

NOTICE OF OPEN AND CLOSED MEETING

AGENDA

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Q.	Closed Session*	
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	2. Wis. Stat. § 5.05 Complaints	
	3. ERIC Processes and Referrals	
	4. Voter Felon Audit Updates	
	5. Closed Session Minutes Approval	

§ 19.85(1)(f) – Considering financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons except where par. (b) applies which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, or involved in such problems or investigations.

§ 19.85(1)(g) – The Commission may confer in closed session with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.

§ 19.851 – The Commission’s deliberations concerning an investigation of any violation of the law under the jurisdiction of the Commission shall be in closed session.

R. Adjourn

**The Elections Commission will convene in open session but may move to closed session under Wis. Stat. § 19.85(1)(f), (1)(g), (1)(h), and Wis. Stat. §*

NOTICE OF OPEN AND CLOSED MEETING

19.851 and then reconvene into open session prior to adjournment of this meeting. This notice is intended to inform the public that this meeting will convene in open session, may move to closed session, and then may reconvene in open session. Wis. Stat. § 19.85(2).



Wisconsin Elections Commission

201 West Washington Avenue | Second Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8005 | elections@wi.gov | elections.wi.gov

Wisconsin Elections Commission

Special Meeting

201 W. Washington Avenue, Second Floor
Madison, Wisconsin
10:00 a.m. June 1, 2023

Open Session Minutes

Present: Commissioner Marge Bostelmann, Commissioner Joseph J. Czarnezki, Commissioner Ann Jacobs, Commissioner Don M. Millis, Commissioner Robert Spindell Jr., and Commissioner Mark Thomsen, in person in the WEC boardroom.

Staff present: Brandon Hunzicker, Robert Kehoe, Anna Langdon, Sara Linski, Jonathan Nelson, Angela O'Brien, Riley Vetterkind, Riley Willman, Jim Witecha, and Meagan Wolfe, in person in the WEC boardroom.

Joel DeSpain, Claudia Santana, and John Smalley, via teleconference.

ES&S present: Mark Maganaro, Kyle Weber, Tim Hallet, Chris Wlaschin, in person in the WEC boardroom.

A. Call to Order

Commission Chair Millis called the meeting to order at 10:05 a.m. and called the roll. All Commissioners were present.

B. Administrator's Report of Appropriate Meeting Notice

Administrator Meagan Wolfe informed the Commission that the meeting was noticed in accordance with Wisconsin's open meetings laws.

C. Closed Session

- a. Litigation Update and Consideration of Potential Litigation**
- b. Advisory Opinion Consideration and Potential Action**
- c. Wis. Stat. § 5.05 Complaints**
- d. Closed Session Minutes Approval**

MOTION: To move into closed session pursuant to Wis. Stats. § 19.85(1)(f), 19.85(1)(g), 19.85(1)(h), and 19.851.

Moved by Commissioner Thomsen. Seconded by Commissioner Bostelmann.

Wisconsin Elections Commissioners

Don M. Millis, chair | Marge Bostelmann | Joseph J. Czarnezki | Ann S. Jacobs | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

Roll call vote: Bostelmann:	Aye	Czarnezki:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

The Commission left open session at 10:06 a.m.

The Commission left closed session at 12:54 p.m. and resumed open session at 12:56 p.m.

D. Approval of Previous Meeting Minutes

MOTION: Approve the April 28, 2023, and May 16, 2023, open session minutes.

Moved by Commissioner Bostelmann. Seconded by Commissioner Thomsen.

Roll call vote: Bostelmann:	Aye	Czarnezki:	Abstain
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

Motion carried 5-0-1.

E. Consideration and Approval of Wisconsin Elections Commission Secretary

MOTION: To approve Commissioner Czarnezki as Commission Secretary.

Moved by Commissioner Jacobs. Seconded by Commissioner Bostelmann.

Roll call vote: Bostelmann:	Aye	Czarnezki:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

F. Ballot Access Approvals for Assembly District 24, and Consideration of Associated Challenge

a. Morgan Hess v. Paul Melotik (EL 23-44)

Staff Attorney Brandon Hunzicker appeared and provided the facts of Morgan Hess v. Paul Melotik. He then presented staff's recommendation to sustain 17 challenges, reject the remaining 277 challenges, and recognize 352 valid signatures.

Discussion.

Commissioner Czarnezki noted that the first part of the candidate's name was obscured on page 9 of their nomination papers, and that the ten signatures on that page should be struck.

Discussion.

David Hollander and Jeffrey Mandell appeared on behalf of the challenger. David Hollander presented arguments.

Discussion.

Matthew Thome appeared and presented arguments on behalf of the respondent.

Discussion.

David Hollander answered further questions for the Commission.

MOTION: The Commission sustains 17 challenges within Morgan Hess v. Paul Melotik (EL 23-44) and rejects the remaining 277 challenges in accordance with the staff recommendations contained in this memo and the attached staff worksheet. The Commission finds that Paul Melotik submitted 352 valid signatures on his nomination papers.

Moved by Commissioner Spindell. Seconded by Chair Millis.

Discussion.

AMENDMENT: The Commission finds that Paul Melotik submitted 342 valid signatures on his nomination papers.

Moved by Commissioner Thomsen. Seconded by Commissioner Czarnezki.

Roll call vote: Bostelmann:	Aye	Czarnezki:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

Motion to amend carried 6-0.

AMENDED MOTION: The Commission sustains 17 challenges within Morgan Hess v. Paul Melotik (EL 23-44) and rejects the remaining 277 challenges in accordance with the staff recommendations contained in this memo and the attached staff worksheet. The Commission finds that Paul Melotik submitted 342 valid signatures on his nomination papers.

Chair Millis clarified that the Commission would still be rejecting 277 challenges rather than 267 challenges because the ten signatures the Commission chose to strike had not been challenged.

Discussion.

Roll call vote: Bostelmann:	Aye	Czarnezki:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

MOTION: The Commission accepts the staff recommendations contained in this memo and approves ballot access for Paul Melotik and Bob Tatterson for the July 18, 2023, Special Election in Assembly District 24.

Moved by Commissioner Spindell. Seconded by Commissioner Thomsen.

Roll call vote:	Bostelmann:	Aye	Czarnezki:	Aye
	Jacobs:	Aye	Spindell:	Aye
	Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

MOTION: The Commission denies ballot access for Spencer Zimmerman for the July 18, 2023, Special Election in Assembly District 24 as the candidate did not file all necessary ballot access documents by the filing deadline.

Moved by Commissioner Bostelmann. Seconded by Commissioner Czarnezki.

Roll call vote:	Bostelmann:	Aye	Czarnezki:	Aye
	Jacobs:	Aye	Spindell:	Aye
	Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

The Commission took a break at 1:54 p.m.

The Commission returned at 2:01 p.m.

G. Election Systems and Software Petition for Approval of Electronic Voting Systems EVS 6.0.6.0 and EVS 6.0.7.0 Processes, and Possible Consideration of Election Equipment Certification

Elections Specialist Robert Williams provided an overview of the voting equipment testing process and presented background information on staff's recommendations for approving the EVS 6.0.6.0 and EVS 6.0.7.0 voting systems.

Commissioner Jacobs sought to clarify a sentence in staff's associated memo (page 28 of the Commission's materials): "However, due to its direct cast feature and the lack of automatic ballot return for voter review on the ExpressVote Tabulator, that specific piece of equipment does not meet this requirement," noting that the last time the Commission approved the ExpressVote tabulator, they specifically required the configuration be changed so the ballot would be physically returned to the voter for review prior to tabulation.

Robert Williams clarified that the Commission denied certification for that reason several years ago, but approved certification in 2021 when the system did include that functionality. He confirmed that that sentence in the memo was incorrect, and that the ExpressVote tabulator requires the voter to return the card for review before it can be inserted for tabulation.

Discussion.

ES&S representatives, Wisconsin State Certification Manager Mark Maganaro, Wisconsin Account Manager Kyle Weber, and Information Security Officer Chris Wlaschin fielded further questions from the Commission.

MOTION: The Wisconsin Elections Commission adopts the staff's recommendations for approval of the ES&S voting system's Application for Approval of EVS 6.0.6.0 in compliance with US EAC certificate ESSEVS6060 including the conditions described above, and the ES&S voting system's Application for Approval of EVS 6.0.7.0 including the conditions described above.

Moved by Commissioner Jacobs. Seconded by Commissioner Czarnezki.

Roll call vote:	Bostelmann:	Aye	Czarnezki:	Aye
	Jacobs:	Aye	Spindell:	Aye
	Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

H. Absentee Envelope Redesign: June Update

Chair Millis noted that the Commission received written comment from the League of Women Voters, Disability Rights Wisconsin, and clerks on this agenda item.

Technology Director Sara Linski presented an update on the timeline for the absentee envelope redesign project, emphasizing usability testing with voters and working with nonpartisan groups such as the Accessibility Advisory Committee to conduct more structured usability sessions. She noted the influx of clerk comments after the last Commission meeting requesting that the Commission reconsider their decision to restrict clerks from using old absentee ballot envelopes after the new envelopes are adopted.

Deputy Administrator Rob Kehoe presented details on the absentee envelope subgrant.

Discussion.

Deputy Administrator Kehoe presented the current draft of the revised uniform instructions and described notable changes made due to recent court cases.

Discussion.

MOTION: Commission staff are directed to implement the Absentee Certificate Envelope Subgrant, previously approved by the commission, in the manner described in this memorandum.

Moved by Commissioner Jacobs. Seconded by Commissioner Czarnezki.

Roll call vote:	Bostelmann:	Aye	Czarnezki:	Aye
	Jacobs:	Aye	Spindell:	Aye
	Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

Deputy Administrator Kehoe stated significant takeaways staff would work on in regard to the uniform instructions, based on the Commission's discussion and in the order they were discussed:

- Clarify ballot return guidance for central count jurisdictions; whether the ballot should be returned to the polling place, central count, or the clerk's office. Ask legal team to analyze what the law allows voters to do.
- Look at the overall concept of the uniform instructions document and consider alternative formats to make it less text-heavy, to be brought to the Commission's attention later.
- Clarify language in the section on correcting ballot mistakes, consequences if voter does mail a ballot with a mistake.

Chair Millis confirmed this was correct.

MOTION: Commission staff are directed to prepare revised Uniform Instructions, consistent with the Commission's guidance today (see above), for review and final approval by the Commission on August 4, 2023.

Moved by Commissioner Thomsen. Seconded by Commissioner Czarnezki.

Discussion.

Administrator Wolfe suggested that the motion be amended to say the instructions will be brought back for an update on August 4, 2023. Agreed to by the Commission; Chair Millis clarified that the return envelope would be brought for approval on August 4, but the instructions would be brought back for an update due to the possibility of a more extensive redesign.

Discussion.

AMENDED MOTION: Commission staff are directed to prepare revised Uniform Instructions, consistent with the Commission's guidance today (see above), for review and update by the Commission on August 4, 2023.

Roll call vote: Bostelmann:	Aye	Czarnezki:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

Administrator Wolfe confirmed that the Commission that they had decided not to take up any changes related to the outer envelope, and that the previous motion from the April 28, 2023, meeting still stood.

I. IT Developer Renewals

Deputy Administrator Kehoe presented the agenda item and the associated recommended motion.

Discussion.

MOTION: Authorize the continuation of biennial IT contracts in FY 24 and 25, at the previously approved allocation of \$900,000 annually for IT contract positions

Moved by Commissioner Jacobs. Seconded by Commissioner Bostelmann.

Roll call vote: Bostelmann:	Aye	Czarnezki:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

J. Badger Book Update

Deputy Administrator Kehoe presented an update on the Badger Book program for the Commission's awareness, and informed the Commission that staff would likely bring the topic back to the Commission at the end of the summer with recommendations for program adjustments.

Discussion.

K. Adjourn

MOTION: To adjourn.

Moved by Commissioner Thomsen. Seconded by Commissioner Spindell.

Roll call vote: Bostelmann:	Aye	Czarnezki:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

The Commission adjourned at 3:35 p.m.

#####

June 1, 2023 Wisconsin Election Commission meeting minutes prepared by:

Anna Langdon, Help Desk Staff

June 2, 2023

June 1, 2023 Wisconsin Election Commission meeting minutes certified by:

Joseph J. Czarnezki, Commission Secretary

September 7, 2023



Wisconsin Elections Commission

201 West Washington Avenue | Second Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8005 | elections@wi.gov | elections.wi.gov

Wisconsin Elections Commission
Special Teleconference Meeting
201 W. Washington Avenue, Second Floor
Madison, Wisconsin
1:00 p.m. June 5, 2023

Open Session Minutes

Present: Commissioner Marge Bostelmann, Commissioner Joseph Czarnezki, Commissioner Ann Jacobs, Commissioner Don M. Millis, Commissioner Robert Spindell Jr., and Commissioner Mark Thomsen, all by teleconference.

Staff present: Robert Kehoe, Anna Langdon, Riley Vetterkind, Jim Witecha, and Meagan Wolfe, all by teleconference.

A. Call to Order

Commission Chair Millis called the meeting to order at 1:01 p.m. and called the roll. All Commissioners were present.

B. Administrator's Report of Appropriate Meeting Notice

Administrator Meagan Wolfe informed the Commission that the meeting was noticed in accordance with Wisconsin's open meetings laws.

C. Closed Session

a. Wis. Stat. § 5.05 Complaint

Chair Millis noted that the Commission would not return to open session.

MOTION: Move into closed session pursuant to Wis. Stat. § 19.85(1)(h) and 18.951(2).

Moved by Commissioner Jacobs. Seconded by Commissioner Bostelmann.

Roll call vote: Bostelmann:	Aye	Czarnezki:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

Wisconsin Elections Commissioners

Don M. Millis, chair | Marge Bostelmann | Joseph J. Czarnezki | Ann S. Jacobs | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

Commissioner Thomsen clarified that Commissioner Spindell would not attend the closed session meeting.

The Commission moved into closed session at 1:03 p.m.

D. Adjourn

The Commission adjourned in closed session at 1:40 p.m.

####

June 5, 2023, Wisconsin Election Commission meeting minutes prepared by:

Anna Langdon, Help Desk Staff

June 5, 2023

June 5, 2023, Wisconsin Election Commission meeting minutes certified by:

Joseph J. Czarnecki, Commission Secretary

September 7, 2023



Wisconsin Elections Commission

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Wisconsin Elections Commission
Special Teleconference Meeting
201 W. Washington Avenue, Second Floor
Madison, Wisconsin
3:30 p.m. June 27, 2023

Open Session Minutes

Present: Commissioner Marge Bostelmann, Commissioner Joseph J. Czarnezki, Commissioner Ann Jacobs, Commissioner Don M. Millis, Commissioner Robert Spindell Jr., and Commissioner Mark Thomsen, all by teleconference.

Staff present: Joel DeSpain, Sharrie Hauge, Brandon Hunzicker, Robert Kehoe, Anna Langdon, Sara Linski, Angela O'Brien, John Smalley, Riley Willman, Jim Witecha and Meagan Wolfe, all by teleconference.

A. Call to Order

Commission Chair Millis called the meeting to order at 3:30 p.m. and called the roll. All Commissioners were present.

B. Administrator's Report of Appropriate Meeting Notice

Administrator Meagan Wolfe informed the Commission that the meeting was noticed in accordance with Wisconsin's open meetings laws.

C. Closed Session

Chair Millis stated that the Commission would reconvene into open session, and notified members of the public that they would be provided a 10-minute notice of when open session would resume.

MOTION: To go into closed session pursuant to Wis. Stat. § 19.85(1)(g)

Moved by Commissioner Jacobs. **Seconded by** Commissioner Bostelmann.

Roll call vote:	Bostelmann:	Aye	Czarnezki:	Aye
	Jacobs:	Aye	Spindell:	Aye
	Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

Wisconsin Elections Commissioners

Don M. Millis, chair | Marge Bostelmann | Joseph J. Czarnezki | Ann S. Jacobs | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

The Commission left open session at 3:32 p.m.

D. Resume Open Session: Appointment of an Interim Administrator and an Administrator for the 4-Year Term Expiring on July 1, 2027, Pursuant to Wis. Stat. § 15.61(1)(b) and to Transmit the Appointment of the Administrator to the State Senate Within 7 Days

The Commission returned at 5:00 p.m. All Commissioners were present. In addition to the staff listed above, Riley Vetterkind was present.

Chair Millis introduced the agenda item.

Discussion ensued.

MOTION: Confirm Meagan Wolfe as the Administrator for the next four years.

Moved by Commissioner Spindell. Seconded by Commissioner Bostelmann.

Discussion ensued.

Roll call vote:	Bostelmann:	Aye	Czarnezki:	Abstain
	Jacobs:	Abstain	Spindell:	Aye
	Millis:	Aye	Thomsen:	Abstain

Motion failed 3-0-3.

E. Adjourn

MOTION: To adjourn.

Moved by Commissioner Spindell. Seconded by Commissioner Bostelmann.

Roll call vote:	Bostelmann:	Aye	Czarnezki:	Aye
	Jacobs:	Aye	Spindell:	Aye
	Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

The Commission adjourned at 5:56 p.m.

#####

June 27, 2023 Wisconsin Election Commission meeting minutes prepared by:

Anna Langdon, Help Desk Staff

June 27, 2023 Wisconsin Election Commission meeting minutes certified by:

Joseph Czarnecki, Commission Secretary

DRAFT



Wisconsin Elections Commission

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Wisconsin Elections Commission
Special Teleconference Meeting
201 W. Washington Avenue, Second Floor
Madison, Wisconsin
3:00 p.m. August 4, 2023

Open Session Minutes

Present: Commissioner Marge Bostelmann, Commissioner Joseph Czarnezki, Commissioner Ann Jacobs, Commissioner Don M. Millis, Commissioner Robert Spindell Jr., and Commissioner Mark Thomsen, all by teleconference.

Staff present: Sharrie Hauge, Brandon Hunzicker, Robert Kehoe, Anna Langdon, Sara Linski, Angela O'Brien, Riley Vetterkind, Riley Willman, Jim Witecha, and Meagan Wolfe, all by teleconference.

A. Call to Order

Commission Chair Millis called the meeting to order at 3:02 p.m. and called the roll. All Commissioners were present.

B. Administrator's Report of Appropriate Meeting Notice

Administrator Meagan Wolfe informed the Commission that the meeting was noticed in accordance with Wisconsin's open meetings laws.

C. 2023 Commission Meeting Schedule

Chair Millis stated that the Commission needed to schedule a special meeting prior to August 31 to approve a response to the Elections Assistance Commission in open session and consider a closed session item. Additionally, the Commission needed to reschedule the September 20 quarterly meeting, the date for which had been established via motion earlier in the year.

Discussion.

The Commission agreed to schedule the August meeting for August 30 at 1:30 p.m.

Discussion.

MOTION: To reschedule the quarterly meeting from September 20 to September 7 at 10 a.m.

Wisconsin Elections Commissioners

Don M. Millis, chair | Marge Bostelmann | Joseph J. Czarnezki | Ann S. Jacobs | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

Moved by Commissioner Thomsen. Seconded by Commissioner Spindell.

Roll call vote: Bostelmann:	Aye	Czarnezki:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

D. Discussion of, and Possible Action on, Absentee Envelope and Certificate Redesign

Technology Director Sara Linski reviewed the results of staff's testing and outreach concerning the absentee envelope and certificate redesign and presented the final design of the EL-122 certificate envelopes and the EL-120 carrier envelopes.

Discussion.

MOTION: Adopt the proposed envelopes as submitted using Appendix A, found on page 12 of the Commission's materials, as the envelope for in-person absentee and regular voter absentee. Staff will caution clerks that there may be statutory or other legal changes, so clerks should adjust their ordering accordingly.

Moved by Commissioner Jacobs. Seconded by Commissioner Thomsen.

FRIENDLY AMENDMENT: If blue is used as the differentiating color for the outgoing envelope, the USPS "Official Election Mail" postal marking will be red.

Proposed by Commissioner Spindell. Agreed to by Commissioner Jacobs and Commissioner Thomsen.

Discussion.

FINAL MOTION: Adopt the proposed envelopes as submitted using Appendix A, found on page 12 of the Commission's materials, as the envelope for in-person absentee and regular voter absentee. Staff will caution clerks that there may be statutory or other legal changes, so clerks should adjust their ordering accordingly. If blue is used as the differentiating color for the outgoing envelope, the USPS "Official Election Mail" postal marking will be red.

Roll call vote: Bostelmann:	Aye	Czarnezki:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

MOTION: The Commission approves the proposed timeline for development and approval of the Uniform Instructions.

Moved by Commissioner Thomsen. Seconded by Commissioner Bostelmann.

Roll call vote: Bostelmann:	Aye	Czarnezki:	Aye
Jacobs:	Aye	Spindell:	Aye

Millis: Aye Thomsen: Aye

Motion carried 6-0.

E. Adjourn

MOTION: To adjourn.

Moved by Commissioner Jacobs. Seconded by Commissioner Bostelmann.

Roll call vote:	Bostelmann:	Aye	Czarnezki:	Aye
	Jacobs:	Aye	Spindell:	Aye
	Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

The Commission adjourned at 3:54 p.m.

####

August 4, 2023 Wisconsin Election Commission meeting minutes prepared by:

Anna Langdon, Help Desk Staff

August 4, 2023

August 4, 2023 Wisconsin Election Commission meeting minutes certified by:

Joseph J. Czarnezki, Commission Secretary

September 7, 2023



Wisconsin Elections Commission

201 West Washington Avenue | Second Floor | P.O. Box 7984 | Madison, WI 53707-7984
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Wisconsin Elections Commission
Special Teleconference Meeting
201 W. Washington Avenue, Second Floor
Madison, Wisconsin
5:00 p.m. August 16, 2023

Open Session Minutes

Present: Commissioner Marge Bostelmann, Commissioner Joseph Czarnezki, Commissioner Ann Jacobs, Commissioner Don M. Millis, Commissioner Robert Spindell Jr., and Commissioner Mark Thomsen, all by teleconference.

Staff present: Sharrie Hauge, Brandon Hunzicker, Robert Kehoe, Anna Langdon, Angela O'Brien, Riley Vetterkind, Riley Willman, Jim Witecha, and Meagan Wolfe, all by teleconference.

A. Call to Order

Commission Chair Millis called the meeting to order at 5:01 p.m. and called the roll. All Commissioners were present.

B. Administrator's Report of Appropriate Meeting Notice

Administrator Meagan Wolfe informed the Commission that the meeting was noticed in accordance with Wisconsin's open meetings laws.

C. Authorizing the Participation of the Administrator at a Hearing to be Conducted by the Senate Committee on Shared Revenue, Elections and Consumer Protection on the Nomination Referred to in 2023 Senate Resolution 3.

