current form, the For the People Act (H.R.1/S.1) would make changes to federal elections in Wisconsin that would strengthen the freedom to vote and make it more difficult to enact voter suppression laws in the future. Several of the requirements of H.R. 1—including those relating to universal mail-in voting and online registration—already exist in some form in Wisconsin. Other requirements, such as those relating to early voting and partisan gerrymandering, would more fundamentally change Wisconsin’s procedures for conducting federal elections. However, key provisions in the bill are effectuated through amendments to the National Voter Registration Act (NVRA), which leaves Wisconsin and five other states exempt from several of the bill’s new protections.¹

The following is a summary of the most salient ways in which H.R.1/S.1 would affect voting in Wisconsin:

Mandating Secure, Accessible Early Voting & Absentee Voting

- Requires the state to provide voters the option of voting early for a full 15 days before an election, including opportunities before and after business hours, on weekends, and on the day before Election Day.² Wisconsin currently has in-person absentee voting,³ with days and hours set by local clerks, limited to no earlier than 14 days before an election, and ending no later than the Sunday before election day.⁴
- Protects the distribution of applications for absentee ballots and voter registration.⁵
- Establishes a ballot tracking system, so voters can follow their ballot’s status through the voting and counting process.⁶

¹ Wisconsin is currently exempt from the requirements of the NVRA, 52 U.S.C. §§ 20501, et seq., often called the Motor-Voter Act. The NVRA’s requirements apply to all states except those that either a) have no voter registration requirement for federal elections, or b) allow election-day registration at the polling place. These exemptions apply only if the relevant state law was in place when the NVRA was passed and has remained in effect continuously since. Wisconsin is one of five states with continuous election-day registration. North Dakota does not require voter registration for federal elections.

² H.R. 1, Title I, Subtitle H.

³ “In-person absentee voting” and “early voting” both allow voters an opportunity to fill out a ballot, at a polling place, before election day. While Wisconsin’s “in-person absentee” voting is colloquially referred to as “early voting,” it is legally distinct. An elector voting in-person absentee requests an absentee ballot at the polling place immediately before casting their (absentee) ballot, which is held by the clerk and delivered to their polling place (or central count) on election day. *See Wis. Stat. § 6.88* That absentee ballot can then be challenged on election day.

⁴ Wis. Stat. § 6.86(1)(b) (beginning at the second sentence).

⁵ H.R. 1, Title I, Subtitle I.

⁶ H.R. 1, Title I, Subtitle I.



- Eliminates discriminatory witness signature requirements.⁷ Currently, Wisconsin law requires the signature of a witness, who must be an adult U.S. citizen, on the absentee return envelope.⁸
- Establishes more options to obtain absentee ballots for disabled, overseas, and military voters.⁹
- Deems ballots postmarked by Election Day valid and must be counted, if delivered to election officials up to ten days after the election.¹⁰ Current Wisconsin law requires ballots be received by the clerk, and in most municipalities also distributed to the voter's precinct, before polls close on election day.¹¹
- Requires secure drop boxes must be available 24 hours a day, for 45 days before Election Day, and that the number of drop boxes be based on county population.¹² In 2020, drop boxes were available in some (but not all) Wisconsin municipalities, and their use was subject to significant litigation and contest, though their legality was ultimately vindicated.¹³ A proposal currently before the legislature would severely limit the use of drop boxes, allowing only one per municipality and requiring it be at the municipal clerk's permanent office.¹⁴
- Mandates drop-box sites also have clearly posted information to help voters track ballots and make sure their vote is counted.¹⁵

Protecting & Expanding Ballot Access

- Makes Election Day a federal holiday.¹⁶
- Requires Wisconsin to take steps to ensure that voters do not wait more than 30 minutes to vote.¹⁷ While the statewide average wait time in Wisconsin has traditionally been below 30 minutes, in some neighborhoods voters waited in hours-long lines during the 2020 primary and general elections.¹⁸
- Mandates that changes to polling place locations be announced seven days before Election Day.¹⁹

⁷ H.R. 1, Title I, Subtitle I.

⁸ Wis. Stat. § 6.87(4)(b)1.

⁹ H.R. 1, Title I, Subtitle J.

¹⁰ *Id.*

¹¹ Wis. Stat. § 6.87(6).

¹² H.R. 1, Title I, Subtitle N, Part 1.

¹³ See, e.g., *Mueller v. Jacobs*, No. 2020AP1958-OA (Wis. Sup. Ct.) and *Trump v. Wis. Elections Comm'n*, Case No. 20-cv-1785-BHL (E.D. Wis. Dec. 12, 2020).

¹⁴ Wisconsin 2021 LRB-1585 (circulating for co-sponsorship, February 2021).

¹⁵ H.R. 1, Title I, Subtitle N, Part 1.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See, e.g., Corrine Hess and Megan Hart, "Wisconsin Polls Close but Hundreds of Voters Remain in Line," *Wisconsin Public Radio*, April 7, 2020, available at <https://www.wpr.org/wisconsin-polls-close-hundreds-voters-remain-line>, and C. Stewart III, S. Ansolabehere, "Waiting in Line to Vote," *U.S. Election Assistance Commission*, July 28, 2013, available at <https://www.eac.gov/documents/2017/02/24/waiting-in-line-to-vote-white-paper-stewart-ansolabehere>.

¹⁹ H.R. 1, Title I, Subtitle N, Part 1.



