

To: Assembly Committee on Elections and Campaign Reform

Date: September 15, 2009

From: Paul Malischke

Subject: AB-330, Requirements for electors who vote by absentee ballot

This bill deals with absentee ballots, an important area that needs improvement. Section 5 wisely removes the statutory requirement for specific language on the certificate envelope for the absentee ballot. The existing statute results in an envelope that has excess verbiage, and a font that is too small for many to read. The current envelope causes confusion, and many simply do not read it before signing.

Please consider amending AB-330 as described below.

1) Add a clause that specifically defines the criteria for the pollworkers to reject absentee ballots. It appears that the existing statutes and the bill are ambiguous.

For recounts, the statute 9.01 (1) (b) 2 clearly describes a defective absentee ballot. Section 7 of the bill amends this clause. However, there does not appear to be a similar specific instruction for pollworkers on Election Day. Statute 6.88 (3) (a) and 7.52 (3) vaguely state, "When the inspectors find that the certification has been properly executed, ...". Presumably, this refers to 6.87 (2), which refers to all absentee ballots and is substantially amended by the bill in Section 5. This clause in the bill includes requirements:

- That the witness be a U.S. citizen
- That the witness provide their address
- That the military elector shall provide their identification serial number

If the voter does not provide these, should the ballot be rejected at the polling place since it is not properly executed?

Instead of the vague clause in 6.88 (3) (a), please add an additional clause that instructs pollworkers on what ballots should be set aside, using the same criteria as the clause for recounts, 9.01 (1) (b) 2, namely:

- If not witnessed
- If not signed by the voter
- Or if the certificate accompanying an absentee ballot that the voter received by fax or email is missing.

2) For all absentee ballots, **eliminate the requirement that the witness be a U.S. citizen.**

According to existing statute 9.01 (1) (b) 2, the recount canvass board does not reject the ballot if the witness is not a citizen. Even if this were desirable, we would have no way to enforce it on a routine basis, since there is no list of citizens. However, this might be a source of litigation in a highly contested recount such as the recent Minnesota recount. Before 2006 there was no requirement for the witness to be a citizen.

3) **Retain the requirement for a witness for all absentee ballots.**

The witness' signature adds to the security of the ballot, helping to verify that the proper person has received the ballot and filled it out. If this requirement is unevenly legislated, it will be unfair to hold those living within the state borders to a higher standard. Please keep the requirements the same for all voters, and avoid complicating election administration by having different criteria and different forms.

Notably, the U.S. Senate's S1415 Military and Overseas Empowerment Act does not eliminate the requirement for a witness, but it does forbid states from requiring the witness to be a notary. It seems unlikely that there would be individuals in such a remote location that there would be no adults able to witness their ballot.

4) **Add a clause to assure privacy for people voting absentee in the clerks office,** similar to the assurance of privacy at polling places mandated in existing 5.35 (2): "The booths shall have a surface on which to write or work and be sufficiently enclosed to assure privacy for the elector and anyone lawfully assisting the elector while marking the elector's ballot."

5) **Add a clause that requires the GAB to promulgate security rules for voted absentee ballots before they are tallied.** Neither the existing administrative rule Chapter 5 on ballot security, nor the GAB's proposed rule changes published in August 2008, contains anything specific to absentee ballots before they are tallied. Some items to be addressed would be security in the clerk's office, and during transport of the ballots to the polling place.

The above amendments provide uniformity in handling different voters, eliminate an unnecessary requirement, clarify ambiguities, and rectify important omissions in existing law. Thank you for your consideration.