Chair Millis explained the agenda item.

Discussion.

MOTION: Authorize Administrator Wolfe to go to the hearing, should she desire to do so.

Moved by Commissioner Spindell. Commissioner Bostelmann expressed willingness to second if a vote is necessary.

Discussion.

Offer to second withdrawn by Commissioner Bostelmann.

Wisconsin Elections Commissioners

Don M. Millis, chair | Marge Bostelmann | Joseph J. Czarnezki | Ann S. Jacobs | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

Motion failed for lack of a second.

D. Closed Session

a. Litigation Update / Wis. Stat. § 5.05 Complaint

MOTION: To move into closed session pursuant to Wis. Stat. § 19.85(1)(g) and § 19.851(2).

Moved by Commissioner Jacobs. Seconded by Commissioner Bostelmann.

Roll call vote:	Bostelmann:	Aye	Czarnezki:	Aye
	Jacobs:	Aye	Spindell:	Aye
	Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

The Commission left open session at 5:34 p.m.

E. Adjourn

The Commission adjourned in closed session at 6:28 p.m.

####

August 16, 2023 Wisconsin Election Commission meeting minutes prepared by:

Anna Langdon, Help Desk Staff

August 17, 2023

August 16, 2023 Wisconsin Election Commission meeting minutes certified by:

Joseph J. Czarnezki, Commission Secretary

September 7, 2023



Wisconsin Elections Commission

201 West Washington Avenue | Second Floor | P.O. Box 7984 | Madison, WI 53707-7984
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DATE: For the September 7, 2023, Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Meagan Wolfe, Administrator

SUBJECT: **Clear Ballot Group**
Petition for Approval of Electronic Voting System: ClearVote 2.3

Introduction

Clear Ballot Group (CBG) is requesting approval from the Wisconsin Elections Commission (WEC or Commission) for the ClearVote 2.3 voting system. This approval will allow for the sale and use of this system in the State of Wisconsin. No electronic voting equipment may be offered for sale or utilized in Wisconsin unless first approved by the WEC based upon the certification requirements laid out in Wis Stat. § 5.91 (Appendix A). The WEC has also adopted administrative rules further clarifying the testing and approval processes in Wis. Admin Code Ch. EL 7 (Appendix B).

ClearVote 2.3

ClearVote 2.3 is a federally tested and certified paper-based, digital scan voting system. It consists of the following components:

Component	Function
ClearDesign (Election Management System or EMS)	Election management software application that provides ballot design, ballot proofing, ballot production, and generation of voting machine election definition file packages.
ClearCount	A central, high-speed optical scan ballot tabulator coupled with ballot processing applications.
ClearCast	A precinct count optical scan tabulator.
ClearAccess	An accessible touchscreen ballot marking device.

Additional information on system updates and components can be found in the United States Election Assistance Commission's (U.S. EAC or EAC) Scope of Certification document, which is attached to this report as Appendix C.

Wisconsin Elections Commissioners

Don M. Millis, chair | Marge Bostelmann | Joseph Czarnezki | Ann S. Jacobs | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

Recommendation

WEC staff is recommending approval of ClearVote 2.3 for sale and use in Wisconsin. Detailed recommendations are listed on pages 12 and 13 following further analysis of the functional testing performed by staff to analyze the voting system under consideration.

Application Background

On February 3, 2023, WEC staff received an Application for Approval of Electronic Voting System for ClearVote 2.3. CBG submitted complete specifications for hardware, firmware, and software related to the voting system. Also included with the submission were technical manuals, documentation, and user manuals necessary for the operation of the system components.

System Overview

The Voting System Test Laboratory (VSTL) responsible for testing ClearVote 2.3, Pro V&V, is based in Huntsville, AL and is one of two test labs currently accredited by the EAC to conduct voting system testing. Pro V&V conducted testing throughout 2022 and issued both their final test report and recommendation for EAC certification on October 17, 2022. ClearVote 2.3's EAC Certification Number is CBG-CV-23.

Following VSTL testing, the EAC issued a Certificate of Conformance and an accompanying Scope of Certification document for this voting system on October 31, 2022. These documents signify that the system has been tested in accordance with current federal certification standards for electronic voting systems and that the system has met or exceeded those standards.

WEC staff conducted state-level certification testing for ClearVote 2.3 in the WEC office from July 31 to August 2, 2023. This period included functional testing, which requires all components of the system to correctly process three mock elections, a meeting of the Wisconsin Voting Equipment Review Panel, which is a body of local election officials and third-party advocates, and a public demonstration of the system.

ClearCast

ClearCast is a digital scan paper ballot tabulator designed for polling place use. This component is compatible with hand-marked paper ballots or with ballots marked by the ClearAccess system. The tabulator uses high speed, high-resolution, commercial scanners to simultaneously image the front and back of the ballot. While CBG recommends that a voter use black ink when marking a ballot, other colors will be read appropriately. This was confirmed both by the VSTL and in WEC in-office functional testing by including ballots marked in black, green, red, and blue ink in the test decks.

When a ballot is inserted into a ClearCast unit, both sides of the ballot are scanned and an image of each side is saved. The unit will interpret voter



marks on the ballot and a variety of feedback screens will be displayed to the voter, ranging from a confirmation that the ballot was accepted to a warning that any ballots containing crossover votes or overvoted contests may lead to the voter's choices not being counted. In these instances, the voter will have the opportunity to have the ballot returned to them for further review or to cast the ballot as they originally marked it. A sample of these voter information screens has been included with this report and can be found in Appendix D.

After a ballot is accepted, the ClearCast unit deposits it into a secure storage receptacle. Purchasing jurisdictions have two options for ballot storage, a collapsible ballot bin or a larger, hard-shell storage case with wheels in which the device is stored and set up at the polling place. ClearCast includes an internal thermal printer for the printing of the zero reports, log reports, polling place and precinct totals as well as an optional write-in report. The ballot images and election results are stored on a removable USB flash drive. This storage drive may be taken to the municipal clerk's office or other central office where the ballot images and election results may be uploaded into an election results management program or transferred to another memory device or machine to facilitate storage. After the election is complete and the memory device is removed, ClearCast does not store any images or data in its internal memory. There is no modem or results transmission component in ClearCast or any other component of this voting system.

ClearCount

ClearCount is a high-speed, optical scan ballot tabulator coupled with ballot processing applications designed for use at central count locations. ClearCount software runs on unmodified COTS laptop or desktop computers running the Windows 10 or Ubuntu Linux operating system and supports specific models of Fujitsu scanners. Throughput capabilities are dependent upon the model of scanner implemented.

All components of the ClearCount system are unmodified commercial off the shelf (COTS) components that are connected via a wired, closed, and isolated network which is not connected to any other systems or the Internet. All files that make up the ClearCount system reside on a single scan server that is shared by a municipality's scan stations. The only software programs installed on the scan stations are the Windows or Linux operating system.

ClearCount also includes software features that support central count tabulation, election results consolidation, and election results reporting. This system also includes ballot and vote adjudication features that allow for the review of each ballot cast on the ClearVote 2.3 system. As with the ClearCast unit, all ballots that are tabulated on the ClearCount unit are scanned on both sides and images of both sides are saved. Ballot images are reviewed by ClearCount based on election definitions created in the EMS and a report is available that indicates how votes on each ballot were counted. Election officials are also able to adjudicate and reconcile problematic ballots by closely evaluating individual errant marks, overvotes, and crossover votes. ClearCount results can be printed or exported in a variety of formats.

ClearAccess



ClearAccess is an accessible touchscreen ballot marking device (BMD) primarily designed for use by voters who have visual, auditory, or physical limitations or disabilities. ClearAccess components include a touchscreen computer, a printer, and an uninterruptible power supply. All components may be implemented in a single wheeled case that can function both as storage and as a voting station at the polling place.

ClearAccess printers create paper ballots that can be scanned and tabulated by ClearCast and ClearCount. Like other components of the ClearVote 2.3 voting system, ClearAccess uses unmodified, COTS hardware such as laptop and desktop computers, combined with personal assistive devices and printers, to form a ballot marking device.

An election inspector must assist the voter to access the correct ballot style for the election. Once that has been completed, the voter is left to navigate the ballot and cast their votes privately. There are a variety of ways a voter may navigate their ballot and mark their selections, including the touchscreen itself or accessible input devices such as a tactile keypad or a sip-and-puff device. Instructions that guide the voter through the process appear on the screen as text or can be accessed via the audio ballot function. Voters have the option to adjust the text display contrast and text size to suit their preferences.

Each button on the tactile keypad has both Braille and printed text labels designed to indicate function and a related shape to help the voter determine its use. Voters may also use headphones to access the audio ballot function that provides a recording of the ballot instructions and lists candidates and options for each contest. The volume and tempo of this audio recording may also be adjusted to match the voter's preference.

ClearAccess provides a ballot summary screen on which voters can review their selections and return to any contest or referendum question to confirm or change their choice. Once the voter confirms their selections, they are printed on blank ballot stock via the attached printer. The voter will then have a final opportunity to review the marked ballot before it is processed on a ClearCast/ClearCount device or deposited into a secure ballot box to be hand tabulated by election inspectors.

As the ClearAccess printer uses the same ballot stock as the hand-marked paper ballots being used in the polling place, the ballots marked by this device are virtually indistinguishable from hand-marked ballots. After the voter completes this process, the paper ballot is the only record of the voting selections made. ClearAccess does not save any vote or ballot information to its internal memory.

ClearDesign

ClearDesign is an Election Management System (EMS) consisting of an interactive set of applications which are responsible for all activities for preparing, defining, and managing elections. This includes ballot design, proofing, layout, and production. The ClearDesign system consists of the following COTS components:

- DesignServer: a laptop or desktop computer running Ubuntu with the ClearDesign software and hosting the election database.
- DesignStation: one or more laptops or desktops running Windows used to connect to the DesignServer. A user with administrative rights is able to define users and manage elections.
- Network switch: used to connect the DesignStation to the DesignServer using a wired, closed Ethernet-based network.

As the EMS is an integral part of election administration in any electronic voting system, there are security requirements for the client/workstation to which counties and vendors must adhere. The EMS client is required to be deployed on a hardened and air-gapped system, meaning that all software not essential to the proper function of the EMS has been removed and access to the Internet has been restricted. Removing superfluous software and other applications increases the overall security of the system by removing potential access points.

Functional Testing

As required by Wis. Admin. Code EL § 7.02(1), WEC staff conducted three mock elections with each component of ClearVote 2.3 to ensure the voting system conforms to all Wisconsin-specific requirements. As in every certification, these mock elections included a partisan primary with a special nonpartisan school board election, a general election with both a presidential and special gubernatorial contest, and a presidential preference vote combined with nonpartisan offices and a special partisan contest.

Staff prepared a series of test decks by marking 1,200 ballots with various configurations of votes, e.g., valid votes, overvotes, crossover votes, etc., across all three mock elections to verify the accuracy and functional capabilities of ClearVote 2.3. Using blank ballot stock provided by CBG, WEC staff utilized a predetermined results set to hand mark 300 ballots for each of the three mock elections. Additionally, 100 ClearAccess ballots were marked in each mock election, bringing the base total for each to 400 ballots. All 400 ballots for each mock election were tabulated via ClearCast and ClearCount. In all cases, staff ensured the results produced by each hardware component matched the predetermined results sets before transitioning to the next mock election.

To ensure the equipment in this voting system is compatible with Wisconsin election law and able to process a variety of marks, the test ballots for each mock election included several ballots purposefully marked in ways not typically recommended by the vendor. In all cases where ballots were intentionally marked with overvotes, all tabulation equipment in this system was able to consistently identify those issues and no overvoted choices were counted. The same was true for crossover votes, which require a

voter to vote in multiple primaries/cross party lines and are only possible in the mock partisan primary and presidential preference elections. Additionally, each mock election has two separate ballot styles, one of which includes a special contest or referendum question and one that does not. Including two separate styles assesses the ability to program multiple election definitions on each piece of equipment and to produce accurate results. In all instances, the equipment accurately tabulated votes between the separate ballot styles.

Test decks were also marked to determine exactly what constitutes a readable mark by each piece of tabulation equipment in this voting system. A subset of ballots for each mock election included “special marks,” shown here:

<input checked="" type="radio"/> Sally Circle (Republican) <input type="radio"/> Steven Square (Democratic) <input type="text"/> Write-In	<input checked="" type="radio"/> Sally Circle (Republican) <input type="radio"/> Steven Square (Democratic) <input type="text"/> Write-In	<input type="radio"/> Sally Circle (Republican) <input checked="" type="radio"/> Steven Square (Democratic) <input type="text"/> Write-In	<input checked="" type="radio"/> Sally Circle (Republican) <input type="radio"/> Steven Square (Democratic) <input type="text"/> Write-In	<input checked="" type="radio"/> Sally Circle (Republican) <input type="radio"/> Steven Square (Democratic) <input type="text"/> Write-In	<input type="radio"/> Sally Circle (Republican) <input type="radio"/> Steven Square (Democratic) <input checked="" type="text"/> Joe Smith
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The first column shows a “typical” mark, i.e., a completed oval. This is the most common way a voter will mark a ballot. The following columns show a selection of ambiguous marks, which include less-common ways a voter may complete an oval to indicate their choices. Per CBG, marks are recognized when at least 20% of the voter target area (the oval) is marked anywhere inside the oval. Each piece of tabulation equipment in this voting system was able to identify the ambiguous marks as valid choices in all three mock elections.

Every voting equipment vendor recommends a specific type of marking device that should be used to complete a ballot. CBG recommends black ink. Staff used blank ink to mark most ballots in each test deck, but also included a variety of other marking devices to ensure the system was capable of tabulating votes marked with green ink, red ink, blue ink, and pencil. While past testing has resulted in issues with ballots marked in specific shades of red and green ink, no such discrepancies were found in this round of testing and the tabulation equipment functioned as expected.

Staff also included several ballots with folds and tears. In some cases, a torn ballot may not be read correctly by tabulation equipment. However, this is more common in instances where the tear goes through the timing marks that surround the outside of the ballot. Folded ballots are included to replicate (as closely as possible) an absentee ballot that will be processed either at the polling place or a central count location. Vendors recommend that all absentee ballots be scored in specific places on the ballot to avoid the potential of a particularly heavy crease reading as a “false positive” vote if the crease goes directly through an oval. Staff folded several test ballots to purposefully place the creases through ovals and no such false positive votes or overvotes were read by the tabulation equipment.

As previously mentioned, ClearVote 2.3 does not include a results transmission component. As such, no additional remote telecommunication testing was necessary in the evaluation of this voting system.

Testing Anomalies

Staff did not experience any anomalies during functional testing of the three mock elections. However, a member of the Voting Equipment Review Panel was able to successfully insert two ballots into a ClearCast unit at the same time without issue. Members of WEC staff were able to recreate this multiple

times. Feeding two ballots at the same time requires both to be flush and inserted perfectly so as to resemble a single ballot. This is not an issue that a voter would encounter in the polling place as there are multiple steps poll workers follow to ensure a voter is issued only one ballot and additionally ensuring only one ballot is inserted in the tabulator at a time, but it does present an opportunity for additional training for election inspectors processing absentee ballots during an election.

Wisconsin Elections Commission Voting Equipment Review Panel

To solicit valuable feedback from local election officials and community advocates, the WEC formed the Voting Equipment Review Panel. In accordance with Wis. Admin Code EL § 7.02(2), this panel includes municipal and county clerks, representatives of the disability community, and other advocates for the interest of the voting public.

Members of this panel attended the meeting both in person and virtually via Zoom. The meeting took place at the WEC office in Madison on August 3, 2023, from 2:00 p.m. to 3:30 p.m. CBG representatives provided a demonstration of ClearVote 2.3, and attendees were encouraged to test the equipment themselves by marking ballots and interacting with all the hardware components under consideration. Comments and feedback from the Voting Equipment Review Panel are included as Appendix G.

Public Demonstration

Following the Voting Equipment Review Panel, a public demonstration was held on August 3, 2023, from 4:00 p.m. to 5:00 p.m. This demonstration was appropriately noticed as a public meeting and was held in person in the WEC offices with CBG representatives available to answer questions and guide attendees through the functionality of the equipment. There were no attendees.

Statutory Compliance

Wis. Stat. § 5.91 provides the following requirements voting systems must meet to be approved for use in Wisconsin. Additionally, voting systems must comply with standards set by the Help America Vote Act of 2002 (HAVA). Please see below for each requirement and staff's analysis of ClearVote 2.3's compliance with the standards.

Wis. Stat. § 5.91(1)
The voting system enables an elector to vote in secret.
Staff Analysis
ClearVote 2.3 meets this requirement by allowing a voter to vote a paper ballot in the privacy of a voting booth or at the accessible voting station without assistance (following the activation of the correct ballot style by an election inspector).

Wis. Stat. § 5.91(3)
The voting system enables the elector, for all elections, except primary elections, to vote for a ticket selected in part from the nominees of one party, and in part from nominees from other parties and write-in candidates

Staff Analysis

ClearVote 2.3 allows voters to split their ballot among as many parties as they wish during any election that is not a partisan primary.

Wis. Stat. § 5.91(4)

The voting system enables an elector to vote for a ticket of his or her own selection for any person for any office for whom he or she may desire to vote whenever write-in votes are permitted.

Staff Analysis

ClearVote 2.3 allows write-ins where permitted.

Wis. Stat. § 5.91(5)

The voting systems accommodate all referenda to be submitted to electors in the form provided by law.

Staff Analysis

ClearVote 2.3 meets this requirement. Referenda included as part of testing were accurately tabulated by all ClearVote 2.3 components.

Wis. Stat. § 5.91(6)

The voting system permits an elector in a primary election to vote for the candidates of the recognized political party of his or her choice, and the system rejects any ballot on which votes are cast in the primary of more than one recognized political party, except where a party designation is made or where an elector casts write-in votes for candidates of more than one party on a ballot that is distributed to the elector.

Staff Analysis

Components of ClearVote 2.3 can be configured to always reject crossover votes without providing an opportunity for the voter to override. The system can also be programmed to provide a warning screen to the voter that identifies any contest with crossover votes. Either of these programming options allows this system to meet this requirement.

The warning screen gives the elector the option to either cast the ballot without correcting the crossover vote or to have the ballot returned to them for further review and correction. The use of the override function was previously prohibited by statute, but Wis. Stats. §5.85(2)(b) expressly allows for the optional use of the override function in event of an overvote. As in past certifications, WEC has applied the same standard to the use of the override function in the event of crossover vote.

Wis. Stat. § 5.91(7)

The voting system enables the elector to vote at an election for all persons and offices for whom and for which the elector is lawfully entitled to vote; to vote for as many persons for an office as the elector is entitled to vote for; to vote for or against any question upon which the elector is entitled to vote; and it rejects all choices recorded on a ballot for an office or a measure if the number of choices exceeds the number

which an elector is entitled to vote for on such office or on such measure, except where an elector casts excess write-in votes upon a ballot that is distributed to the elector.

Staff Analysis

Components of ClearVote 2.3 can be configured to always reject overvotes without providing an opportunity for the voter to override or to provide a warning screen to the voter that identifies any overvoted contests/referendum questions. Either of these programming options allows this system to meet this requirement.

The warning screen gives the elector the option to either cast the ballot without correcting the overvote or to have the ballot returned to them for further review and correction. The use of the override function was previously prohibited by statute, but Wis. Stats. §5.85(2)(b) expressly allows for the optional use of the override function in event of an overvote.

Wis. Stat. § 5.91(8)

The voting system permits an elector at a General Election by one action to vote for the candidates of a party for President and Vice President or for Governor and Lieutenant Governor.

Staff Analysis

ClearVote 2.3 meets this requirement by placing Presidential or Gubernatorial candidates and their respective running mates within the same contest as a single choice. This applies to either hand-marked paper ballots or ballots marked on a BMD.

Wis. Stat. § 5.91(9)

The voting system prevents an elector from voting for the same person more than once, except for excess write-in votes upon a ballot that is distributed to the elector.

Staff Analysis

ClearVote 2.3 meets this requirement.

Wis. Stat. § 5.91(10)

The voting system is suitably designed for the purpose used, of durable construction, and is usable safely, securely, efficiently, and accurately in the conduct of elections and counting of ballots.

Staff Analysis

ClearVote 2.3 meets this requirement.

Wis. Stat. § 5.91(11)

The voting system records and counts accurately every vote and maintains a cumulative tally of the total votes cast that is retrievable in the event of a power outage, evacuation or malfunction so that the records of votes cast prior to the time that the problem occurs is preserved.

Staff Analysis

ClearVote 2.3 meets this requirement.

Wis. Stat. § 5.91(12)

The voting system minimizes the possibility of disenfranchisement of electors as the result of failure to understand the method of operation or utilization or malfunction of the ballot, voting system, or other related equipment or materials.

Staff Analysis

ClearVote 2.3 can be programmed to provide warning screens to the voter that identify any problem with their ballot. The warning screens provide an explanation of the problem and allow the voter to have their ballot returned to them to review and correct the error. The systems can be configured to always reject overvotes and crossover votes without providing an opportunity for the voter to override. The language on the warning screens can be customized to a format prescribed by the WEC.

Wis. Stat. § 5.91(13)

The automatic tabulating equipment authorized for use in connection with the system includes a mechanism which makes the operator aware of whether the equipment is malfunctioning in such a way that an inaccurate tabulation of the votes could be obtained.

Staff Analysis

ClearVote 2.3 meets this requirement.

Wis. Stat. § 5.91(14)

The voting system does not use any mechanism by which a ballot is punched or punctured to record the votes cast by an elector.

Staff Analysis

No component of ClearVote 2.3 uses any such mechanism to record votes.

Wis. Stat. § 5.91(15)

The voting system permits an elector to privately verify the votes selected by the elector before casting his or her ballot.

Staff Analysis

ClearVote 2.3 meets this requirement by offering hand-marked paper ballots or accessible voting equipment that provides both an electronic ballot review screen and a marked paper ballot that can be further reviewed before tabulation.

Wis. Stat. § 5.91(16)

The voting system provides an elector the opportunity to change his or her votes and to correct any error or to obtain a replacement for a spoiled ballot prior to casting his or her ballot.

Staff Analysis

ClearVote 2.3 meets this requirement. Hand-marked paper ballots can be changed and/or spoiled at any point up to being placed in the tabulator. Ballots marked on a ClearAccess unit are printed for the voter to review prior to casting in a tabulator and can be spoiled at will by the voter. Per Wis. Stat. § 6.80(2)(c), an elector may spoil up to two ballots and cannot be issued more than three ballots in total.