- Prohibits challenges to a voter’s eligibility based on race, ethnicity, or age by non-election officials. Requires that challenges to voters (or registrations) be based on personal knowledge about the issue and be sworn to under penalty of perjury.²⁰ Currently Wisconsin allows challenges by any other elector, who need not have first-hand knowledge of the challenged voter’s ineligibility.²¹

Creating Alternatives to Wisconsin’s Draconian “Voter ID” Law

- Requires that voters who are already registered be able to provide a sworn written statement on a state form, confirming their identity and eligibility to vote in the election,²² in contrast to Wisconsin’s current law, which requires registered voters to present a compliant photo ID (one meeting several specific requirements) every time they vote at the polls.²³
- Mandates that no ID be required to request an absentee ballot for registered voters, who may provide a signature instead,²⁴ in contrast to current Wisconsin law requiring registered voters to submit photo ID to request an absentee ballot (except in limited circumstances).²⁵

Restoring Civil Rights

- Requires Wisconsin to restore civil rights to people with felony convictions once they are released from prison and to offer voter registration materials upon eligibility.²⁶ Currently, Wisconsinites with felony convictions can vote only after they have completed their probation and/or parole.²⁷

Strengthening Election Security & Trust in Elections

- Requires clerks to begin processing mail-in ballots received during the early voting period, as opposed to current law, which provides that the pre-canvassing process can begin no earlier than 7:00 a.m. on Election day.²⁸ This will reduce the kinds of delays that were exploited in 2020 to spread distrust in the Wisconsin counting process.
- Requires the U.S. Postal Service to sweep its facilities and post offices daily to ensure that ballots are expeditiously transmitted to local election officials.²⁹

²⁰ H.R. 1, Title I, Subtitle C.

²¹ Wis. Stat. § 6.48; Wis. Stat. § 6.925.

²² H.R. 1, Title I, Subtitle N, Part 1.

²³ Wis. Stat. § 5.02(6m), (16c) and § 6.79(2)(a).

²⁴ H.R. 1, Title I, Subtitle I.

²⁵ Wis. Stat. § 6.86(1)(ac) and § 6.87(1), (4)(b)2-3.

²⁶ H.R. 1, Title I, Subtitle E.

²⁷ Wis. Stat. § 6.03(1)(b) and § 304.078(3).

²⁸ H.R. 1, Title I, Subtitle I; 25 P.S. § 3146.8.

²⁹ Amendment 5 to H.R.1, Part B.



- Prevents the U.S. Postal Service from enacting any new operational change that slows the delivery of voting materials in the 120 day period before an election.³⁰
- Requires the U.S. Postal Service to appoint Election Mail Coordinators to assist election officials with any voting material questions.³¹
- Requires the voting system to produce a paper ballot that is verified by the voter before the vote is cast.³²
- Permits the security of drop boxes through remote or electronic surveillance.³³

Ending Partisan Gerrymandering in Federal Congressional Redistricting

- Currently, the state legislature crafts congressional districts in Wisconsin. It can do so for partisan advantage or to favor incumbents. There is no public input requirement.³⁴ H.R.1/S.1. would do the following:
 - Requires Wisconsin to set up an independent commission to draw federal congressional districts, which must take public input and operate an open, transparent process.³⁵
 - Prevents one party from dominating the process or excluding minority groups and takes map drawing away from politicians.³⁶
 - Requires consideration of “communities of interest” when drawing congressional districts.³⁷
 - Creates enforceable standards for evaluating and preventing partisan gerrymandering of congressional districts. Prohibits the use of party-based voting history in drawing districts (but not in evaluating them for partisanship).³⁸
 - Counts incarcerated Wisconsinites as residents of their home community for purposes of representation, ending Wisconsin’s prison gerrymanders.³⁹
 - Requires an independent commission draw congressional maps for the 2021 redistricting cycle, no later than November 15, 2021. Authorizes a federal court to draw the maps if not finalized by December 15, 2021.⁴⁰ (This does not impact the process for state legislative or local redistricting).⁴¹

³⁰ Amendment 26 to H.R.1, Part B.

³¹ Amendment 27 to H.R.1, Part B.

³² H.R. 1, Title I, Subtitle F.

³³ Amendment 9 to H.R.1, Part B.

³⁴ There are no statutory or constitutional provisions for congressional redistricting in Wisconsin. The process is governed by court and procedural precedents, including U.S. Supreme Court holdings that districts must absolutely equal in population, and be enacted into law following the same process as any bill.

³⁵ H.R. 1, Title III, Subtitle E.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ H.R. 1, Title III, Subtitle E.

⁴¹ H.R. 1, Title III, Subtitle E, Part 4.



Because of its exemption from the NVRA, Wisconsin misses out on:

- Pre-registration of 16 and 17 year olds to vote immediately upon turning 18.
- Voter purge protections included in H.R.1/S.
- Automatic Voter Registration across state agencies, including at the DMV.

Wisconsin could also be denied some of the benefits of H.R.1/S.1 because provisions establishing grant eligibility and requiring emergency planning do not limit state legislative intervention. In Wisconsin, future state laws could prohibit municipalities or state election officials from applying for, or receiving, federal funds to support voting. The state legislature could also block the implementation of an “election contingency plan” required by H.R.1/S.1 in the face of a natural disaster or public health crisis. While H.R.1/S.1 requires the drafting and updating of such a contingency plan, it does not currently allocate any power to election officials to implement this plan in the event of a crisis. In Wisconsin, the plan’s components could be tied up in court, or reversed by the legislature, without explicit federal authority to execute such a plan.