Wis. Stat. § 5.91(17)

Unless the ballot is counted at a central counting location, the voting system includes a mechanism for notifying an elector who attempts to cast an excess number of votes for a single office the ballot will not be counted and provides the elector with an opportunity to correct his or her ballot or to receive a replacement ballot.

Staff Analysis

ClearVote 2.3 meets this requirement by including an option to have a voter's ballot returned for review/correction when overvotes are detected.

Wis. Stat. § 5.91(18)

If the voting system consists of an electronic voting machine, the voting system generates a complete, permanent paper record showing all votes cast by the elector, that is verifiable by the elector, by either visual or nonvisual means as appropriate, before the elector leaves the voting area, and that enables a manual count or recount of each vote cast by the elector.

Staff Analysis

ClearVote 2.3 meets this requirement.

The Help America Vote Act of 2002 (HAVA) also provides the following applicable requirements that voting systems must meet:

HAVA § 301(a)(1)(A)

The voting system shall:

- (i) permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted;
- (ii) provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error); and
- (iii) if the voter selects votes for more than one candidate for a single office –
 - (I) notify the voter that the voter has selected more than one candidate for a single office on the ballot;
 - (II) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and,
 - (III) provide the voter with the opportunity to correct the ballot before the ballot is cast and counted.

HAVA § 301(a)(1)(C)

The voting system shall ensure that any notification required under this paragraph preserves the privacy of the voter and the confidentiality of the ballot.

HAVA § 301(a)(3)(A)

The voting system shall—

(A) be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as other voters
--

Staff Analysis

ClearVote 2.3 meets these requirements.

Recommendations

Staff has reviewed the application materials, including the technical data package and VSTL test report, and examined the results from the functional test campaign to determine if this system is compliant with both state and federal certification laws. ClearVote 2.3 complies with all applicable state and federal requirements. The components of this voting system met all standards over three mock elections and staff determined they can successfully run a transparent, fair, and secure election in compliance with Wisconsin Statutes. The system also enhances access to the electoral process for individuals with disabilities with the inclusion of the ClearAccess ballot marking device.

1. WEC staff recommends approval of Clear Ballot Group's ClearVote 2.3 voting system and the components of this system, set forth in Appendix C. This voting system accurately completed the three mock elections and was able to accommodate the voting requirements of the Wisconsin election process.
2. WEC staff recommends that as a continuing condition of the WEC's approval, Clear Ballot Group may not impose customer deadlines contrary to requirements provided in Wisconsin Statutes, as determined by the WEC. In order to enforce this provision, local jurisdictions purchasing Clear Ballot Group equipment shall also include such a provision in their respective purchase contract or amend their contract if such a provision does not currently exist.
3. WEC staff recommends that as a continuing condition of the WEC's approval, that voting systems purchased and installed as part of ClearVote 2.3 be configured in the same manner in which they were tested, subject to verification by the Commission or its designee. Once installed, the configuration must remain the same and may not be altered by Clear Ballot Group, nor by state, county, or municipal officials except as approved by the Commission.
4. WEC staff recommends that election inspectors continue to check both the write-in bin, where applicable, and main ballot bin for validly cast write-in votes after the close of polls in each election, and not rely upon the optional write-in report.
5. WEC staff recommends that any absentee ballot returned by the tabulation equipment with an overvote or crossover vote notification must be reviewed by election inspectors prior to being overridden or remade. If necessary, ballots must be remade pursuant to approved procedures listed in the Election Day and Election Administration manuals and state statute.
6. WEC staff recommends that any absentee ballot returned which has been marked with non-black ink be remade by election inspectors prior to any attempt at processing on the tabulation equipment.
7. WEC staff recommends that ballots marked with ClearAccess be included as part of the pre-election public test.

8. WEC staff recommends that as a continuing condition of the WEC's approval, that this system must always be configured to include the following options:
 - a. Automatic rejection of crossover and overvoted ballots with or without the option to override.
 - b. Automatic rejection of all improper ballots except blank ballots.
 - c. Digital ballot images shall be captured for all ballots tabulated by the system.
 - d. Provide visual warning messages, utilizing Commission approved language, to voters when overvotes and crossover votes are detected.
9. Only the hardware and software versions included in this system version can be used together to conduct an election in Wisconsin. Any updates to the hardware or software included in this system must be brought before the Commission for review and approval. As part of US EAC certificate: CBG-CV-23, only equipment included in this certificate can be used together to conduct an election in Wisconsin. Previous versions that were approved for use by the Elections Commission are not compatible with the new Clear Ballot Group voting system and are not to be used together with the equipment seeking approval by the WEC, as this would void the US EAC certificate. If a jurisdiction upgrades to ClearVote 2.3, it needs to upgrade each and every component of the voting system to the requirements of what is approved herein.
10. WEC staff recommends that as a condition of approval, Clear Ballot Group shall abide by applicable Wisconsin public records laws. If, pursuant to a proper public records request, the customer receives a request for matters that might be proprietary or confidential, customer will notify Clear Ballot Group, providing the same with the opportunity to either provide customer with the record that is requested for release to the requestor, or shall advise customer that Clear Ballot Group objects to the release of the information, and provide the legal and factual basis of the objection. If for any reason, the customer concludes that customer is obligated to provide such records, Clear Ballot Group shall provide such records immediately upon customer's request. Clear Ballot Group shall negotiate and specify retention and public records production costs in writing with customers prior to charging said fees. In absence of meeting such conditions of approval, Clear Ballot Group shall not charge customer for work performed pursuant to a proper public records request, except for the "actual, necessary, and direct" charge of responding to the records request, as that is defined and interpreted in Wisconsin law, plus shipping, handling, and chain of custody.
11. The Wisconsin application for approval contains a condition that requires the vendor to reimburse the WEC for all costs associated with the testing campaign and certification process. Clear Ballot Group agreed to this requirement on the application submitted to WEC on February 3, 2023, requesting the approval of ClearVote 2.3

Proposed Motion

MOTION: The Wisconsin Elections Commission adopts the recommendations for approval of Clear Ballot Group's Application for Approval of ClearVote 2.3 voting system in compliance with US EAC certification number CBG-CV-23, including the conditions described above.

Appendices

- Appendix A: Wisconsin Statutes § 5.91
- Appendix B: Wisconsin Administrative Code Ch. EL 7
- Appendix C: US-EAC Certificate of Conformance / Scope of Certification
- Appendix D: ClearCast Voter Information Screen
- Appendix E: Wisconsin Voting Equipment Review Panel Feedback

Appendix A: Wisconsin Statutes § 5.91

5.91 Requisites for approval of ballots, devices and equipment. No ballot, voting device, automatic tabulating equipment, or related equipment and materials to be used in an electronic voting system may be utilized in this state unless it is certified by the commission. The commission may revoke its certification of any ballot, device, equipment, or materials at any time for cause. The commission may certify any such voting device, automatic tabulating equipment, or related equipment or materials regardless of whether any such item is approved by the federal election assistance commission, but the commission may not certify any ballot, device, equipment, or material to be used in an electronic voting system unless it fulfills the following requirements:

- (1) It enables an elector to vote in secrecy and to select the party for which an elector will vote in secrecy at a partisan primary election.
- (3) Except in primary elections, it enables an elector to vote for a ticket selected in part from the nominees of one party, and in part from the nominees of other parties, and in part from independent candidates and in part of candidates whose names are written in by the elector.
- (4) It enables an elector to vote for a ticket of his or her own selection for any person for any office for whom he or she may desire to vote whenever write-in votes are permitted.
- (5) It accommodates all referenda to be submitted to the electors in the form provided by law.
- (6) The voting device or machine permits an elector in a primary election to vote for the candidates of the recognized political party of his or her choice, and the automatic tabulating equipment or machine rejects any ballot on which votes are cast in the primary of more than one recognized political party, except where a party designation is made or where an elector casts write-in votes for candidates of more than one party on a ballot that is distributed to the elector.
- (7) It permits an elector to vote at an election for all persons and offices for whom and for which the elector is lawfully entitled to vote; to vote for as many persons for an office as the elector is entitled to vote for; to vote for or against any question upon which the elector is entitled to vote; and it rejects all choices recorded on a ballot for an office or a measure if the number of choices exceeds the number which an elector is entitled to vote for on such office or on such measure, except where an elector casts excess write-in votes upon a ballot that is distributed to the elector.
- (8) It permits an elector, at a presidential or gubernatorial election, by one action to vote for the candidates of a party for president and vice president or for governor and lieutenant governor, respectively.
- (9) It prevents an elector from voting for the same person more than once for the same office, except where an elector casts excess write-in votes upon a ballot that is distributed to the elector.
- (10) It is suitably designed for the purpose used, of durable construction, and is usable safely, securely, efficiently and accurately in the conduct of elections and counting of ballots.
- (11) It records correctly and counts accurately every vote properly cast and maintains a cumulative tally of the total votes cast that is retrievable in the event of a power outage, evacuation or malfunction so that the records of votes cast prior to the time that the problem occurs is preserved.
- (12) It minimizes the possibility of disenfranchisement of electors as the result of failure to understand the method of operation or utilization or malfunction of the ballot, voting device, automatic tabulating equipment or related equipment or materials.

- (13)** The automatic tabulating equipment authorized for use in connection with the system includes a mechanism which makes the operator aware of whether the equipment is malfunctioning in such a way that an inaccurate tabulation of the votes could be obtained.
- (14)** It does not employ any mechanism by which a ballot is punched or punctured to record the votes cast by an elector.
- (15)** It permits an elector to privately verify the votes selected by the elector before casting his or her ballot.
- (16)** It provides an elector with the opportunity to change his or her votes and to correct any error or to obtain a replacement for a spoiled ballot prior to casting his or her ballot.
- (17)** Unless the ballot is counted at a central counting location, it includes a mechanism for notifying an elector who attempts to cast an excess number of votes for a single office that his or her votes for that office will not be counted and provides the elector with an opportunity to correct his or her ballot or to receive and cast a replacement ballot.
- (18)** If the device consists of an electronic voting machine, it generates a complete, permanent paper record showing all votes cast by each elector, that is verifiable by the elector, by either visual or nonvisual means as appropriate, before the elector leaves the voting area, and that enables a manual count or recount of each vote cast by the elector.

Appendix B: Wis. Admin. Code Ch. EL 7

APPROVAL OF ELECTRONIC VOTING EQUIPMENT

EL 7.01 Application for approval of electronic voting system.

EL 7.02 Agency testing of electronic voting system.

EL 7.03 Continuing approval of electronic voting system.

Note: Chapter ElBd 7 was renumbered chapter GAB 7 under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 7., Stats., [Register April 2008 No. 628](#). Chapter GAB 7 was renumbered Chapter EL 7 under s. 13.92 (4) (b) 1., Stats., [Register June 2016 No. 726](#).

EL 7.01 Application for approval of electronic voting system.

(1) An application for approval of an electronic voting system shall be accompanied by all of the following:

- (a) A signed agreement that the vendor shall pay all costs, related to approval of the system, incurred by the elections commission, its designees and the vendor.
- (b) Complete specifications for all hardware, firmware and software.
- (c) All technical manuals and documentation related to the system.
- (d) Complete instruction materials necessary for the operation of the equipment and a description of training available to users and purchasers.
- (e) Reports from an independent testing authority accredited by the national association of state election directors (NASED) demonstrating that the voting system conforms to all the standards recommended by the federal elections commission.
- (f) A signed agreement requiring that the vendor shall immediately notify the elections commission of any modification to the voting system and requiring that the vendor will not offer, for use, sale or lease, any modified voting system, if the elections commission notifies the vendor that the modifications require that the system be approved again.
- (g) A list showing all the states and municipalities in which the system has been approved for use and the length of time that the equipment has been in use in those jurisdictions.

(2) The commission shall determine if the application is complete and, if it is, shall so notify the vendor in writing. If it is not complete, the elections commission shall so notify the vendor and shall detail any insufficiencies.

(3) If the application is complete, the vendor shall prepare the voting system for three mock elections, using offices, referenda questions and candidates provided by the elections commission.

History: Cr. [Register, June, 2000, No. 534](#), eff. 7-1-00; **correction in (1) (a), (f),**

(2), (3) made under s. 13.92 (4) (b) 6., Stats., Register June 2016 No. 726.

EL 7.02 Agency testing of electronic voting system.

(1) The elections commission shall conduct a test of a voting system, submitted for approval under s. EL 7.01, to ensure that it meets the criteria set out in s. 5.91, Stats. The test shall be conducted using a mock election for the partisan primary, a mock general election with both a presidential and gubernatorial vote, and a mock nonpartisan election combined with a presidential preference vote.

(2) The elections commission may use a panel of local election officials and electors to assist in its review of the voting system.

(3) The elections commission may require that the voting system be used in an actual election as a condition of approval.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00; correction in (1) to (3) made under s. 13.92 (4) (b) 6., Stats., and correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

EL 7.03 Continuing approval of electronic voting system.

(1) The elections commission may revoke the approval of any existing electronic voting system if it does not comply with the provisions of this chapter. As a condition of maintaining the elections commission's approval for the use of the voting system, the vendor shall inform the elections commission of all changes in the hardware, firmware and software and all jurisdictions using the voting system.

(2) The vendor shall, at its own expense, furnish, to an agent approved by the elections commission, for placement in escrow, a copy of the programs, documentation and source code used for any election in the state.



(3) The electronic voting system must be capable of transferring the data contained in the system to an electronic recording medium, pursuant to the provisions of s. 7.23, Stats.

(4) The vendor shall ensure that election results can be exported on election night into a statewide database developed by the elections commission.

(5) For good cause shown, the elections commission may exempt any electronic voting system from strict compliance with this chapter.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00; correction in (1), (4), (5) made under s. 13.92 (4) (b) 6., Stats. and corrections in (5) made under s. 13.92 (4) (b) 7., Stats., and s. 35.17, Stats., Register June 2016 No. 726.

Appendix C: US-EAC Certificate of Conformance / Scope of Certification

	<p>United States Election Assistance Commission</p> <hr/> <p>Certificate of Conformance</p> <hr/> <p>Clear Ballot ClearVote 2.3</p>	
<p>The voting system identified on this certificate has been evaluated at an accredited voting system testing laboratory for conformance to the <i>Voluntary Voting System Guidelines Version 1.0 (VVSG 1.0)</i>. Components evaluated for this certification are detailed in the attached Scope of Certification document. This certificate applies only to the specific version and release of the product in its evaluated configuration. The evaluation has been verified by the EAC in accordance with the provisions of the <i>EAC Voting System Testing and Certification Program Manual</i> and the conclusions of the testing laboratory in the test report are consistent with the evidence adduced. This certificate is not an endorsement of the product by any agency of the U.S. Government and no warranty of the product is either expressed or implied.</p>		
<p>Product Name: <u>ClearVote</u></p> <p>Model or Version: <u>2.3</u></p> <p>Name of VSTL: <u>Pro V&V</u></p> <p>EAC Certification Number: <u>CBG-CV-23</u></p> <p>Date Issued: <u>10/31/2022</u></p>		<p> _____ Executive Director</p> <p>Scope of Certification Attached</p>

Manufacturer: Clear Ballot Group
System Name: ClearVote 2.3
Certificate: CBG-CV-23

Laboratory: Pro V&V
Standard: VVSG 1.0
Date: October 31, 2022



Scope of Certification

This document describes the scope of the validation and certification of the system defined above. Any use, configuration changes, revision changes, additions or subtractions from the described system are not included in this evaluation.

Significance of EAC Certification

An EAC certification is an official recognition that a voting system (in a specific configuration or configurations) has been tested to and has met an identified set of Federal voting system standards. An EAC certification is **not**:

- An endorsement of a Manufacturer, voting system, or any of the system's components.
- A Federal warranty of the voting system or any of its components.
- A determination that a voting system, when fielded, will be operated in a manner that meets all HAVA requirements.
- A substitute for State or local certification and testing.
- A determination that the system is ready for use in an election.
- A determination that any particular component of a certified system is itself certified for use outside the certified configuration.

Representation of EAC Certification

Manufacturers may not represent or imply that a voting system is certified unless it has received a Certificate of Conformance for that system. Statements regarding EAC certification in brochures, on Web sites, on displays, and in advertising/sales literature must be made solely in reference to specific systems. Any action by a Manufacturer to suggest EAC endorsement of its product or organization is strictly prohibited and may result in a Manufacturer's suspension or other action pursuant to Federal civil and criminal law.

System Overview

The ClearVote 2.3 voting system is a paper-based optical-scan voting system consisting of the following major components: ClearDesign (ballot design and EMS), ClearCount (central count, tabulation, and election reporting), ClearCast (precinct count and tabulation), and ClearAccess (accessible voting and ballot marking device).

ClearDesign

ClearDesign is an election management system consisting of an interactive set of applications which are responsible for all pre-voting activities necessary for defining and managing elections.

This includes ballot design, ballot proofing, ballot layout, ballot production, and generation of voting machine election definition file packages. The ClearDesign system consists of the physical components listed below. All the components are unmodified COTS that are connected via a wired, closed, and isolated network not connected to any other systems or the Internet.

- DesignServer: A laptop or desktop computer running Ubuntu with the ClearDesign software and hosting the election database.
- DesignStation(s): One or more laptops or desktops running Microsoft Windows used to connect to the DesignServer. A browser-based interface is used to perform the necessary tasks. A user with administration privileges is able to define users and manage the elections.
- Network Switch: Used to connect the DesignStations to the DesignServer using a wired, closed Ethernet-based network.

ClearCount

ClearCount is a central, high-speed, optical scan ballot tabulator coupled with ballot processing applications. The ClearCount software runs on unmodified COTS laptop or desktop computers running the Microsoft Windows operating system and supports specific models of scanners.

The ClearCount central-count system running on an Ubuntu Linux operating system, with Ethernet connections to workstations running the Windows operating system, consists of the physical components listed below. All components are unmodified COTS that are connected via a wired, closed, and isolated network not connected to any other systems or the Internet.

- CountServer: An Ubuntu Linux laptop or desktop computer running the ClearCount software and hosting its election database and the web server that serves its election reports.
- ScanStation(s): One or more laptop or desktop/scanner pairs used to scan and tabulate ballots.
- Network Switch: Used to connect the ScanStations and CountStations to the CountServer using a wired, closed Ethernet-based network.
- CountStation: One or more Windows laptop or desktop computers installed with browser software, linked by a wired Ethernet connection to the CountServer using the network switch. This station can serve multiple uses: user administration, election administration, adjudication, and reporting. This station is also used to consolidate vote totals and ballot images from the ClearCast precinct tabulator. Vote totals and ballot images are consolidated by the ClearCount Software via the ClearCast USB drive.

All files that make up the ClearCount software reside on a single CountServer that is shared by all client ScanStations. The Tabulator software is executed by the ScanStations at run-time from files that reside on the CountServer. The only software programs that have to be installed on ScanStations, apart from the Windows operating system, are the Fujitsu PaperStream Capture software and drivers required by the scanner hardware. The ClearCount software consists of the following components:

- Tabulator: The Tabulator application handles ballot tabulation. The Tabulator application is stored on the CountServer, and an instance of Tabulator runs on each ScanStation. The Tabulator counts ballots and adjudicates the vote for ballots scanned on that ScanStation. Upon completion of a scanned batch of ballots, the Tabulator application sends its results

and the associated card images to the central election database on the CountServer.

- Election Database: A centralized election database that resides on the CountServer and collects the output of each Tabulator.
- Election Reports: A suite of reports that provides election results and analysis and allows election officials to review individual ballot images.
- Card Resolutions tool: A web application that allows election officials to review and appropriately resolve unreadable voted ballots. It also allows manual adjudication of automatically adjudicated ballots where officials determine changes need to be made to reflect voter intent.
- User and Election Database Management through web applications: On the User Administration dashboard, the administrator can add, rename, or delete users, assign permissions, and change user passwords. On the Election Administration dashboard, the administrator can create or delete an election, set an election as active, merge ClearCast election results, and backup or restore an election.

ClearCast

The ClearCast tabulator is a precinct count ballot scanning solution suitable for early and election in-person voting, including processing ballots printed by the ClearAccess accessible ballot marking device. The ClearCast application runs on the precinct count-based tabulator, and is used to scan, count and tally marked ballots.

ClearCast functionality is divided into three essential modes: Election Mode (Early Voting and/or Election Day), which is used to process voter cast ballots; Pre-Election Mode, which occurs prior to Election Mode, and is used to test all system functionality prior to the start of the election; and Post-Election Mode, which is used to perform administrative functions following the close of the election.

ClearAccess

ClearAccess is an accessible touchscreen ballot marking device (BMD) used for the creation of paper ballots that can be scanned and tabulated by ClearCast or ClearCount. The ClearAccess components of the ClearVote voting system consist of computers combined with personal assistive devices, printers, and uninterruptible power supplies to form a ballot-marking device.

Mark Definitions

Twenty percent or more of the voter target (oval) marked anywhere within the oval (left/right, above, or below its center) provides mark recognition. The manufacturer recommends black ink, but many colors will tally in accordance with VVSG 1.0 accuracy requirements. There are no required dropout colors.

Tested Marking Devices

The manufacturer recommends black ballpoint pens, felt tip pens, gel pens, Sharpie® markers, and number 2 pencils.

Language Capability

In addition to English, the voting system supports Chinese, Danish, Dutch, Flemish, French, German, Italian, Japanese, Korean, Norwegian, Portuguese, Spanish, Swedish and Vietnamese.

Components Included

This section provides information describing the components and revision level of the primary components included in this Certification.



System Component	Software or Firmware Version	Hardware Version	Operating System or COTS	Comment
ClearAccess software	2.3.0			ClearAccess
ClearCast software	2.2.9			ClearCast
ClearCast Go software	2.2.a			ClearCast Go
ClearCount software	2.3.1			ClearCount
ClearDesign software	2.3.0			ClearDesign
EloPOS driver pack	2019.12.5		COTS software	ClearAccess
Google Chrome	97.0.4692.99		COTS software	ClearAccess
jquery	1.10.2		COTS software	ClearAccess
jsmin	2019.10.30		COTS software	ClearAccess

System Component	Software or Firmware Version	Hardware Version	Operating System or COTS	Comment
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nsis	3.01		COTS software	ClearAccess
DataTables	1.10.16		COTS software	ClearAccess
pefile	2018.8.8		COTS software	ClearAccess
PyInstaller	3.2		COTS software	ClearAccess
Pyserial	3.2.1		COTS software	ClearAccess
Python	2.7.10		COTS software	ClearAccess
Python-future	0.15.2		COTS software	ClearAccess
pywin	223		COTS software	ClearAccess
webpy	0.38		COTS software	ClearAccess
Zebra CoreScanner Driver	3.07.0004		COTS software	ClearAccess
Windows 10 Pro	Build 1607		Windows 10 Pro	ClearAccess
DataTables	1.10.16		COTS software	ClearCast
chromium-browser	92.0.4515.159		COTS software	ClearCast
jquery	1.12.4		COTS software	ClearCast
jQuery.NumPad	1.4		COTS software	ClearCast
jquery.ui	1.11.3		COTS software	ClearCast
JTSage DateBox	4.0.0		COTS software	ClearCast
libScanAPI.a	2.0.0.0		COTS software	ClearCast
OpenSSL (standard)	1.0.2g		COTS software	ClearCast
OpenSSL - FIPS	2.0.10		COTS software	ClearCast
Pyinstaller	3.2.1		COTS software	ClearCast
Ubuntu	18.04.5 LTS		COTS software	ClearCast
boot_merger	1.31		COTS software	ClearCast Go
chromium-browser	92.0.4515.159		COTS software	ClearCast Go
DataTables	1.10.16		COTS software	ClearCast Go
jQuery	1.12.4		COTS software	ClearCast Go
jQuery.NumPad	1.4		COTS software	ClearCast Go
jquery.ui	1.11.3		COTS software	ClearCast Go
JTSage DateBox	4.0.0		COTS software	ClearCast Go
libScanAPI.a	1.0.0.1		COTS software	ClearCast Go
libssl	1.0_1.0.2n		COTS software	ClearCast Go
Linux kernel	5.4.52		COTS software	ClearCast Go
openssl	1.0.0_1.0.2n		COTS software	ClearCast Go
rk3399_bl31	1.35		COTS software	ClearCast Go

System Component	Software or Firmware Version	Hardware Version	Operating System or COTS	Comment
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Rk3399_ddr-800MHz	1.25		COTS software	ClearCast Go
rk3399_loader	1.24.126		COTS software	ClearCast Go
Rk3399_miniloader	1.26		COTS software	ClearCast Go
rkdeveloptool	1.2		COTS software	ClearCast Go
trust_merger	1.0 (2015-06-15)		COTS software	ClearCast Go
U-boot	2020.10		COTS software	ClearCast Go
Ubuntu	18.04.6 LTS		COTS software	ClearCast Go
Apache	2.4.29		COTS software	ClearCount
auditd	2.8.2 - 1		COTS software	ClearCount
debconf	1.5.66		COTS software	ClearCount
Fujitsu fi-6400	PaperStream IP (TWAIN) 2.10.3		Windows 10 Pro	ClearCount
Fujitsu fi-6800	PaperStream IP (TWAIN) 2.10.3		Windows 10 Pro	ClearCount
Fujitsu fi-7180	PaperStream IP (TWAIN) 2.10.3		Windows 10 Pro	ClearCount
Fujitsu fi-7800	PaperStream IP (TWAIN) 2.10.3		Windows 10 Pro	ClearCount
Fujitsu fi-7900	PaperStream IP (TWAIN) 2.10.3		Windows 10 Pro	ClearCount
Google Chrome	87.0.4280.141		COTS software	ClearCount
J JavaScript jQuery-migrate library	1.2.1		COTS software	ClearCount
JavaScript Bootstrap library	2.3.2, & 4.3.1		COTS software	ClearCount
JavaScript bootstrap-vue library	2.0.2		COTS software	ClearCount
JavaScript Chosen library	1.8.7		COTS software	ClearCount
JavaScript DataTables Buttons	1.5.6		COTS software	ClearCount
JavaScript DataTables Buttons ColVis Library	1.0.8		COTS software	ClearCount
JavaScript DataTables Buttons html5 library	1.3.3		COTS software	ClearCount
JavaScript DataTables FixedHeader library	3.1.4		COTS software	ClearCount
JavaScript DataTables library	1.10.18		COTS software	ClearCount
JavaScript DataTables pdfmaker library	0.1.36		COTS software	ClearCount

System Component	Software or Firmware Version	Hardware Version	Operating System or COTS	Comment
JavaScript jQuery hotkeys library	0.8		COTS software	ClearCount
JavaScript jQuery library	1.10.2J		COTS software	ClearCount
JavaScript jQuery spllitter library	0.28.3		COTS software	ClearCount
JavaScript jQuery tooltip library	1.3		COTS software	ClearCount
JavaScript vue library	2.6.10		COTS software	ClearCount
libapache2-mod-fcgid	2.3.9-1		COTS software	ClearCount
MySQLdb (part of Ubuntu)	5.7.31		COTS software	ClearCount
OpenSSL (standard)	1.1.1		COTS software	ClearCount
OpenSSL FIPS Object Module	2.0.10		COTS software	ClearCount
pmount	0.9.23		COTS software	ClearCount
PollyReports	1.7.6		COTS software	ClearCount
PyInstaller	3.2.1		COTS software	ClearCount
Python (part of Ubuntu)	2.7.15~rc1-1		COTS software	ClearCount
Python-dateutil	2.8.1		COTS software	ClearCount
Samba	4.7.6		COTS software	ClearCount
Six	1.15.0		COTS software	ClearCount
sqlalchemy	1.3.4		COTS software	ClearCount
Ubuntu	18.04.5 LTS		COTS software	ClearCount
udisks	2.7.6		COTS software	ClearCount
Windows 10 Pro	Build 1607		Windows 10 Pro	ClearCount
Apache	2.4.29		COTS software	ClearDesign
Bootstrap	3.0.0		COTS software	ClearDesign
DataTable	1.10.16		COTS software	ClearDesign
DataTable Buttons	1.4.2		COTS software	ClearDesign
DataTable Buttons JSZip	2.5.0		COTS software	ClearDesign
DataTable Buttons Pdfmake	0.1.32		COTS software	ClearDesign
DataTablePlugins	1.10.16		COTS software	ClearDesign
Google Chrome	87.0.4280.141		COTS software	ClearDesign
jquery	2.2.4		COTS software	ClearDesign
jquery-impromptu	6.2.3		COTS software	ClearDesign
jquery-qrcode	1.0		COTS software	ClearDesign

jquery-splitter	0.27.1		COTS software	ClearDesign
jquery-ui	1.12.1		COTS software	ClearDesign
jscolor	1.4.2		COTS software	ClearDesign
jslibmp3lame	0.5.0		COTS software	ClearDesign
jsmin	4.6		COTS software	ClearDesign
jszip	3.2.0		COTS software	ClearDesign
libapache2-mod-fcgid	2.3.9-1		COTS software	ClearDesign
MySQL	5.7.31		COTS software	ClearDesign
OpenSSL (standard)	1.1.1		COTS software	ClearDesign
OpenSSL FIPS Object Module	2.0.10		COTS software	ClearDesign
paparser	4.6.0		COTS software	ClearDesign
PhantomJS	1.9.8		COTS software	ClearDesign
Pyinstaller	3.2.1		COTS software	ClearDesign
Python	2.7.15		COTS software	ClearDesign
Python DBUtils	1.3		COTS software	ClearDesign
Python Flup	1.0.2		COTS software	ClearDesign
Python FontTools library	3.4.1		COTS software	ClearDesign
Python JSMIN	2.2.1		COTS software	ClearDesign
Python MySQL DB	1.3.10		COTS software	ClearDesign
Python Pillow	5.1.0		COTS software	ClearDesign
Python PIP	9.0.1		COTS software	ClearDesign
Python RTF	0.2.1		COTS software	ClearDesign
Python webpy	0.38		COTS software	ClearDesign
Python XLRD	1.2.0		COTS software	ClearDesign
Samba	4.7.6		COTS software	ClearDesign
SQLAlchemy	1.3.3		COTS software	ClearDesign
tinymce	4.1.9		COTS software	ClearDesign
Ubuntu	18.04.5		COTS software	ClearDesign
Unzip	6.0.21		COTS software	ClearDesign
Windows 10 Pro	Build 1607		Windows 10 Pro	ClearDesign
Zip	3.0.11		COTS software	ClearDesign
ELO 15-inch EloPOS		EPS15E3	COTS hardware	ClearAccess
ELO 15-inch AIO		E-Series (ESY15E2)	COTS hardware	ClearAccess
Dell OptiPlex AIO		5250	COTS hardware	ClearAccess

System Component	Software or Firmware Version	Hardware Version	Operating System or COTS	Comment
ELO 20-inch AIO		X-Series (ESY20X2)	COTS hardware	ClearAccess
Dell Inspiron 15"		7573	COTS hardware	ClearAccess
Oki Data Laser Printer		B432dn	COTS hardware	ClearAccess
Zebra Technologies Bar Code Scanner		DS457-SR	COTS hardware	ClearAccess
Storm EZ Access Keypad		EZ08-22201	COTS hardware	ClearAccess
Storm EZ Access Keypad		EZ08-22000	COTS hardware	ClearAccess
Origin Instruments Sip/Puff Breeze with Headset		AC-0313-MUV, AC-0300-MU	COTS hardware	ClearAccess
Samson Over-Ear Stereo Headphones		SASR350	COTS hardware	ClearAccess
Monoprice Over the Ear Pro Headphones		8323	COTS hardware	ClearAccess
Hamilton Buhl Over-Ear Stereo Headphones		HA7	COTS hardware	ClearAccess
Ergotron Neo-Flex		Widescreen Lift Stand	COTS hardware	ClearAccess
Wearson LCD Stand		Adjustable LCD Monitor Stand	COTS hardware	ClearAccess
Corsair Flash Padlock 3 32 GB		Secure USB 3.0 Flash Drive	COTS hardware	ClearAccess
Corsair Flash Voyager GTX		3.1 USB Drive	COTS hardware	ClearAccess
Kingston Data Traveler Elite G2		3.0 USB Drive	COTS hardware	ClearAccess
SanDisk Extreme Go 64 GB USB		3.0 USB Drive	COTS hardware	ClearAccess
SanDisk Extreme Pro 64 GB USB		3.0 USB Drive	COTS hardware	ClearAccess
SanDisk Ultra Flair 32 GB USB		3.0 USB Drive	COTS hardware	ClearAccess
CyberPower Smart App UPS		PR1500RT2U	COTS hardware	ClearAccess
APC Smart-UPS		SMT2200	COTS hardware	ClearAccess
ClearCast		Model D, Revision 4	COTS hardware	ClearCast
ClearCast Go		Model E Revision 5	COTS hardware	ClearCast
Corsair Flash Padlock 3 32 GB		Secure USB 3.0 Flash Drive	COTS hardware	ClearCast
Corsair Flash Voyager GTX		3.1 USB Drive	COTS hardware	ClearCast

Kingston Data Traveler Elite G2		3.0 USB Drive	COTS hardware	ClearCast
SanDisk Extreme Go 64 GB USB		3.0 USB Drive	COTS hardware	ClearCast
SanDisk Extreme Pro 64 GB USB		3.0 USB Drive	COTS hardware	ClearCast
SanDisk Ultra Flair 32 GB USB		3.0 USB Drive	COTS hardware	ClearCast
Ballot Bag		CV-1032-1.5, CV-1032-2.0	COTS hardware	ClearCast
Ballot Box		CV-1033-1.5, CV-1033-2.0	COTS hardware	ClearCast
Dell Precision Tower (Election Administration)		T3620	Windows 10 Pro	ClearCount
Lenovo ThinkServer (ScanServer)		TS140	Windows 10 Pro	ClearCount
Dell PowerEdge Server (ScanServer)		T130, T140, T330, T440	Ubuntu 18.04.5 LTS	ClearCount
Dell OptiPlex (Election Administration)		7440, XE3 SFF	Windows 10 Pro	ClearCount
Dell Latitude Laptop (ScanStation)		5580, 5590, 5500, 5511	Windows 10 Pro	ClearCount
Fujitsu Scanner		fi-7180	COTS hardware	ClearCount
Fujitsu Scanner		fi-6800	COTS hardware	ClearCount
Fujitsu Scanner		fi-6400	COTS hardware	ClearCount
Fujitsu Scanner		fi-7800	COTS hardware	ClearCount
Fujitsu Scanner		fi-7900	COTS hardware	ClearCount
SanDisk Extreme Go 64 GB USB		3.0 USB Drive	COTS hardware	ClearCount
SanDisk Extreme Pro 64 GB USB		3.0 USB Drive	COTS hardware	ClearCount
SanDisk Ultra Flair 32 GB USB		3.0 USB Drive	COTS hardware	ClearCount
CyberPower Smart App UPS		PR1500RT2U	COTS hardware	ClearCount
Cisco 8-Port Switch		SG250-08	COTS hardware	ClearCount
Cisco Catalyst 8-Port Switch		C1000-8T-2G-L	COTS hardware	ClearCount

Cisco 24-Port Switch		C1000-24T-4X-L	COTS hardware	ClearCount
NetGear 8-Port Switch		FVS318G	COTS hardware	ClearCount
TP-LINK 4-Port Switch		TL-R600VPN	COTS hardware	ClearCount
Cisco 26-Port Switch		SG250-26	COTS hardware	ClearCount
TRENDNet 8-Port Switch		TEG-S80G	COTS hardware	ClearCount
Corsair Flash Padlock 3 32 GB		Secure USB 3.0 Flash Drive	COTS hardware	ClearCount
Corsair Flash Voyager GTX		3.1 USB Drive	COTS hardware	ClearCount
Kingston Data Traveler Elite G2		3.0 USB Drive	COTS hardware	ClearCount
APC Smart-UPS		SMT-1500C	COTS hardware	ClearCount
Dell Latitude Laptop (client)		5580, 5590, 5500, 5511	Windows 10 Pro	ClearDesign
Dell Precision Tower (client)		T3620	Windows 10 Pro	ClearDesign
Dell PowerEdge Server (server)		T130, T140, T440, R440, T630	Ubuntu 16.04.4 LTS	ClearDesign
Dell OptiPlex (client)		7440	Windows 10 Pro	ClearDesign
Cisco 8-Port Switch		SG250-08	COTS hardware	ClearDesign
Cisco Catalyst 8-Port Switch		C1000-8T-2G-L	COTS hardware	ClearDesign
NetGear 8-Port Switch		FVS318G	COTS hardware	ClearDesign
TP-LINK 4-Port Switch		TL-R600VPN	COTS hardware	ClearDesign
TRENDNet 8-Port Switch		TEG-S80G	COTS Hardware	ClearDesign
Corsair Flash Padlock 3 32 GB		Secure USB 3.0 Flash Drive	COTS hardware	ClearDesign
Corsair Flash Voyager GTX		3.1 USB Drive	COTS hardware	ClearDesign
Kingston Data Traveler Elite G2		3.0 USB Drive	COTS hardware	ClearDesign
SanDisk Extreme Go 64 GB USB		3.0 USB Drive	COTS hardware	ClearDesign
SanDisk Extreme Pro 64 GB USB		3.0 USB Drive	COTS hardware	ClearDesign

SanDisk Ultra Flair 32 GB USB		3.0 USB Drive	COTS hardware	ClearDesign
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System Limitations

This table depicts the limits the system has been tested and certified to meet.

System Characteristic	Limitation	Limiting Component
Precincts in an election	3200	ClearDesign database
Contests in an election	3200	ClearDesign database
Choices in an election	3200	ClearDesign database
Card Styles in an election	3200	ClearDesign database
Contests in a ballot style	60	ClearDesign database
Choices in a contest	300	ClearDesign database
Card styles in a precinct	50	ClearDesign database
Number of political parties per election	50	ClearDesign database
“Vote for” in a contest	50	ClearDesign database
Supported languages in an election	15	ClearDesign database
Number of write-ins per contest	50	ClearDesign database
Cards per ballot (per language)	5	ClearDesign database
Maximum oval positions per side: 5-inch ballot	60	Ballot length
Maximum oval positions per side: 11-inch ballot	180	Ballot length
Maximum oval positions per side: 14-inch ballot	240	Ballot length
Maximum oval positions per side: 17-inch ballot	300	Ballot length
Maximum oval positions per side: 19-inch ballot	360	Ballot length
Maximum oval positions per side: 22-inch ballot	420	Ballot length
Reporting Name Parameters (Reports Only)		Limitation
Election name (characters)		60
Jurisdiction name (characters)		60
Precinct name (characters)		60
Vote center name (characters)		60
Contest name (characters)		60
Candidate name (characters)		60
Party name (characters)		60
Write-in length (characters)		60
System Parameters		Limitation
Central-count scanners per network		10

Cards per precinct-voting device	10,000
Cards per central-count device	4,000,000

System Limits for ClearCount

Scanner Model	Sustained (not burst speed) ballots per hour						Typical county size (Central count)
	8.5x5	8.5x11	8.5x14	8.5x17	8.5x19	8.5x22	
fi-6400	5592	3624	2928	2448	2350	2236	Large (>100k voters)
fi-6800	7822	5508	4155	3352	3000	2800	Large (>100k voters)
fi-7180	3396	2040	1692	1400	1300	1200	Small (<25k voters)
fi-7800	5364	5028	3842	3556	3136	1566	Large (>100k voters)
fi-7900	6746	5635	4129	3926	3175	3108	Large (>100k voters)
ClearCount can have a maximum of 10 ScanStation/Scanner pairs							

Functionality

2005 VVSG Supported Functionality Declaration

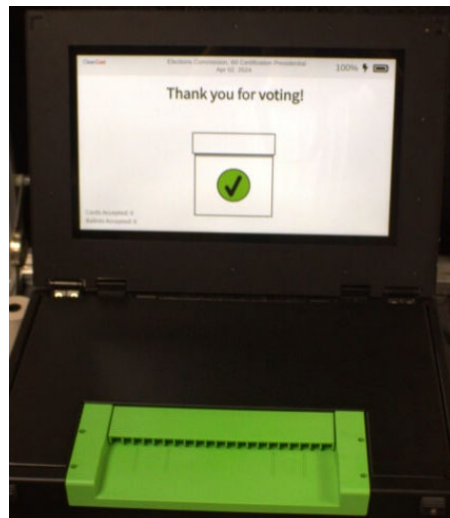
Feature/Characteristic	Yes/No	Comment
<ul style="list-style-type: none"> Precinct and BMD accessible via Parallel (Side) and Forward Approach 	Yes	
Closed Primary		
<ul style="list-style-type: none"> Primary: Closed 	Yes	
Open Primary		
<ul style="list-style-type: none"> Primary: Open Standard (provide definition of how supported) 	Yes	Open Primary
<ul style="list-style-type: none"> Primary: Open Blanket (provide definition of how supported) 	Yes	General "top two"
Partisan & Non-Partisan:		
<ul style="list-style-type: none"> Partisan & Non-Partisan: Vote for 1 of N race 	Yes	
<ul style="list-style-type: none"> Partisan & Non-Partisan: Multi-member ("vote for N of M") board 	Yes	
<ul style="list-style-type: none"> Partisan & Non-Partisan: "vote for 1" race with a single candidate and write-in voting 	Yes	
<ul style="list-style-type: none"> Partisan & Non-Partisan "vote for 1" race with no declared candidates and write-in voting 	Yes	
Feature/Characteristic	Yes/No	Comment
Write-In Voting:		
<ul style="list-style-type: none"> Write-in Voting: System default is a voting position identified for 	Yes	
<ul style="list-style-type: none"> Write-in Voting: Without selecting a write in position. 	Yes	
<ul style="list-style-type: none"> Write-in: With No Declared Candidates 	Yes	

• Write-in: Identification of write-ins for resolution at central count	Yes	
Primary Presidential Delegation Nominations & Slates:		
• Primary Presidential Delegation Nominations: Displayed delegate slates for each presidential party	Yes	
• Slate & Group Voting: one selection votes the slate.	Yes	
Ballot Rotation:		
• Rotation of Names within an Office; define all supported rotation methods for location on the ballot and vote tabulation/reporting	Yes	Rotation by precinct and district
Straight Party Voting:		
• Straight Party: A single selection for partisan races in a general	Yes	
• Straight Party: Vote for each candidate individually	Yes	
• Straight Party: Modify straight party selections with crossover votes	Yes	
• Straight Party: A race without a candidate for one party	Yes	
• Straight Party: "N of M race (where "N">1)	Yes	
• Straight Party: Excludes a partisan contest from the straight party	Yes	
Cross-Party Endorsement:		
• Cross party endorsements, multiple parties endorse one candidate.	Yes	
Split Precincts:		
• Split Precincts: Multiple ballot styles	Yes	
• Split Precincts: P & M system support splits with correct contests and ballot identification of each split	Yes	
• Split Precincts: DRE matches voter to all applicable races.	N/A	Not a DRE system
• Split Precincts: Reporting of voter counts (# of voters) to the precinct split level; Reporting of vote totals is to the precinct level	Yes	
Vote N of M:		
• Vote for N of M: Counts each selected candidate if the maximum is not exceeded.	Yes	
• Vote for N of M: Invalidates all candidates in an overvote (paper)	Yes	
Recall Issues, with options:		
• Recall Issues with Options: Simple Yes/No with separate race/election. (Vote Yes or No Question)	Yes	
• Recall Issues with Options: Retain is the first option, Replacement candidate for the second or more options (Vote 1 of M)	Yes	
• Recall Issues with Options: Two contests with access to a second contest conditional upon a specific vote in contest one. (Must vote Yes to vote in 2nd contest.)	No	
• Recall Issues with Options: Two contests with access to a second contest conditional upon any vote in contest one. (Must vote Yes to vote in 2nd contest.)	No	
Feature/Characteristic	Yes/No	Comment
Cumulative Voting		
• Cumulative Voting: Voters are permitted to cast, as many votes as	No	
Ranked Order Voting		
• Ranked Order Voting: Voters can write in a ranked vote.	No	

<ul style="list-style-type: none"> Ranked Order Voting: A ballot stops being counting when all ranked choices have been eliminated 	No	
<ul style="list-style-type: none"> Ranked Order Voting: A ballot with a skipped rank counts the vote for the next rank. 	No	
<ul style="list-style-type: none"> Ranked Order Voting: Voters rank candidates in a contest in order of choice. A candidate receiving a majority of the first-choice votes wins. If no candidate receives a majority of first choice votes, the last place candidate is deleted, each ballot cast for the deleted candidate counts for the second-choice candidate listed on the ballot. The process of eliminating the last place candidate and recounting the ballots continues until one candidate receives a majority of the vote 	No	
<ul style="list-style-type: none"> Ranked Order Voting: A ballot with two choices ranked the same, stops being counted at the point of two similarly ranked choices. 	No	
<ul style="list-style-type: none"> Ranked Order Voting: The total number of votes for two or more candidates with the least votes is less than the votes of the candidate with the next highest number of votes, the candidates with the least votes are eliminated simultaneously and their votes transferred to the next-ranked continuing candidate. 	No	
Provisional or Challenged Ballots		
<ul style="list-style-type: none"> Provisional/Challenged Ballots: A voted provisional ballots is identified but not included in the tabulation but can be added in 	Yes	via jurisdiction processes
<ul style="list-style-type: none"> Provisional/Challenged Ballots: A voted provisional ballots is included in the tabulation, but is identified and can be subtracted in the 	No	
<ul style="list-style-type: none"> Provisional/Challenged Ballots: Provisional ballots maintain the secrecy of the ballot. 	Yes	
Overvotes (must support for specific type of voting system)		
<ul style="list-style-type: none"> Overvotes: P & M: Overvote invalidates the vote. Define how overvotes are counted. 	Yes	If the system detects more votes than allowed by the vote rule, it is counted as an overvote
<ul style="list-style-type: none"> Overvotes: DRE: Prevented from or requires correction of overvoting. 	Yes	Yes, for ClearAccess
<ul style="list-style-type: none"> Overvotes: If a system does not prevent overvotes, it must count them. Define how overvotes are counted. 	Yes	If the system detects more votes than allowed by the vote rule, it is counted as an overvote
<ul style="list-style-type: none"> Overvotes: DRE systems that provide a method to data enter absentee votes must account for overvotes. 	N/A	No method to data enter absentee via ClearAccess
Undervotes		
<ul style="list-style-type: none"> Undervotes: System counts undervotes cast for accounting purposes 	Yes	
Blank Ballots		
<ul style="list-style-type: none"> Totally Blank Ballots: Any blank ballot alert is tested. 	Yes	
<ul style="list-style-type: none"> Totally Blank Ballots: If blank ballots are not immediately processed, there must be a provision to recognize and accept them 	Yes	via adjudication in ClearCount
<ul style="list-style-type: none"> Totally Blank Ballots: If operators can access a blank ballot, there must be a provision for resolution. 	Yes	via adjudication in ClearCount
Networking		
<ul style="list-style-type: none"> Wide Area Network – Use of Modems 	No	
<ul style="list-style-type: none"> Wide Area Network – Use of Wireless 	No	
<ul style="list-style-type: none"> Local Area Network – Use of TCP/IP 	Yes	

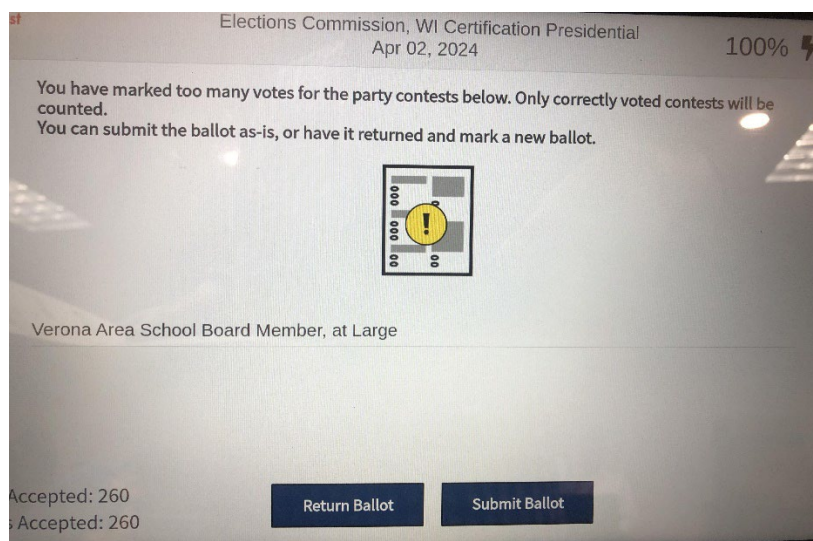
• Local Area Network – Use of Infrared	No	
• Local Area Network – Use of Wireless	No	
• FIPS 140-2 validated cryptographic module	Yes	
Used as (if applicable):		
• Precinct and Central counting devices	Yes	
• Ballot Marking Device	Yes	
Overvotes (must support for specific type of voting system)		
• Overvotes: P & M: Overvote invalidates the vote. Define how overvotes are counted.	Yes	If the system detects more votes than allowed by the vote rule, it is counted as an overvote
• Overvotes: DRE: Prevented from or requires correction of	Yes	Yes for ClearAccess
• Overvotes: If a system does not prevent overvotes, it must count them. Define how overvotes are counted.	Yes	If the system detects more votes than allowed by the vote rule, it is counted as an overvote
• Overvotes: DRE systems that provide a method to data enter absentee votes must account for overvotes.	N/A	No method to data enter absentee via ClearAccess
Undervotes		
• Undervotes: System counts undervotes cast for accounting purposes	Yes	
Blank Ballots		
• Totally Blank Ballots: Any blank ballot alert is tested.	Yes	
• Totally Blank Ballots: If blank ballots are not immediately processed, there must be a provision to recognize and accept them	Yes	via adjudication in ClearCount
• Totally Blank Ballots: If operators can access a blank ballot, there must be a provision for resolution.	Yes	via adjudication in ClearCount
Networking		
• Wide Area Network – Use of Modems	No	
• Wide Area Network – Use of Wireless	No	
• Local Area Network – Use of TCP/IP	Yes	
• Local Area Network – Use of Infrared	No	
• Local Area Network – Use of Wireless	No	
• FIPS 140-2 validated cryptographic module	Yes	
Used as (if applicable):		
• Precinct and Central counting devices	Yes	
• Ballot Marking Device	Yes	

Appendix D: ClearCast Voter Information Screens

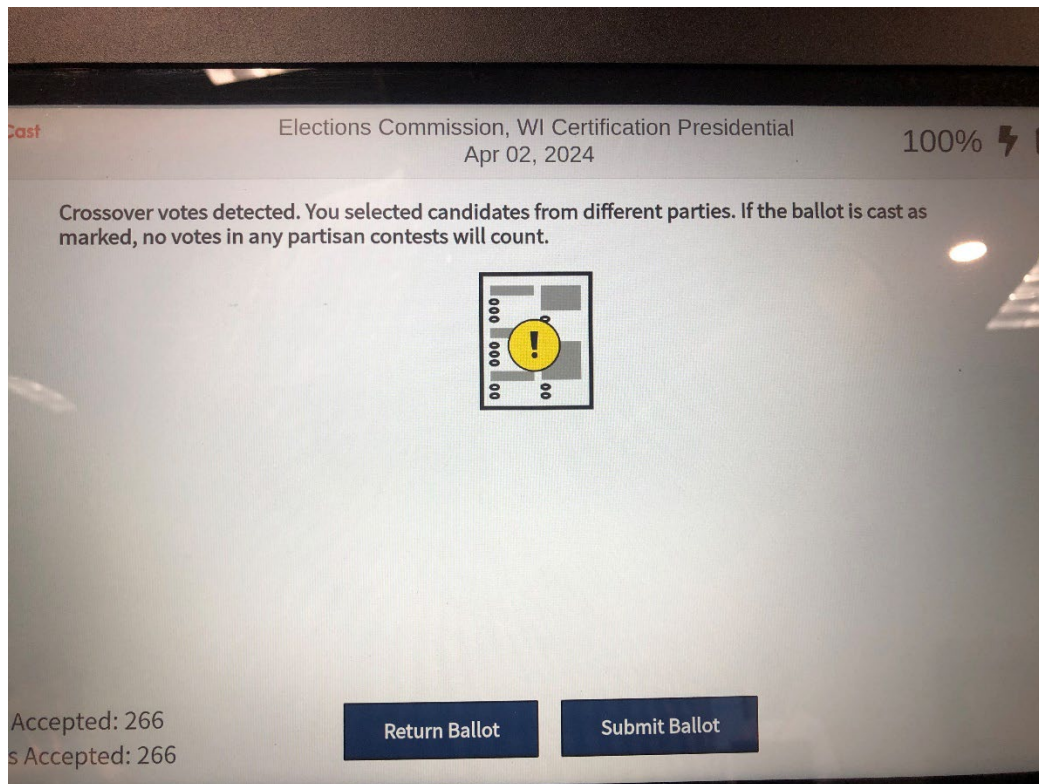


Insert Ballot/Thank you for voting: These are the only screens most voters will see in a voting session. The Insert Ballot screen lets a voter know the tabulator is ready to accept their ballot and, if there are no issues with the ballot, the tabulator will accept it and confirm that it has been counted. Upon acceptance, the public count number will increase by one.

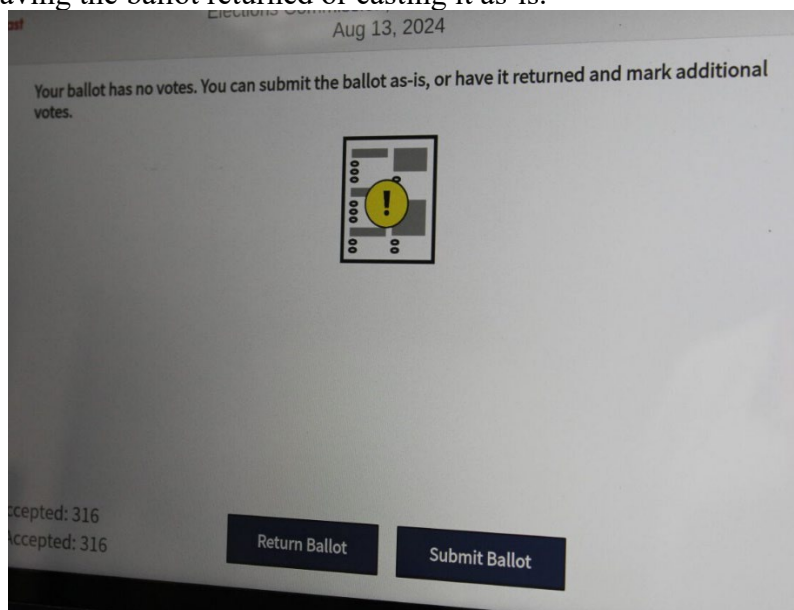
Overvote Notification: If the ballot contains an overvote, i.e., the voter has selected more choices than they are eligible to make in a particular contest, the ClearCast will identify the overvoted contest/referendum question. The voter will have the option to either have the ballot returned or override the overvote notification. If the ballot is returned, the voter can spoil their first ballot and vote a new one. If the overvote warning is overridden and the voter chooses to cast the ballot as marked, they are warned that their choices in any overvoted contest will not count. This language reflects the requirements as stipulated by the WEC.



Crossover Vote Notification: If a ballot is inserted on which a voter has made choices in more than one party's primary, a warning message will appear advising the voter of such and identifying the contests with crossover votes. As with the overvote warning, the voter has the option of either having their ballot returned or casting it with the crossover votes as marked. If the voter chooses to cast their ballot as-is, any choices in contests with crossover votes will not count. This verbiage also reflects the requirements as stipulated by the WEC.



Blank Ballot: If a voter inserts a ballot on which they have made no choices, this warning will appear. The voter has the option of having the ballot returned or casting it as-is.



Appendix E: Wisconsin Voting Equipment Review Panel Feedback

These comments were provided via a structured feedback form. Members of the panel also had the opportunity to follow up with additional written comments. For each question, participants were asked to assess the equipment on a scale of 1 to 5, with 1 being very poor and 5 being excellent. The tables below show the number of participants that chose each ranking. Written responses/supplemental comments for each question can be found under each respective table.

1. How would you rate the functionality of the equipment?

Very Poor	Poor	Fair	Good	Excellent
			3	2

- One issue I noticed is that the tabulator accepted two ballots at once. It did not jam or reject them. The two ballots were not read individually.
- The tabulator tells the voter about over votes but not under votes.
- Great, the tabulator was able to tell me the exact race I overvoted and gave me the option to submit anyway or have it returned.
- I like that the accessible voting machine uses a standard ballot, this makes it impossible to differentiate between a regular ballot and a ballot from an accessible voting machine.
- I like that the tabulator has the green colored ballot part. This makes it easy to see where the ballot should go.
- The tabulator noises are helpful for when your ballot is not accepted.
- Very functional – similar to other systems in the state for the polling place.
- Voting machine functions well as does the tabulator.

2. How would you rate the accessible features?

Very Poor	Poor	Fair	Good	Excellent
			4	1

- There are some issues for voters with visual impairment. Once you get it to start testing the audio does not start automatically, and it is unclear how to start it.
- If you start navigating with the tactile pad and switch to the screen, the prompts seem to have a glitch and does not how the same prompts. Seems to be a logic issue.
- The security features limit the independence of a voter with a disability as they would need to have a poll worker type in a code and initiate the voting session.
- Concern about not having a prompt to start the voting session for accessible voters.
- It takes a little bit to get used to the voting pad.
- I like that it is easy to correct your ballot.
- Voice is clear, contrast choices very helpful, change of font size very useful.
- Prints regular ballot.
- In summary BIG PLUS is getting the same size ballot.
- Concern: needs an audio cue to get the audio started.
- Lots of potential training gaps.
- With the accessible device, I loved that the ballot mirrors the ballot that those using a hand marked ballot This allows for my ballot to be anonymous.

- A concern is that the voter can't begin the session until a poll worker starts it. I understand that this is a security feature, but it dismisses the independence of the voter. No one else in the polling area needs to be walked to their voting area.
- The tactile marking device takes a bit of time to orient. I needed to listen to the help function in order to get the feel for the marking device. Once I got the feel of it, it was easy to use. The device is heavy, so someone with hand weakness may find it difficult to handle. I liked that it had a built-in spot which creates predictability for locating it from election to election.
- The audio output is clear and easy to follow. It is a bit tricky to adjust volume and speech rate. I liked that when I made a selection, I got an audio tone letting me know that I'd voted the contest. It was difficult to get the audio to start playing. I needed to hit a couple of buttons to activate the audio. It would be helpful to have the audio output start while the poll worker is entering data to help the voter feel confident about what is being entered on their behalf, especially if the voter can't see the screen.
- I skipped a contest to see what would happen. When I reviewed the ballot, I was audio cued that I'd skipped a contest. I was able to vote that contest from the review screen.
- I have concerns about wheelchair access since the printer is underneath the ballot marking device. If the voter has any mobility issues that make it difficult to lean forward to access the screen or tactile marking device.
- I do worry about a fully blind voter being able to retrieve their ballot as it leaves the printer. It may not be intuitive where to feel for it. The little printer paper catch would need to be up to avoid the ballot going on the floor.

3. Rate your overall impression of the system.

Very Poor	Poor	Fair	Good	Excellent
			4	1

- Appreciate that it isn't connected to the internet.
- Appreciate that it uses off the shelf components.
- Appreciate that the accessible ballot is the same size as the other ballots.
- Easy to use, great accessible features.
- Tabulator makes a happy noise when the ballot is not accepted.
- Accessible voting machine does not allow for a 100% independent process for the voter. Audio doesn't start on its own. Refer to Denise Jess' comments.
- The scanner is not recommended for central count locations. Does not sort overvotes and undervotes on write-ins. Will not comply with our current statutes.
- Overall, it seems good. Concerned that the people with disabilities will need assistance starting the voting process on the screen.
- Voice does not start unless someone clicks on screen or voter pushes buttons several times.
- On the tabulator, I liked that the top of the device is free from clutter. It was easy to feel where the ballot feeder is located. The high contrast with the bright green against the black was very helpful.



Wisconsin Elections Commission

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DATE: For the September 7, 2023, Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Brandon Hunzicker, Staff Attorney

SUBJECT: Discussion of the Second Advisory Committee Meeting on Election Observers

Introduction:

This memo discusses the second meeting of the Commission's Advisory Committee on Election Observers, which was held on June 29, 2023. This memo primarily introduces a revision of the draft rule language following the second Advisory Committee meeting. The revised draft rule immediately follows this memo as Appendix 1, which consists of one clean copy and one copy showing the revisions applied in red. The revisions applied by staff following the second Committee meeting consist of smaller adjustments that did not generate significant disagreement between Committee members. The draft also contains sections with conflicting options and other sections that generated significant disagreement. These disagreements will need to be addressed by the Commission before the Commission can approve language for the draft rule. This memo focuses on the broad policy considerations underlying these disagreements and attempts to present in a concise manner the various perspectives offered by Committee members to the Commission.

The Commission is not bound to adopt any of the language presented in the staff revision or to adopt any of the recommendations offered by Committee members. Rather, the Commission now has the benefit of receiving comments from a wide variety of perspectives and may weigh the information provided to decide what language to adopt for its official draft. The minutes of the second Advisory Committee meeting are presented in Appendix 2; surveys of Committee members concerning areas of significant disagreement in Appendix 3; and all written comments received by the WEC from Committee members in Appendix 4.

Considering the length of the rule, the level of detail within the minutes and comments that follow the revised draft, and the other items on the agenda for the September 7 meeting, the Commission may not be able to address all aspects of the draft rule during this meeting. Staff hope to solicit feedback from each Commissioner during the meeting, invite all Commissioners to edit and comment directly in copies of the draft rule document, and to provide those edits and comments to the full Commission and to staff during the public meeting. Comments received during the public meeting can be used by staff to create a second revised document that may be able to address topics that could not be addressed during the meeting and which could be presented to the Commission during a meeting to resolve any remaining considerations.

Wisconsin Elections Commissioners

Don M. Millis, chair | Marge Bostelmann | Joseph J. Czarnecki | Ann S. Jacobs | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

Discussion:

Considering the time constraints of this meeting, this memo attempts to focus only on, in staff's opinion, the 11 most significant areas of disagreement among Committee members. This discussion therefore does not present an exhaustive report on each line of the revised draft. However, the discussion during the meeting can address any line within the revised draft or any other issue. The issues below follow the order within the draft rule. Staff hope to discuss each issue during the September 7th Commission meeting in order to gain an understanding of each Commissioner's perspective on the issue. Feedback from Commissioners regarding this curated list of 11 issues would likely give staff enough information to revise this draft and present the Commission with a version of the draft rules that the Commission can vote to approve.

1. **4.02(5) & 4.06(2): Should communications media be treated differently from other observers?** Currently, the draft rule allows media observers, which are defined in a relatively limited fashion as "newspapers, periodicals, radio stations, and television stations," to take photographs, video, and audio recordings in all observable locations except for facilities served by SVDs. Some Advisory Committee members disagreed with the limited definition and wanted social and digital media to be included, arguing that significant numbers of people look to these media sources for information. Other members wanted sections referencing media to be removed entirely. Such a removal would have the effect of all observers being bound by the same rules, arguing that all observers either should or should not be allowed to take photographs, videos, and audio recordings in a given location, and that observers should not be divided into subcategories. Advisory Committee members also commented that the freedom of the press is a significant consideration and that proper credentialing of media could effectively regulate the use of images and audio, and remain consistent with historical practices in Wisconsin.
2. **4.02(6): What information should be regarded as confidential?** There was broad agreement among Advisory Committee members that information such as driver's license numbers cannot be viewed by observers, but there was disagreement over what role observers play in ensuring that the documents presented for POI and POR are acceptable documents. Though they did not argue that observers have an ability to see the specific information on the documents, some Advisory Committee members want observers to be able to see what kind of documents are being presented, arguing that the type of document is part of the public aspect of the voting process and therefore observable.
3. **4.03(2) & 4.04(1): Should observers be required to present photo ID and list their address?** Wis. Stat. § 7.41 does not specify that observers need to show photo ID and list their address, and some Advisory Committee members argued that such information should not be required. Others stated that such information allows an observer to be identified and that simply listing a name would not be enough to show who was observing the election.
4. **4.03(5): Should election officials be required to announce to observers that a ballot is being remade and the reason for doing so?** Wis. Stat. § 5.85 states that witnesses should be present for the remaking of absentee ballots. In the context of an election, observers are the only obvious candidates to serve as witnesses to the election inspectors remaking the ballot, other than additional inspectors. There was some disagreement concerning the need for making such an announcement, and the potential burden of making repeated announcements in a context that may already make clear to observers that ballots are being remade.

5. **4.03(7): Should a designated election official be required to establish an observation area behind the EI's at the check-in table?** Some Advisory Committee members felt that it was crucial that observers be placed behind election officials at the check-in table, arguing that placement anywhere else would make it very difficult to see, hear, and observe whether or not all election processes were being followed. Notably, some committee members wanted to ensure that observers could fully observe election officials asking for, and voters providing, proper photo IDs. Other Advisory Committee members felt that the placement of observers should be at the discretion of the designated election official and that having observers behind election officials could in some instances threaten the privacy of voters showing confidential documents to election officials.
6. **4.03(9)&(10): How may observers move between observation areas within the polling place?** Some Advisory Committee members thought that observers should be able to move between all observation areas during the day, so long as they remain three feet or more away from any election process. Other Advisory Committee members thought that the designated election official should have the discretion to establish more limited paths for observers to move between observation areas.
7. **4.03(15): Should observers be able to examine rejected certificate envelopes in a manner established by the designated election official?** Some Advisory Committee members felt that observers should be able to examine rejected certificate envelopes to determine why they were being rejected and whose ballots were being rejected. It is possible for voters to cure some defects until 8 p.m. on Election Day, and observers may be able to inform voters when election officials may only have access to a voter's address. Other Advisory Committee members felt that observers should be able to examine all certificate envelopes, though none specifically stated that observers should be able to handle the documents. This level of access may also result in a burden to election officials, depending on how much oversight would be needed to manage this observation.
8. **4.05: Should the Commission establish minimum numbers for specific locations regarding observers representing the same organization?** Some Advisory Committee members suggested that rules should determine a minimum number regarding the limitation of observers representing the same organization that may be present at different observable locations, while others felt that such limitations should remain within the discretion of the designated election official, and that the minimums within the draft rules may be more than some locations would be able to accommodate.
9. **4.05: When should observable locations be open to observation?** Some Advisory Committee members felt that the setup of the observable location on a day during which voting would occur should be observable, while other members felt that observers being present before voters could start voting would make setting up the location more difficult for the election officials. There was, however, more agreement concerning observers being able to witness the zeroing of any voting equipment. Relatedly, there is a significant disagreement concerning whether or not the return of voted absentee ballots to a municipal clerk's office can be observed outside of hours held for in-person absentee voting. Some members felt that this is a public part of the process and should be observable, while others felt that this would open up a significant burden for clerks and is outside of the scope of Wis. Stat. § 7.41 because ballots are merely being collected and voters are not receiving and voting ballots.

10. **4.05(5): Should recounts be included?** Recounts fall under Ch. 9 of the Wisconsin Statutes and are not cross referenced with the other observable processes. Rather, a separate statute, Wis. Stat. § 9.01(3), provides its own unique definition of observing recounts. Several Advisory Committee members stated that candidates, campaigns, and their counsel should be prioritized during a recount process. The Commission's current guidance does include observing recounts.
11. **4.05(4)(e): Should the two SVD observers be permitted to enter a voter's private residence if voting occurs in that location?** Some Advisory Committee members disagreed with changing the Commission's current guidance on this issue. Current guidance states that:

There may be instances when voting occurs in a resident's room. If space permits, observers are allowed inside the resident's room, and in an observation area from 3 to 8 feet where the voting occurs, as determined by the SVDs. If space constraints prevent accommodating an observation area within that distance, the special voting deputies shall document the actual location of the observation area and the reasons why it could not be located within the 3 to 8 feet distance.

Other Advisory Committee members stated that observers being permitted into a voter's private residence would constitute a significant invasion of privacy for voters who may have no choice but to vote using the SVD process and that there should be a distinction between a voter checking in to receive an absentee ballot and the actual voting of that ballot by the voter.

Conclusion:

Staff is not presenting any recommended motions because staff anticipate needing to make another draft following the Commission's feedback on the revised draft. Staff seek the Commission's guidance on the questions presented above and would use that guidance to make selections between the contradictory parts of the draft and on the topics of the most significant disagreement. After receiving Commission feedback and making another draft, staff hope to present a version of these rules that the Commission can advance in the promulgation process.

Appendix 1

EL 4.01 Right to vote. Nothing in this chapter shall be construed to disrupt, obstruct, or prevent a qualified elector from casting a lawful ballot or registering to vote.

EL 4.02 Definitions. In this chapter:

- (1) “Accessibility reviewer” means an individual authorized by Commission who monitors compliance with s. 5.25(4)(a). Accessibility reviewers are not observers under this chapter.
- (2) “Commission” means the Wisconsin Elections Commission.
- (3) “Chief inspector” means the chief inspector at a polling place, under s.7.30(6)(b), Stats., or the election official that the chief inspector designates to carry out the responsibilities of the chief inspector under this chapter.
- (4) “Clerk” means the municipal clerk, or the executive director of a municipal board of election commissioners, or the official designated by the clerk or director to carry out the election responsibilities under this chapter.
- (5) “Communications media” means newspapers, periodicals, radio stations, and television stations.
- (6) “Confidential information” means information that is not part of the public aspects of the voting process including but not limited to driver’s license numbers, birth dates, social security numbers or any portion thereof, accommodation information on a voter registration form, photo IDs as defined by Wis. Stat. § 5.02(6m), proof of residency documents as defined by Wis. Stat. 6.34(3), information concerning confidential electors, guardianship information, voted ballots, and communications by a voter to a person rendering voting assistance under §§. 6.82, 6.87(5), or 6.875(6)(c)1., Stats. The type of

proof of residence document presented to the election official is not considered confidential information within this subsection.

- (7) “Designated election official” means the chief inspector, if the observable location is a polling place, or the clerk, or any other election official designated by a chief inspector or clerk to carry out the responsibilities of this chapter related to election observers. At a facility served by special voting deputies, designated election official means the special voting deputies.
- (8) “Electioneering” has the meaning given in s. 12.03(4), Stats.
- (9) “Election official” means an individual who is charged with any duties relating to the conduct of an election.
- (10) “Inspector” or “election inspector” means any individual appointed pursuant to s. 7.30, Stats., to conduct an election.
- (11) “Member of the public” means any individual, excluding election officials and any candidate appearing on the ballot at that observable location or a registered write-in candidate for an office voted on at that observable location.
- (12) “Observable location” means a polling place, a municipal clerk’s office that is located in a public building, an alternate absentee ballot site, a meeting location of a board of absentee ballot canvassers, a facility served by special voting deputies, or a central count location.
- (13) “Observe” means to see, hear, or inspect, and does not include physically handling election related materials or any materials provided by the voter.

- (14) “Observer” means any member of the public who has signed in as an observer at the observable location and is present at any observable location to observe an election or the absentee ballot voting process.
- (15) “Organization” means any organization represented by an observer at an observable location under this chapter and shall not be construed to be limited to political parties, candidates, or campaigns.
- (16) “Posting and distribution of election-related material” has the meaning given in s. 12.035, Stats.
- (17) “Public aspects of the voting process” means the election activities that take place at an observation location except for inspection of confidential materials as defined in (6).
- (18) “Representing the same organization” means individuals who are members of the same organization.
- (19) “Representing the same organization” means individuals who were deployed, assigned, trained by, or who identify as representing the same organization.

EL 4.03 Conduct of election officials.

- (1) If there are no alternatives due to physical limitations, the designated election official may reasonably limit the number of observers representing the same organization who are present at any one time. If the designated election official acts under this subsection, all organizations shall be limited in a uniform manner.
- (2) The designated election official shall maintain an observer log and shall require observers to enter the required information under EL 4.04(1) into the observer log and shall ensure that the photo ID presented reasonably resembles the observer and the name entered. The designated election official shall then inform the observers to whom at the observable

location they may direct questions during the day, make available to the observer a summary of the rules governing election observers at the observable location, explain how observers may move between observation areas throughout the day, and then direct the observer to an area of the observable location established by the designated election official as an observation area. Observer logs shall be returned to the municipal clerk after the election activities at an observable location have concluded.

- (3) The designated election official shall provide each observer with a sticker, badge, or other item that identifies an individual as an observer and distinguishes observers from election officials.
- (4) The designated election official shall establish one or, if necessary to meet the requirements of this paragraph, multiple observation areas to enable observers to readily observe all public aspects of the voting process during the election without disrupting the voting process. An observation area shall be not less than 3 feet nor more than 8 feet from each table at which electors announce their names and addresses to be issued voter numbers or at which election officials announce the name of absentee voters, not less than 3 feet nor more than 8 feet from each table at which electors may register to vote, and not less than 3 feet nor more than 8 feet from each table at which election inspectors remake any ballots. The 3-foot distance described in this paragraph shall be applied unless it would interfere with voting activities due to the physical limitations of the observable location.
- (5) Before remaking any ballot, election inspectors shall announce to observers that the ballot is being remade and the reason for doing so.

- (6) An election official shall repeat, once and then at the election official's discretion, a name or address upon request.
- (7) The designated election official shall establish an observation area behind the election inspectors at each table at which electors announce their names and addresses to be issued voter numbers. If any electronic poll lists are used when voters announce their names and addresses, the observation area shall be positioned to allow observers to observe the screen, but observers shall not be permitted to see the screen of an electronic registration form used to register voters.
- (8) The designated election official shall comply with the distance requirements described in sub. (4) and shall have the discretion to define the width of the observation area, but the width determined by the designated election official shall not prevent observers from readily observing all election processes.
- (9) If more than one observation area is established within an observable location, observers shall be able to move between all such areas without restriction but must remain at least 3 feet from any election process.
- (10) If more than one observation area is established within an observable location, observers may move between such areas in a manner established by the designated election official.
- (11) The designated election official shall position the observer area to minimize contact between observers and voters and election officials.
- (12) All observation areas shall be accessible to observers with disabilities and shall include sufficient space for mobility equipment, chairs, or other disability aids brought by the observer.

- (13) The designated election official shall permit observers access to any available chairs within the observable location and with the same access to restrooms available to election officials at the observable location.
- (14) The designated election official of any observable location that is unable to accommodate the observation areas as described in sub. (4) shall record the reason the requirements were not met and shall send a copy of that record to the Commission within 7 days of the election for which the observable location was active.
- (15) Election officials shall permit observers to observe absentee ballot certificate envelopes that have been rejected in a manner established by the designated election official.
- (16) Election officials shall permit observers to observe the poll lists, excluding the confidential portions of the lists maintained under ss. 6.36(4) and 6.79(6), Stats., as long as doing so does not interfere with or distract electors under s. 5.35(5) and does not interfere with the conduct of the election under s. 6.45(1m), Stats. Election officials shall not permit observers to create or transmit a photocopy, photograph, or video of the poll lists on election-day.
- (17) Election officials shall not permit observers to handle an original version of any official election document.
- (18) Election officials shall not permit observers to observe any confidential information.
- (19) The designated election official shall:
- a) Warn an observer to cease offending conduct when the observer violates a provision of this chapter or any applicable election statute.

- b) Order an observer to depart from the observable location when an observer does not cease offending conduct following a warning under sub. (a). If the designated election official has been designated by a Chief Inspector or municipal clerk, the designated election official shall notify the Chief Inspector or municipal clerk, who shall proceed under this subdivision. If the offending observer declines or otherwise fails to comply with the designated election official's order to depart, the official may summon local law enforcement to remove the offending observer. The designated election official shall provide a written order to the observer which includes the reason for the order and the signatures of the designated election official as well as another election official representing the opposite political party, if available. The Chief Inspector, municipal clerk, or both special voting deputies shall have sole authority to order the removal of an observer, but the other election official may note concurrence or disagreement with the decision on the order.
- (20) If an observer is ordered to leave an observable location, the incident shall be recorded and the designated election official shall, within seven days of the incident, provide to the Commission a copy of the order and any other documentation of the incident. Commission staff shall submit a summary to the Commission of all reported incidents in which observers were ordered to leave an observable location pursuant to this chapter. The designated official may use a copy of an inspectors' statement or other incident log to comply with this subsection.

EL 4.04 Conduct of observers.

- (1) Any member of the public intending to exercise the right to observe an election under s. 7.41, Stats., shall notify the designated election official of that intent upon entering the observable location. An observer shall sign the election observer log acknowledging that the observer understands the applicable rules and will abide by them. An observer shall present photo identification Stats., to the designated election official and shall legibly print the observer's full name, street address and municipality, and the name of the organization the observer represents, if any on the observer log. The observer log shall not be available for public inspection at the polling place but shall be made available after Election Day through a public records request of the clerk or board of election commissioners.
- (2) Observers shall comply with the designated election official's lawful commands or shall be subject to removal from the polling place following a warning under EL 4.02(17)(a).
- (3) All observer questions shall be directed to the designated election official or other election officials as determined by the designated election official and communicated to observers when they sign the observer log. All questions shall be answered by the designated election official in a timely manner.
- (4) Any challenges brought by a qualified observer against a voter for cause shall be directed to an election official in accordance with ss. 6.925, 6.93, 6.935 Stats., and ch. EL 9 Wis. Admin. Code.
- (5) No observer may engage in any loud, boisterous, or otherwise disruptive behavior, including but not limited to any abuse of the ability to create or transmit photographs, videos, or audio recordings as allowed by this chapter, that, in the discretion of the

designated election official, threatens the orderly conduct of the election or interferes with voting.

- (6) Observers shall keep conversation to a minimum and shall try to conduct whatever conversation is necessary at a low enough volume to minimize distraction to electors and election officials.
- (7) No observer may engage in electioneering as defined in s. 12.03, Stats., or the posting or distribution of election-related material as defined in s. 12.035, Stats.
- (8) No observer may display the name or likeness of, or text related to, a candidate, party, or referendum group appearing on the ballot, or display text which describes, states, or implies that the observer is a governmental official.
- (9) No observer may engage in any conversation concerning a candidate, party, or question appearing on the ballot.
- (10) No observer may use a communication device inside an observer area to make an audio or video communication. Text messaging, email, and other non-audible uses of such a device are permissible except as otherwise prohibited by this chapter.
- (11) No observer may initiate a conversation with a voter. If a voter initiates a conversation with an observer inside an observable location, except as allowed by subsection (13), the observer may refer the voter to an election official for any election related questions, and briefly explain to the voter that the observer is observing the election and cannot communicate with voters. A brief wave or greeting to an individual known to the observer shall not constitute a violation of this section.
- (12) Observers may communicate as needed with the designated election official and any other election officials at the discretion of the designated election official.

- (13) Nothing in this chapter shall be construed to prevent an observer from assisting an elector in accordance with ss. 6.82, 6.87(5), or 6.875(6)(c)1., Stats., provided that the elector requests the observer's assistance.

EL 4.05 Location specific requirements.

(1) POLLING PLACE.

- a. Observers shall be allowed to observe beginning at 7 a.m. or whenever machines are zeroed out on Election Day, whichever is earlier, and ending at 8 p.m. or when the last voter who was in line to vote at or before 8 p.m. has finished voting. After 8 p.m., observers may remain at the polling place to observe canvassing under Wisconsin's open meetings law.
- b. Observers shall be allowed to observe as soon as the election inspectors begin setting up the polling place on election day, including the zeroing of the voting machines. After 8 p.m., or when the last voter who was in line to vote by 8 p.m. has finished voting, observers may remain at the polling place to observe canvassing under Wisconsin's open meetings law.
- c. Observers representing the same organization shall not be limited to less than one per ward served by the polling place.
- d. Observers shall not create or transmit photographs, videos, or audio recordings of the interior of the observable location until the public canvassing meeting has begun.

(2) MUNICIPAL CLERK OFFICE OR ALTERNATE SITE.

- a. Observers shall be permitted to observe the in-person issuing and voting of absentee ballots under s. 6.86(1)(b), Stats., as well as the return of voted absentee

ballots during the hours such activities may occur at a municipal clerk's office whose office is located in a public building, or at an alternate absentee ballot site.

- b. Observers shall be permitted to observe the in-person issuing and voting of absentee ballots under s. 6.86(1)(b), Stats, during the hours such activities may occur at a municipal clerk's office whose office is located in a public building, or at an alternate absentee ballot site. The return of voted by-mail absentee ballots to a municipal clerk's office or alternate site is not covered by this chapter unless it occurs in the same location and during the same hours as the issuing and voting of absentee ballots.
- c. Observers representing the same organization shall not be limited to less than two observers per municipal clerk's office located in a public building or alternate site.
- d. Observers shall be permitted to observe the preparations for the transfer of voted absentee ballots to a polling place, central count location, or board of absentee ballot canvassers.
- e. Observers shall be permitted to observe at all alternate absentee ballot sites established s. 6.855, Stats.
- f. Observers shall not create or transmit photographs, videos, or audio recordings of the observable location.

(3) BOARD OF ABSENTEE BALLOT CANVASSERS.

- a. Observers shall be permitted to observe during all hours when a board of absentee ballot canvassers is meeting to canvass absentee ballots, but observation shall not start later than the zeroing of election equipment.

- b. Observers shall be permitted to observe the setup of the absentee ballot canvassing location, including the zeroing of election equipment, on election day and during all hours when a board of absentee ballot canvassers is meeting to canvass absentee ballots.
- c. Observers representing the same organization shall not be limited to less than one observer per processing table and tabulator.
- d. Observers shall not create or transmit photographs, videos, or audio recordings of the observable location.
- e. Observers may create or transmit photographs, videos, or audio recordings of the observable location.

(4) ABSENTEE VOTING IN RESIDENTIAL CARE FACILITIES AND RETIREMENT HOMES.

- a. Only one observer from each of the 2 political parties whose candidate for governor or president received the greatest number of votes in the municipality, in the last general election, may accompany the special voting deputies to absentee voting locations described in s. 6.875, Stats. Each party wishing to have an observer present shall submit the name of the observer to the clerk or board of election commissioners no later than the close of business on the last business day prior to the visit to the facility.
- b. Observers shall be permitted to accompany the special voting deputies during the hours when the deputies will be administering voting in accordance with s. 6.875, Stats.
- c. Observers shall comply with any requirements imposed on visitors by a facility served by special voting deputies.

- d. Observers shall be permitted to observe the process of absentee ballot distribution in the common areas of the home or facility. Observers shall not be permitted to observe a voter or the special voting deputies providing assistance to a voter, filling out a ballot or expressing which candidates or referenda the voter selects.
- e. If voting occurs outside of the common areas of a facility served by special voting deputies, observers shall not be permitted to enter a voter's private room, however, the observers shall be permitted to observe such voting from a common area in accordance with sub. (4)(d).
- f. Observers shall not create or transmit photographs, videos, or audio recordings of the observable location.

(5) RECOUNT.

- a. Observers shall be permitted to observe during all hours when a recount is occurring.
- b. Observers representing the same organization shall not be limited to less than one observer per processing table and tabulator.
- c. Observers may create or transmit photographs, videos, or audio recordings of the observable location.

(6) CENTRAL COUNT.

- a. Observers shall be permitted to observe all counting of ballots occurring at a central counting location.
- b. Observers representing the same organization shall not be limited to less than one observer per processing table and tabulator.

- c. Observers shall not create or transmit photographs, videos, or audio recordings of the observable location.
- d. Observers may create or transmit photographs, videos, or audio recordings of the observable location.

4.06 Media observers and post-observation practices.

- (1) After all voting activity has concluded within the observable location, candidates may be present and the prohibition of creating or transmitting photographs, videos, and audio recordings does not apply unless it is disruptive or interferes with the administration of the election.
- (2) Observers from communications media organizations shall identify themselves and the organization they represent to the designated election official upon arriving at the observable location and shall sign the observer log as provided by section EL 4.04(1). Communications media observers shall be permitted to use video and still cameras at the discretion of the designated election official provided the cameras are not used in a manner that allows the observer to see or record any confidential information and provided the cameras do not disrupt or interfere with voting or disrupt the orderly conduct of the election. The Commission may also use video and still cameras at polling places, municipal clerks' offices, central counting locations, or absentee ballot canvass locations, or authorize others to do so for purposes authorized by the Commission.

Notes:

- Election equipment testing, post-election audits, and county canvasses are all public meetings that may be attended under Wisconsin's open meeting laws, but they are very likely not covered by Wis. Stat. § 7.41.
- The Advisory Committee has asked for the Commission to produce information and training on these rules that can be provided to observers, possibly broken down by observable location. Information would include challenging a voter for cause, the rights of individuals with disabilities to receive assistance, the process to follow if an observer believes that election activities are not being administered properly, and what observers do and do not have access to on Election Day.
- The Advisory Committee had comments about interactions between observers and voters beyond the 100ft zone around the entrance to an observable location, but it is very unlikely that the Commission would have any authority to regulate conduct beyond this zone under Wis. Stat. § 7.41.

EL 4.01 Right to vote. Nothing in this chapter shall be construed to disrupt, ~~obstruct~~obstruct, or prevent a qualified elector from casting a lawful ballot or registering to vote.

EL 4.01-02 Definitions. In this chapter:

- (1) "Accessibility reviewer" means an individual authorized by Commission who monitors compliance with ~~§s.~~ 5.25(4)(a). Accessibility reviewers are not observers under this chapter.
- (2) "Commission" means the Wisconsin Elections Commission.
- (3) "Chief inspector" means the chief inspector at a polling place, under ~~§s.~~ 7.30(6)(b), Stats., or the election official that the chief inspector designates to carry out the responsibilities of the chief inspector under this chapter.
- (4) "Clerk" means the municipal clerk, or the executive director of a municipal board of election commissioners, or the official designated by the clerk or director to carry out the election responsibilities under this chapter.

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- (5) “Communications media” means newspapers, periodicals, radio stations, and television stations.
- (6) “Confidential information” means information that is not part of the public aspects of the voting process ~~and includes including but not limited to~~ driver’s license numbers, birth dates, social security numbers ~~or any portion thereof~~, accommodation information ~~on a voter registration form~~, photo IDs ~~as defined by Wis. Stat. § 5.02(6m)~~, proof of residency documents ~~as defined by Wis. Stat. § 6.34(3)~~, information concerning confidential electors, guardianship information, voted ballots, and communications by a voter to a person rendering voting assistance under ~~ss§§~~ 6.82, 6.87(5), or 6.875(6)(c)1., Stats. The type of proof of residence document presented to the election official is not considered confidential information within this subsection.
- (7) “Designated election official” means the chief inspector, if the observable location is a polling place, or the clerk, or any other election official ~~designed-designated~~ by a chief inspector or clerk to carry out the responsibilities of this chapter related to election observers. At a facility served by special voting deputies, designated election official means the special voting deputies.
- (8) “Electioneering” has the meaning given in ~~§~~ 12.03(4), Stats.
- (9) “Election official” means an individual who is charged with any duties relating to the conduct of an election.
- (10) “Inspector” or “election inspector” means any individual appointed pursuant to ~~§~~ 7.30, Stats., to conduct an election.
- (11) “Member of the public” means any individual, excluding ~~election officials and~~ any candidate appearing on the ballot at that ~~polling place~~observable location or a

registered write-in candidate for an office voted on at that ~~polling place or other~~
observable location.

- (12) “Observable location” means a polling place, a municipal clerk’s office that is located in a public building, an alternate absentee ballot site, a meeting location of a board of absentee ballot canvassers, a facility served by special voting deputies, or a central count location.¹
- (13) “Observe” means to see, hear, or ~~read~~inspect, and does not include physically handling election related materials or any materials provided by the voter.
- (14) “Observer” means any member of the public who has signed in as an observer at the observable location and is present at any observable location to observe an election or the absentee ballot voting process.
- (15) “Organization” means any organization represented by an observer at an observable location under this chapter and shall not be construed to be limited to political parties, candidates, or campaigns.
- (16) “Posting and distribution of election-related material” has the meaning given in ~~§~~ 12.035, Stats.
- (17) “Public aspects of the voting process” means the election activities that take place at an observation location except for inspection of confidential materials ~~those that are confidential as defined in (6)~~.
- (18) “Representing the same organization” means individuals who are members of the same organization.

¹Central Count is a possibility for counting all ballots of a municipality under Wis. Stat. § 5.86, which does not mention observers or Wis. Stat. § 7.41. This is not currently in use.

- (19) “Representing the same organization” means individuals who were deployed, assigned, trained by, or who identify as representing the same organization.

~~EL 4.02 Right to vote. Nothing in this chapter shall be constructed to obstruct or prevent a qualified elector from casting a lawful ballot.~~

EL 4.03 Conduct of election officials.

- (1) If there are no alternatives due to physical limitations, the designated election official may reasonably limit the number of observers representing the same organization who are present at any one time. If the designated election official acts under this subsection, all organizations shall be limited in a uniform manner.
- (2) The designated election official shall maintain an observer log and shall require observers to enter the required information under EL 4.04(1) into the observer log and shall ensure that the photo ID presented reasonably resembles the observer and conforms to the ~~information-name~~ entered. The designated election official shall then inform the observers ~~how they may ask to whom at the observable location they may direct~~ questions during the day, make available to the observer a summary of the rules governing election observers at the observable location, explain how observers may move between observation areas throughout the day, and then direct the observer to an area of the observable location established by the designated election official as an observation area. Observer logs shall be returned to the municipal clerk after the election activities at an observable location have concluded.
- (3) The designated election official shall provide each observer with a sticker, badge, or other item that identifies an individual as an observer and distinguishes observers from election officials.

(4) The designated election official shall establish one or, if necessary to meet the requirements of this paragraph, more-multiple observation areas to enable observers to readily observe all public aspects of the voting process during the election without disrupting the voting process. An observation area shall be not less than 3 feet nor more than 8 feet from each table at which electors announce their names and addresses to be issued voter numbers or at which election officials announce the name of absentee voters, not less than 3 feet nor more than 8 feet from each table at which electors may register to vote, and not less than 3 feet nor more than 8 feet from each table at which election inspectors remake any ballots. The 3-foot distance described in this paragraph shall be preferred~~applied~~ unless it would interfere with voting activities due to the physical limitations of the observable location.

(5) Before remaking any ballot, election inspectors shall announce to observers that the ballot is being remade and the reason for doing so.

~~(4)(6) If observers are unable to hear an elector or election official stating a name or address, a~~ An election official shall repeat, once and then at the election official's discretion, the a name or address upon request. ~~The 3-foot distance described in this paragraph shall be preferred unless it would interfere with voting activities due to the physical limitations of the observable location.~~

~~(5)(7)~~ (6) The designated election official shall establish an observation area behind the election inspectors at each table at which electors announce their names and addresses to be issued voter numbers. If any electronic poll lists are used when voters announce their names and addresses, the observation area shall be positioned to allow observers to

observe the screen, but observers shall not be permitted to see the screen of an electronic ~~poll list registration form~~ used to register voters.

~~(6)~~(8) The designated election official shall comply with the distance requirements described in sub. (4) and shall have the discretion to define the width of the observation area, but the width determined by the designated election official shall not prevent observers from readily observing all election processes ~~if a greater width could have been chosen.~~

~~(7)~~(9) If more than one observation area is established within an observable location, observers shall be able to move between all such areas without restriction but must remain at least 3 feet from any election process.

~~(8)~~(10) If more than one observation area is established within an observable location, observers may move between such areas in a manner established by the designated election official.

~~(9)~~(11) The designated election official shall position the observer area to minimize contact between observers and voters and election officials.

~~(10)~~(12) All observation areas shall be accessible to observers with disabilities and shall include sufficient space for mobility equipment, chairs, or other disability aids brought by the observer.

~~(11)~~(13) The designated election official shall permit observers access to any ~~unused~~ available chairs ~~available~~ within the observable location and with ~~unrestricted the same~~ access to restrooms available to election officials if available at the observable location.

~~(12)~~(14) The designated election official of any observable location that is unable to accommodate the observation areas as described in sub. (4) shall record the reason the

requirements were not met and shall send a copy of that record to the Commission within 7 days of the election for which the observable location was active.

~~(13)~~(15) Election officials shall permit observers to observe absentee ballot certificate envelopes that have been rejected in a manner established by the designated election official.

~~(14)~~(16) Election officials shall permit observers to observe the poll lists, excluding the confidential portions of the lists maintained under ~~§§~~ 6.36(4) and 6.79(6), Stats., as long as doing so does not interfere with or distract electors under ~~§~~ 5.35(5) and does not interfere with the conduct of the election under §. 6.45(1m), Stats. Election officials shall not permit observers to create or transmit a photocopy, photograph, or video of the poll lists on election-day.

~~(15)~~(17) Election officials shall not permit observers to handle an original version of any official election document.

~~(16)~~(18) Election officials shall not permit observers to observe any confidential information.

~~(17)~~(19) The designated election official shall:

- a) Warn an observer to cease offending conduct when the observer violates a provision of this chapter or any applicable election statute.
- b) Order an observer to depart from the observable location when an observer does not cease offending conduct following a warning under sub. (a). If the designated election official has been designated by a Chief Inspector or municipal clerk, the designated election official shall notify the Chief Inspector or municipal clerk, who shall proceed under this subdivision. If the offending observer declines or

otherwise fails to comply with the designated election official's order to depart, the official may summon local law enforcement to remove the offending observer. The designated election official shall provide a written order to the observer which includes the reason for the order and the signatures of the designated election official as well as another election official representing the opposite political party, if available. The Chief Inspector, municipal clerk, or both special voting deputies shall have sole authority to order the removal of an observer, but the other election official may note concurrence or disagreement with the decision on the order.

(18)(20) If an observer is ordered to leave an observable location ~~by a designated election official~~, the incident shall be recorded and the designated election official shall, within seven days of the incident, provide to the Commission a copy of the order and any other documentation of the incident. Commission staff shall submit a summary to the Commission of all reported incidents in which observers were ordered to leave an observable location pursuant to this chapter. The designated official may use a copy of an inspectors' statement or other incident log to comply with this subsection.

EL 4.04 Conduct of observers.

- (1) Any member of the public intending to exercise the right to observe an election under s. 7.41, Stats., shall notify the designated election official of that intent upon entering the observable location. An observer shall sign the election observer log acknowledging that the observer understands the applicable rules and will abide by them. An observer shall present photo identification, ~~as defined by s. 5.02(6m), Stats.~~ to the designated election official and shall legibly print the observer's full name, street address and municipality,

and the name of the organization the observer represents, if any, ~~and the time range spent observing~~ on the observer log. The observer log shall not be available for public inspection at the polling place but shall be made available after Election Day through a public records request of the clerk or board of election commissioners.

- (2) Observers shall comply with the designated election official's lawful commands or shall be subject to removal from the polling place following a warning under EL 4.02(17)(a).
- (3) All observer questions shall be directed to the designated election official or other election officials as determined by the designated election official and communicated to observers when they sign the observer log. All questions shall be answered by the designated election official in a timely manner.
- (4) Any challenges brought by a qualified observer against a voter for cause shall be directed to an election official in accordance with §§ 6.925, 6.93, 6.935 Stats., and ch. EL 9 Wis. Admin. Code.
- (5) No observer may engage in any loud, boisterous, or otherwise disruptive behavior, including but not limited to any abuse of the ability to create or transmit photographs, videos, or audio recordings as allowed by this chapter, that, in the discretion of the designated election official, threatens the orderly conduct of the election or interferes with voting.
- (6) Observers shall keep conversation to a minimum and shall try to conduct whatever conversation is necessary at a low enough volume to minimize distraction to electors and election officials.
- (7) No observer may engage in electioneering as defined in § 12.03, Stats., or the posting or distribution of election-related material as defined in § 12.035, Stats.

- (8) No observer may display the name or likeness of, or text related to, a candidate, party, or referendum group appearing on the ballot, or display text which describes, states, or implies that the observer is a governmental official.
- (9) No observer may engage in any conversation concerning a candidate, party, or question appearing on the ballot.
- (10) No observer may use a communication device inside an observer area to make an audio or video communication. Text messaging, email, and other non-audible uses of such a device are permissible except as otherwise prohibited by this chapter.
- (11) No observer may initiate a conversation with a voter. If a voter initiates a conversation with an observer inside an observable location, except as allowed by subsection (13), the observer ~~shall~~may refer the voter to an election official for any election related questions, and briefly explain to the voter that the observer is observing the election and cannot communicate with voters. A brief wave or greeting to an individual known to the observer shall not constitute a violation of this section.
- (12) Observers may communicate as needed with the designated election official and any other election officials at the discretion of the designated election official.
- (13) Nothing in this chapter shall be construed to prevent an observer from assisting an elector in accordance with ~~§§~~ 6.82, 6.87(5), or 6.875(6)(c)1., Stats., provided that the elector requests the observer's assistance.

EL 4.05 Location specific requirements.

(1) POLLING PLACE.

- a. Observers shall be allowed to observe beginning at 7 a.m. or whenever machines are zeroed out on Election Day, whichever is earlier, ~~on election day~~ and ending at

8 p.m. or when the last voter who was in line to vote at or before 8 p.m. has finished voting. After 8 p.m., observers may remain at the polling place to observe canvassing under Wisconsin's open meetings law.

- b. Observers shall be allowed to observe as soon as the election inspectors begin setting up the polling place, including the zeroing of the voting machines. After 8 p.m., or when the last voter who was in line to vote by 8 p.m. has finished voting, observers may remain at the polling place to observe canvassing under Wisconsin's open meetings law.
- c. Observers representing the same organization shall not be limited to less than one per ward served by the polling place.
- d. Observers shall not create or transmit photographs, videos, or audio recordings of the interior of the observable location until the public canvassing meeting has begun.

(2) MUNICIPAL CLERK OFFICE OR ALTERNATE SITE.

- a. Observers shall be permitted to observe the in-person issuing and voting of absentee ballots under § 6.86(1)(b), Stats, as well as the return of voted absentee ballots during the hours such activities may occur at a municipal clerk's office whose office is located in a public building, or at an alternate absentee ballot site.
- b. Observers shall be permitted to observe the in-person issuing and voting of absentee ballots under § 6.86(1)(b), Stats, during the hours such activities may occur at a municipal clerk's office whose office is located in a public building, or at an alternate absentee ballot site. The return of voted by-mail absentee ballots to a municipal clerk's office or alternate site is not covered by this chapter unless it

occurs in the same location and during the same hours as the issuing and voting of absentee ballots.

- c. Observers representing the same organization shall not be limited to less than two observers per municipal clerk's office located in a public building or alternate site.
- d. Observers shall be permitted to observe the preparations for the transfer of voted absentee ballots to a polling place, central count location, or board of absentee ballot canvassers.
- e. Observers shall be permitted to observe at all alternate absentee ballot sites ~~regardless of such site's indoor, outdoor, or mobile location established~~ §s. 6.855, Stats.
- f. Observers shall not create or transmit photographs, videos, or audio recordings of the observable location.

(3) BOARD OF ABSENTEE BALLOT CANVASSERS.

a. Observers shall be permitted to observe during all hours when a board of absentee ballot canvassers is meeting to canvass absentee ballots, but observation shall not start later than the zeroing of election equipment.

a.b. Observers shall be permitted to observe the setup of the absentee ballot canvassing location, including the zeroing of election equipment, on election day and during all hours when a board of absentee ballot canvassers is meeting to canvass absentee ballots.

~~b.a. Observers shall be permitted to observe during all hours when a board of absentee ballot canvassers is meeting to canvass absentee ballots, but observation shall not start later than the zeroing of election equipment.~~

- c. Observers representing the same organization shall not be limited to less than one observer per processing table and tabulator.
- d. Observers shall not create or transmit photographs, videos, or audio recordings of the observable location.
- e. Observers may create or transmit photographs, videos, or audio recordings of the observable location.

(4) ABSENTEE VOTING IN RESIDENTIAL CARE FACILITIES AND RETIREMENT HOMES.

- a. Only one observer from each of the 2 political parties whose candidate for governor or president received the greatest number of votes in the municipality, in the last general election, may accompany the special voting deputies to absentee voting locations described in ~~§~~ 6.875, Stats. Each party wishing to have an observer present shall submit the name of the observer to the clerk or board of election commissioners no later than the close of business on the last business day prior to the visit to the facility.
- b. Observers shall be permitted to accompany the special voting deputies during the hours when the deputies will be administering voting in accordance with ~~§~~ 6.875, Stats.
- c. Observers shall comply with any requirements imposed on visitors by a facility served by special voting deputies.
- d. Observers shall be permitted to observe the process of absentee ballot distribution in the common areas of the home or facility. Observers shall not be permitted to observe a voter or the special voting deputies providing assistance to a voter, filling out a ballot or expressing which candidates or referenda the voter selects.

- e. If voting occurs outside of the common areas of a facility served by special voting deputies, observers shall not be permitted to enter a voter's private room, however, the observers shall be permitted to observe such voting from a common area in accordance with sub. (4)(d).
- f. Observers shall not create or transmit photographs, videos, or audio recordings of the observable location.

(5) RECOUNT.²

- a. Observers shall be permitted to observe during all hours when a recount is occurring.
- b. Observers representing the same organization shall not be limited to less than one observer per processing table and tabulator.
- c. Observers may create or transmit photographs, videos, or audio recordings of the observable location.

(6) CENTRAL COUNT.³

- a. Observers shall be permitted to observe all counting of ballots occurring at a central counting location.
- b. Observers representing the same organization shall not be limited to less than one observer per processing table and tabulator.
- c. Observers shall not create or transmit photographs, videos, or audio recordings of the observable location.

² Wis. Stat. § 9.01(3) provides only that, "the petitioner, all opposing candidates and interested persons shall be entitled to be present in person and by counsel to observe the proceedings."²

³ Central Count is a possibility for counting all ballots of a municipality under Wis. Stat. § 5.86, which does not mention observers or Wis. Stat. § 7.41. This is not currently used in WI.

- d. Observers may create or transmit photographs, videos, or audio recordings of the observable location.

4.06 Media observers and post-observation practices.

- (1) After all voting activity has concluded within the observable location, candidates may be present and the prohibition of creating or transmitting photographs, videos, and audio recordings does not apply unless it is disruptive or interferes with the administration of the election.
- (2) Observers from communications media organizations shall identify themselves and the organization they represent to the designated election official upon arriving at the observable location and shall sign the observer log as provided by section EL 4.04(1). Communications media observers shall be permitted to use video and still cameras at the discretion of the designated election official provided the cameras are not used in a manner that allows the observer to see or record any confidential information and provided the cameras do not disrupt or interfere with voting or disrupt the orderly conduct of the election. The Commission may also use video and still cameras at polling places, municipal clerks' offices, central counting locations, or absentee ballot canvass locations, or authorize others to do so for purposes authorized by the Commission.

Appendix 2



Wisconsin Elections Commission

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Wisconsin Elections Commission

Second Advisory Committee Meeting Concerning Admin. Rule Statement of Scope SS 089-22

201 W. Washington Avenue, Second Floor

Madison, Wisconsin

9:00 a.m. June 29, 2023

Advisory Committee Meeting Minutes**Members present:**

Karen Huffman – Poll worker selected by the Democratic Party
 Robert Newby – Election observer selected by the Democratic Party
 David Kronig – Democratic Party representative
 Ken Brown – Libertarian Party representative (alternate for Jim Sewell)
 Lana Lee Helm – Poll worker selected by the Republican Party
 Debbie Morin – Election observer selected by the Republican Party
 Ryan Retza – Republican Party representative
 Kristin Hansen – Common Cause Wisconsin representative (alternate for Erin Grunze)
 Yolanda Adams – Forward Latino representative
 Eileen Newcomer – League of Women Voters representative
 Anita Johnson – Souls to the Polls representative
 Julie Seegers – Wisconsin Election Integrity Network representative
 Caroline Fochs – Clerk selected by the Wisconsin Municipal Clerks Association
 Diane Coenen – Clerk selected by the Wisconsin Municipal Clerks Association
 Toya Harrell – Clerk selected by the Wisconsin Municipal Clerks Association
 Katie Reinbold – Clerk selected by the Wisconsin Municipal Clerks Association
 Claire Woodall-Vogg - Executive Director, Milwaukee Election Commission representative
 Bill Barth – Wisconsin Newspaper Association representative
 Sean Dwyer – Wisconsin Broadcasters Association representative

Members absent:

Mark Gabriel – Constitution Party representative
 Nikki Elsen – Clerk selected by the Democratic Party
 Jim Sewell – Libertarian Party representative
 Michelle Nelson – Clerk selected by the Republican Party
 Erin Grunze – Common Cause Wisconsin representative
 Barbara Beckert – Disability Rights Wisconsin representative
 Ken Dragotta – True the Vote representative

Staff present: Brandon Hunzicker, Caitlin Jeidy, Matthew Kabbash, Riley Willman

Wisconsin Elections Commissioners

Don M. Millis, chair | Marge Bostelmann | Joseph J. Czarnecki | Ann S. Jacobs | Robert Spindell | Mark L. Thomsen

A. Call to Order

The meeting started after the intended start time. There was a technical issue with videos displaying for attendees.

B. Staff Report of Meeting Notice

The meeting was noticed under Wisconsin's Open Meeting notice laws. It was published for media, and on the Wisconsin Elections Commission (WEC) website. The publishing also included the materials for today's meeting.

C. Staff Introduction

Attorney Brandon Hunzicker introduced himself and noted that WEC staff Caitlin Jeidy, Matthew Kabbash, and Riley Willman were also on the call. Attorney Hunzicker gave an overview of the function and history of the Advisory Committee, a brief overview of the rule promulgation process, and how the information provided by the Committee will be considered by the Commission in the draft rule language.

D. Introduction of New Committee Members

Sean Dwyer – News Director at WXOW in La Crosse, representative of the Wisconsin Broadcasters Association (WBA). News Director at WXOW for 25 years covering local and statewide elections. Hopes to see greater consistency at polling places, and treatment of media for covering elections.

Bill Barth – Retired editor of Beloit Daily News, representative of the Wisconsin Newspapers Association. Primary experience in Rock, Green, and Walworth counties covering elections. Shared concerns in election administration being consistent county by county.

Claire Woodall-Vogg – Executive Director of the City of Milwaukee Election Commission. Representing city with the largest central count operations in the state. Hopes to help establish consistency and clarity in rules and how they apply across the county and state.

Katie Reinbold – Clerk, Town of Algoma. Representative of the Wisconsin Municipal Clerks Association. Hopes to get a different perspective on elections observer. Seeks clarity and flexibility in rules.

Ken Brown – Libertarian Party representative, attending in-place of Jim Sewell.

Kristin Hansen – Board member of Common Cause, attending in-place of Erin Grunze.

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E. Discussion of Draft Observer Rules

Notes by Attorney Hunzicker:

- Election equipment testing, post-election audits, and county canvasses are all public meetings that may be attended under Wisconsin’s open meeting laws, but they are very likely not covered by Wis. Stat. § 7.41.
- The Advisory Committee has asked for the Commission to produce information and training on these rules that can be provided to observers, possibly broken down by observable location. Information would include challenging a voter for cause, the rights of individuals with disabilities to receive assistance, the process to follow if an observer believes that election activities are not being administered properly, and what observers do and do not have access to on Election Day.
 - The Advisory Committee had comments about interactions between observers and voters beyond the 100ft zone around the entrance to an observable location, but it is very unlikely that the Commission would have any authority to regulate conduct beyond this zone under Wis. Stat. § 7.41.

Attorney Hunzicker provided an explanation on how Committee members should utilize the hand-raising function to provide feedback on rule text language. For a handful of these definitions as written, as modified, as an alternate version.

Debbie Morin: Wis. Stat. § 7.41: No specific type of acknowledgement for media as a separate type of elections observer. Are we addressing them separately?

Attorney Hunzicker: Comment to be better addressed once we get to media section.

Debbie Morin: Previous Government Accountability Board (GAB) rule addressed disability and accessibility observers, also was noted in “Notes” above.

Draft EL 4.01 Definitions

EL 4.01(1) “Accessibility reviewer”

Yolanda Adams: Raised hand in agreement that definition read by Attorney Hunzicker is OK.

Debbie Morin: Since this was covered in the last rule, is there a way for voters and observers to identify and differentiate who a regular election observer is versus accessibility reviewer?

Diane Coenen: Accessibility reviewer was wearing credentials, checked in/out with chief, also noted on incident log. Need some type of badge and check-in process.

Eileen Newcomer: Definition is considerably different than previous rule. LWV appreciates distinction between the elections observer and accessibility reviewer. In general, we support this.

Claire Woodall-Vogg: Last fall there was a lot of confusion/concern from other observers (Department of Justice (DOJ) ones, as well). Important to define accessibility reviewer, and ADD “government agencies representing”, plus other exceptions to the “normal” observer.

Julie Seegers: Agrees with CWV, lots of confusion with the presence of the DOJ observers being asked with how they were affiliated, and their names. ADD separate line on “government agencies representing”

EL 4.01(2) “Commission”

Attorney Hunzicker confirmed no one wanted to speak.

EL 4.01(3) “Chief Inspector”

Attorney Hunzicker confirmed no one wanted to speak.

EL 4.01(4) “Clerk”

David Kronig: Stylistic suggestion: In (3) and (4) “or the official designated”... strikes as odd. Terms are defined in statute, might read better to stick with statutory definition. Provided suggestion for subsection.

EL 4.01(5) “Communications media”

Sean Dwyer: Communications media – important to make mention of social media reporters? There are a number in western Wisconsin that are media but not associated with TV, news, radio station. ADD “Social media reporting”?

Ryan Retza: May be beneficial to reference statutory definitions of these media outlets. Cleaner

Bill Barth: Thought echoes Sean Dwyer – This is referencing legacy media. Digital journalism and social media. No proper statutory language to provide, but this is a rather narrow definitions of communications media. Should be broadened to include the modern digital journalism landscape.

Yolanda Adams: How to capture language to make sure we have legitimate credentials and members of the media at the table.

Kristin Hansen: Concern with people who are self-appointed journalists, do not have proper training to do this as a media representative. Suggests credentialing, with the fall back that if a person is unable to show that they’re a member of a professional news organization (digital, print, radio) the fall back is then that you may observe. Greater scrutiny needed.

Eileen Newcomer: (introduced herself, arrived late to the meeting) Generally agree with Yolanda and Kristin, concerned about possible loopholes in definition.

Ryan Retza: Agree with Kristin and Yolanda, display identification and credentials issued by the outlet.

Sean Dwyer: Explained process followed by associated media outlet. Numerous examples of people at debates and public forums claiming to be reporters. Disruption is their goal.

David Kronig: Agreement with Yolanda, Kristin, and Eileen's concerns on media loophole. Fine with more restricted version. Is there a federal definition of "media" we can reference?

Ken Brown: Object to idea that media is there to intimidate. Freedom of the press not defined by any type of credentials. Social media inclusion is an appropriate thing to do. Interacting with voters inside the polling places shall not be permitted. In-line, or exit polling situations, only.

Bill Barth: Agree in large measure with Mr. Brown. Broader description to include modern media, etc., How to prevent people from claiming they're credentialed reporters. Focus should be on conduct versus credentialing. Media landscape is different; however conduct is not different.

Julie Seegers: Biggest concern is when media comes into these places, questions posed by them may be misconstrued as electioneering. Media came in during machine testing, Ms. Seegers felt harassed, especially the amount of time that was spent zoning in/out on particular people.

Robert Newby: Likes focus on conduct.

Karen Huffman: Important to say who the person represents on that day. Establish in writing who they are representing that day.

Eileen Newcomer: Agree with Kristin and Yolanda, ensure intent is what is meant here is carried through at the polling place.

EL 4.01(6) "Confidential Information"

David Kronig: "INCLUDES" SHOULD BE "INCLUDING BUT NOT LIMITED TO".

EL 3.20 (2) – List of data not permitted to be retained in voter registration drives. Include DOT ID #s for non-driving photo IDs, also include "SSN or any portion thereof."

Ryan Retza: Accommodation Information: Is that typically on file?

Brandon Hunzicker: It can be, it's specific to election day registration, a voter can list accommodation needs for polling places directly on the form.

Ryan Retza: What is done with this information?

Attorney Hunzicker: Information kept at local level, not something the Wisconsin Elections Commission (WEC) has.

Ryan Retza: Request to add "on the registration form" following "accommodation information".

Ken Brown: Should at least be able to discern that it is an acceptable photo identification in the State of Wisconsin, Proof of Residence (POR), ensure it's a qualified document.

Julie Seegers: Agree with Ken, may restrict what a poll worker can see. Be careful with labeling this and using “confidential information” to be able to stand behind the poll workers. Is there a statutory definition anywhere that provides “confidential information”?

Attorney Hunzicker: Note that many of these definitions are coming from Wis. Stat. § 6.36.

Lana Lee Helm: “Confidential Information” include language: Photo IDs, personal information on the POR residencies, but not the type of document.

Ken Brown: If it’s a situation where central count, the observer should be in a position to be able to witness what is written outside of the ballot envelope.

David Kronig: Note disagreement with Ken and others that observers should be able to look at these in real time. No such right to be able to do that, they all contain confidential information. Also cannot view the poll book in real-time.

Robert Newby: What David says, without opening a can of worms discussion, “confidential information” may be statutory.

Caroline Fochs: Like to keep confidential information to poll workers, take an oath that they will not abuse this information. No assurance on what they will do with info, what organization, not comfortable giving them access to that type of information.

Debbie Morin: Possible to change to “voting accommodation information”? Also, is voting ID confidential information, or just the information contained in it? Or is this part of the public aspects of voting process?

Claire Woodall-Vogg: Agree with David Kronig, Caroline Fochs, Robert Newby. Concerns we’re confusing role of observation versus role of Election Worker. Concerns about voter intimidation.

Anita Johnson: Don’t give the observer too much power, poll worker will determine if I’m the person in the picture. Agree with David, Caroline, and Claire.

Yolanda Adams: Agree with David, Anita.

Ken Brown: Verifying poll worker, voter and observers are keeping each other honest.

Toya Harrell: Legal age verification needed (when purchasing alcohol, cigarettes). Agrees with Caroline, David Kronig. Ensure election process is done with integrity.

Kristin Hansen: Underscore what Toya and other said, role is to observe, not replicating their work.

Julie Seegers: What the observers want to see is that they pull out a photo ID. Do have right to stand behind and watch the process. Standing behind poll workers shouldn’t be a concern.

Anita Johnson: Remember to consider voter experience.

Debbie Morin: Reiterate the balance of confidential information and public aspects of voting process. Poll workers are not going to know every detail here. Observers can supply the confidence that the process is being followed correctly, only if they’re able to observe the public aspects of voting.

Chat discussion for EL 4.01(6):

10:22:52 From Toya Harrell to Hosts and panelists:
Thank you, Caroline!! I concur wholeheartedly!¹

10:23:44 From Claire Woodall-Vogg to Hosts and panelists:
And i think we will also get to all of this in 4.03

10:28:34 From Toya Harrell to Hosts and panelists:
I feel we're getting way off topic on this subject. if it's a State Statute, we must all abide by it.

10:29:22 From Eileen Newcomer, LWVWI to Hosts and panelists:
I agree with Toya. We need to move on. I think the Commission will have enough info to know there was discussion on this point.

10:29:53 From Robert Newby to Hosts and panelists:
I agree with Toya and Eileen.

10:33:00 From Claire Woodall-Vogg to Hosts and panelists:
Agreed. I think this definition is accurate and later we will discuss the process and procedure. from 3 feet, you cannot see these confidential details and it has not been at issue at least in Milwaukee.

EL 4.01(7) “Designated election official”

Yolanda Adams: Noted typo: “Designed” to “designated”.

EL 4.01(8) “Electioneering”

Attorney Hunzicker confirmed no one wanted to speak.

EL 4.01(9) “Election official”

Attorney Hunzicker confirmed no one wanted to speak.

EL 4.01(10) “Inspector” or “Election Inspector”

Eileen Newcomer: In “Election official” definition: Concerned with wording “charged with any duties relating to the conduct of an election”. Clarify definition that an observer is not an election official.

David Kronig: Agree with Eileen.

EL 4.01(11) “Member of the Public”

David Kronig: “Or other location”: Seems vague, could be read to broadly to exclude a candidate across municipalities.

Attorney Hunzicker: Remove “polling place or other” and replace with “observable”, for consistency.

¹ Referencing Caroline Fochs’ first comment in this section

Debbie Morin: In-Person Absentee Voting (IPAV) voting ballot not taking place not during IPAV hours. Contention when observers wanted to observe, but there is no IPAV going on. Can be addressed elsewhere in the rule.

EL 4.01(12) “Observable location”

Attorney Hunzicker: Note included in draft rule will not be included in final rule, just available for reference. Definitions and usage of “central count.”

Eileen Newcomer: Recount locations fit in to this?

Attorney Hunzicker: Available in § 9.01 (3), COMMISSION DECISION to include into this definition.

Question: Does 7.41 cover recounts?

David Kronig: Add time parameters to definition.

Julie Seegers: Electronic poll booking testing is considered a public meeting as well and should be included in this. COMMISSION DECISION to regulate under statute.

Ryan Retza: Opposition to time parameters to definition portion, understands specific locations is important.

EL 4.01(13) “Observe”

David Kronig: Remove “read” is necessary, observers do not have right in real-time to read poll book or other election-related materials presented verb, propose adding to end of sentence “or any materials provided by the voter”.

Debbie Morin: Appreciate “read”, questioned where definition of “observe” came from. “See, hear, read, the public aspects of voting.”

Claire Woodall-Vogg: Creating a universal definition is difficult for polling place vs. central count. Agree with David, “read” should not be verb. *Come back to this after 4.03?

Ryan Retza: Disagree with David and Claire on “read”: 6.45 (m) – potential to replace “read” with “examine”.

Ken Brown: “Read” or “examine” remain. There is no reason that information can’t be read without touching it by observers.

Robert Newby: Issue of real-time may be an important thing here, and adding this complication to rules, introducing a new definition – there is unclarity now, on the read. Eliminate (13) or need to spend more words clarifying.

David Kronig: Limitation in Wis. Stat. § 6.45 (m).

Claire Woodall-Vogg: “Inspect” would mirror the language of § 6.45 (1)(m).

Debbie Morin: Add definition of what “real-time” is?

Ken Brown: Claims were thrown out in 2020 because they weren’t raised at the time they occurred.

Julie Seegers: Don’t understand nuanced definition of “see” vs. “read”.

Chat discussion for EL 4.01(13):

10:53:06 From Claire Woodall-Vogg to Hosts and panelists:

"Inspect" would mirror the language of 6.45(1m)

10:57:15 From Kristin Hansen, Common Cause to Hosts and panelists:

I agree that "in real time" is vague.²

10:57:19 From Caitlin Jeidy to Hosts and panelists:

Please feel free to add comments/thoughts here - they will be captured in the minutes. Thanks.

EL 4.01(14) “Observer”

Eileen Newcomer: Liked suggestion that an elections observer is not an election official.

David Kronig: Propose adding “and signs in pursuant § 7.41 and any requirement...”

Ryan Retza: agreement with David’s suggestion.

EL 4.01(15) “Organization”

Eileen Newcomer: LWV-WI appreciates and supports the definition of "organization" as written in draft document to include non-partisan, doesn’t need to be a political party or campaign. Continued dialogue on (18) and (19).

Chat discussion for EL 4.01(15)

11:00:59 From Eileen Newcomer, LWVWI to Hosts and panelists:

LWVWI appreciates and supports the definition of "organization" as written in draft document.

EL 4.01(16) “Posting and distribution of election-related material”

Attorney Hunzicker confirmed no one wanted to speak.

EL 4.01(17) “Public aspects of voting process”

Ryan Retza: (17) confidential reference back to (6). GAB rule was much more in depth. Curious if this was a drafting decision.

Attorney Hunzicker: Definitions incorporated elsewhere. Meant to set up contrast between “confidential” and “public aspects of voting process.”

David Kronig: Worth carving out certain things (i.e., transport of ballots shouldn’t be considered public aspects, nor should physical set-up, central count).

Julie Seegers: Object to Photo ID being confidential.

Debbie Morin: GAB Ch. 4 definition included “opening of polling place, prior to commencement of voting.” Importance of being present during zeroing out machines, for example.

² Referencing Debbie Morin’s second comment in this section

Chat Discussion for EL 4.01(17)

11:14:35 From Claire Woodall-Vogg to Hosts and panelists:

I'd suggest we reference "except for inspection of materials that are confidential." or something similar to that. You can observe someone presenting their ID, but an observer cannot inspect their ID because of the confidential nature.

11:15:53 From Ken Brown to Hosts and panelists:

I agree with Claires above point^

11:16:05 From Claire Woodall-Vogg to Hosts and panelists:

Nor should the scanning of incoming ballots into wisvote be required to be done publicly. I think we need to flesh out a lot of what is and is not public and then come back to this.

11:16:10 From Diane Coenen to Hosts and panelists:

I agree with Clare on added language.

11:16:22 From David Kronig to Hosts and panelists:

I agree with Claire's two above points

11:16:31 From Caitlin Jeidy to Hosts and panelists:

Received

11:19:24 From Ken Brown to Hosts and panelists:

Claire on this do you mean Ballots? or Ballot Envelopes/ Certificates? I see no problem with observers if available to see the full processing of incoming absentee ballots.

11:21:07 From Claire Woodall-Vogg to Hosts and panelists:

Due to space for sorting and alphabetizing and having computers set up, i do not think it should be required to be observable. These are back office procedures and not every municipality would be able to make these observable without allowing observers into office space. We have prioritized making these at least viewable via window, but that is because our space allows it. I think this will come up when we get to observable practices location specific.

EL 4.01(18) and (19) "Representing the same organization"

Diane Coenen: Combine 18 and 19 to mean...

David Kronig: Caution against using the term "member", being a "member" has a specific meaning like paying membership dues, not inclusive enough. Propose... Comment is in lieu of (19).

Ryan Retza: Agree with David Kronig on member language, issue with (15) is recounts. In § 4.05 (5): If we're covering recounts in this rule, candidates their council get priority in recounts, recounts get special designation.

Yolanda Adams: Likes (19) more than (18).

Debbie Morin: Prefers (19). As a citizen of the State of Wisconsin, you can watch process/learn how the sausage is made.

Please see the Rule Language Preferences of Committee Members document for an organized chart of members' preferences.

Chat discussion for EL 4.01(18) and (19)

11:05:25 From Karen Huffman to Hosts and panelists:

Again, primary representation matters, especially when number of observers must be limited due to space. I.e., Can someone change who they say they represent to hold an observer space?

11:06:56 From David Kronig to Hosts and panelists:

I agree with Ryan regarding priority for candidate representatives getting priority at recounts³

11:07:33 From Debbie Morin to Hosts and panelists:

I like the language in 4.01 (19)

11:08:22 From Kristin Hansen, Common Cause to Hosts and panelists:

If you have to be specific, maybe "employed by or volunteering for" an organization would do it. It's one or the other, right?

11:11:07 From Claire Woodall-Vogg to Hosts and panelists:

19

11:11:16 From Ryan Retza to Hosts and panelists:

19

11:11:18 From Toya Harrell to Hosts and panelists:

19

11:11:24 From Katie Reinbold to Hosts and panelists:

19

11:11:28 From Lana Lee Helm to Hosts and panelists:

19

11:11:34 From Robert Newby to Hosts and panelists:

19

11:11:40 From Kristin Hansen, Common Cause to Hosts and panelists:

19

11:11:44 From David Kronig to Hosts and panelists:

I prefer 19 but think that it should include additional language: "deployed, assigned, trained by, or identify as representing"

11:11:48 From Diane Coenen to Hosts and panelists:

19

³ Referencing Ryan Retza's first comment in this section

11:11:52 From Julie Seegers to Hosts and panelists:
19

11:12:13 From Eileen Newcomer, LWVWI to Hosts and panelists:
I like David's suggested addition to 19

11:12:27 From Karen Huffman to Hosts and panelists:
19 with the language proposed by David Kronig

Draft EL 4.02 Right to vote

David Kronig: Typo: "Constructed" should be "construed." Proposes changing to "Obstruct, prevent, impede, or delay."

Eileen Newcomer: Likes David's suggested additions. Also, having a statement like this is more impactful at top of the rule.

Debbie Morin: Agree with Eileen. Move section to top before definitions.

Ryan Retza: Likes definition as is. Any reason as to § 7.41 (3) wasn't included?

Attorney Hunzicker: Language could be adjusted to mirror that better.

Yolanda Adams: Should we also include something around the experience of going to a polling place?

Attorney Hunzicker: Provide suggested language, if possible.

Chat discussion for EL 4.02

11:21:22 From Kristin Hansen, Common Cause to Hosts and panelists:
Common Cause also wants to be on record as protecting and centering the right to vote by qualified electors.

11:21:55 From Lana Lee Helm to Hosts and panelists:
I agree with Ryan I like 4.02 as written.⁴

11:22:25 From Julie Seegers to Hosts and panelists:
Agree 4.02 should be 4.01 should be the priority of our discussions, but leave as written.

11:23:34 From David Kronig to Hosts and panelists:
I would also propose adding "casting a lawful ballot or registering to vote"

RECESS 11:24 a.m. - 11:32 a.m.

⁴ Referencing Ryan Retza's first comment in this section

Draft EL 4.03 Conduct of election officials.**EL 4.03(1)**

Attorney Hunzicker shared his screen to show the language of EL 4.03(1) and read the draft out loud: “If there are no alternatives due to the physical limitations, the designated election official may reasonably limit the number of observers representing the same organization who are present at any one time.”

- So again, this is coming directly from s. 7.41 as a possibility to limit the number of observers representing the same organizations. Just to point out the “no alternatives” language here, I’m expecting some comments on that part; I just want to make sure that we get all opinions on the table on that.

David Kronig

- You hit on what I was going to raise, which is that “if there are no alternatives” language. That seems to me to give clerks and chief inspectors sort of an undue burden they have to meet in order to limit the number of observers; what does “no alternatives” mean? That they are required to go out and rent a convention hall for every polling place? It seems to me that it should just read something like, “The designated election official may reasonably limit the number of observers representing the same organization who are present at any one time due to physical limitations of the observable location.”

Caroline Fochs

- I do agree, I would like to see that language stricken, that “If there are no alternatives due to physical limitations,” but also, I would like our election officials to be able to limit the total number of observers, not just for those that are representing parties. You could potentially have fifteen observers that they’re trying to manage, and I apologize if this is stated somewhere else in the document that I missed it, but my goal would be to give them the ability to limit the total number of observers. Whether we want to put a number on that, which I don’t think is very practical, but leave it up to the chief to do what is comfortable in that polling site.

Yolanda Adams

- Coming in from the last speaker, I would think we would need to put a number on there. In Kenosha, I know we’ve had some election officials who would rather have none, no one present at any time. So I think we need to put a number in there if we’re going to go down that route, we need to limit it to, there’s got to be a specific number so that everyone around the state is doing the same thing, but not giving that total power to that official.

Attorney Hunzicker responded to the discussion:

- I think some of the specific area lists below do have numbers, I think the difficulty here is the statute allows the election officials to limit based on organization and not based on total number, so I think the Commission is somewhat constrained on what it can issue rules for in that regard. But I think at the very least, specific numbers for specific organizations is a possibility, and so that is represented later on. But in terms of limiting the total number, it’s more difficult for the Commission to do that, just based on the statutory language.

Kristin Hansen

- I can see how this is going to again require some real wordsmithing and balance because on the one hand, you don’t want it to be where the clerk is claiming, “Oh, there’s no room for three observers,” when in fact there is plenty of room, like who’s going to make that subjective call? But there also can’t be just a number because the size of the polling places varies so widely, and the way that they are organized and laid out varies so widely, that there are some where even if you said the number eight,

that's too many for some of these tiny cramped polling places. So that's going to be rough. But on the other hand, the other part of this is, if you say you can limit the number of observers representing the same organization, there is nothing stopping someone from saying, "Okay, well now I'm not representing that organization, now I'm representing just myself." Because you don't have to be representing an organization to observe. So that doesn't actually remove a person if you simply remove their connection to an organization. So I can try to think about that and send you some actual language, but on the one hand you're trying to control the chief inspector who may purposely be trying to not have observers, and on the other hand, you don't want an observer to simply turn around and say, "Well, I'm not leaving, so now I'm not representing the League of Women Voters, I'm suddenly just representing myself." Essentially, it comes back to the ability of a chief inspector to be able to control their space and be the final arbiter of the condition a polling place is in, but the vast difference in this, the way a polling place exists, makes this hard.

Attorney Hunzicker responded to Kristin Hansen's comment:

- Yes, I think it is a difficult area to have good rule language for exactly that reason, just the shared differences of polling places.

Ryan Retza

- I just have to say I very strongly disagree with Caroline's comments of capping an arbitrary number of observers. There's no statutory authority that the chief inspectors have to do so, it's specific to them limiting the representatives from the same organization in s. 7.41.
- One thing I did also want to comment on is there has to be some sort of standard, like other folks have mentioned here, with restricting, or where that threshold is, where the chief inspector restricts those individuals. I know each polling place is different, but s. 7.41 is weakened significantly if there's just no standard or threshold for when they start limiting observer access.
- I also wanted to comment that if the chief inspector does decide to limit individuals who represent the same organization, it should be done in an equal fashion, because theoretically, if it's taken to its end, you could say, "Well, the Republicans get twelve observers here and the Democrats get one." That's technically limiting the numbers of observers from the same organization.

Eileen Newcomer

- I do think that Ryan's comment about balance is important. One of the things I'm concerned about with the way that it's written is that a reasonable limit might be zero people observing from an organization, and then it might only allow for partisan observers to be part of the observing process. I know we've experienced observers going to, I think a central count location, and the chief said, "Oh, we don't allow nonpartisan observers, we only have people from the party." And so that's something I just want to make sure is kind of baked into the rule, that that kind of conduct isn't allowed.
- I also have seen it work pretty well when there are too many observers at one place, where they set a schedule, and then it kind of is fair and balanced where you have so much time and then people kind of rotate out. I don't know if that's something that could somehow be baked into this, but that has been a good practice that we have seen.
- Finally, I was wondering: if somebody was not allowed to observe based on the reasonable limit, would the chief inspector have to issue them something in writing and then report that to the Elections Commission, kind of in the same way if somebody was removed from a polling place, or how do those two definitions work together?

Attorney Hunzicker responded to the discussion:

- I would say that the “removed by an observer” language later on is intended to be a completely separate thing from “limiting the numbers of people representing the same organization.” I think it could end up where, if someone who is representing the same organization and states that they are, it could end up being the same, but I think it’s not intended to be the same. I’d say there’s basically an article of good faith for members representing the same organization being limited in a fair manner, kind of as Ryan was mentioning, that it should be even across the board. And I think the definition section we talked about earlier is also meant to protect observers representing no organization or representing an organization that is not a political party, so that all organizations and all individuals are treated equally under this section. But I would say that nothing in these rules is requiring some kind of written notice to someone who is, not kicked out because they were disruptive, but limited from observing purely due to numbers. So I would say, if you think that there should be a form and a process for that as well in these rules, I think that’s something that would need to be added to them, if you want to comment on an addition or add an addition in the comments for this meeting, I think that is something that would need to be added.

Eileen Newcomer

- I think I do lean towards wanting to have that be included in why somebody would be, have something in writing about it, because I could see it as being a way to get around having to complete the form by just saying, “Oh there’s too many people here, you can leave” as kind of a way to not have to do the paperwork and not have to have that level of oversight but still limit people at the polling place. I guess that’s a concern that I have, is the potential loophole in this if we do not include something in writing.

Ken Brown

- I think this is a good place for me to interject something. Part of the reason I got so involved in this, as well as several other people that are on this discussion, was because of the hostility that was presented against observers in the City of Racine specifically. For about the last two and a half years, I made it a point on Election Day— February, April, August and November – to go around to every single, all fifteen different voting locations and central count, and I usually hit one or two in Caledonia and Mount Pleasant, which are adjacent, to see how they’re handling the situation. Approximately two years ago we started using the Badger Books, and once that was put in place, the City of Racine clerk has used that as excuse why observers cannot be behind the poll workers to properly observe. So instead, she created a square approximately eight feet behind the voter, not the poll worker, but behind the voter, and restricted us in every single voting location that that was the only place we could observe from. And in fact, she started it, we disputed the 8-foot line because of Covid and she moved it up to seven feet. They’re willing to come a little bit closer than that, but again, we’re still on the wrong side of the voter. We can’t see the voter’s face, we can’t necessarily hear them, or read their lips if you’re hearing impaired, in order to do that. They say the restriction for that is because of the power cables can only go so far and they don’t want anybody to trip over them; I certainly understand that. In the City of Racine, every single voting location except one is in a gymnasium type of place, or a cafeteria. So there’s plenty of room to run those extension cords out, put some rubber blocks over the top to make sure nobody trips, or if they want, run them up the ceiling and then come back down over the table so that those electronic equipment can properly work and the observers can be on the right side.
- I presume our recommendation at the end of this is that we’re going to maintain that three to eight foot behind the poll worker, hopefully is what we’re going to resolve here, and that would just automatically create that packed space if you actually did have 40 people show up who all wanted to fit in that square. Our central count situation that we had, they had the counting equipment and so forth and the poll

workers all around the perimeter of the room, and they jammed fourteen or fifteen people in an eight-foot square in the middle of the room, again, seven or eight feet away from the nearest table, and we found that highly impractical because you can't really properly observe in that situation. So we maintain that three foot minimum to eight foot maximum, I think that will just automatically fulfill that there's only so many people you can put behind the poll workers and then they can also be over by the tabulation equipment, and then they could also be over at the registration table, etc., so that they could be dispersed around or they could move to another nearby voting location or even another community, or as someone else had suggested, you come in for four hours and then we'll switch you out and we'll have, you know, Gladys come in and she can do the balance of the day.

Julie Seegers

- I'm going to kind of piggyback off of what Ken was saying. Physical limitations can be very subjective, especially if the chief is unfriendly to observers. I know that we talked about this at the last meeting, but we talked about floor plans and those being presented a day or a few days before an election so that they can be reviewed by observers and anybody else just to make sure that there will be, because an observable area should be really the whole polling place, the whole central count, minus what we decide as the, minus the confidential information. So I think having a floor plan or letting the observers go in during setup and before the election starts, so any kind of issues can be resolved as where the placement of the observer should be.

Anita Johnson

- I need to go back for clarification about the statement, how many observers can be at the polling site from an organization, and then perhaps that we should use documentation to let the clerk know how many people are showing up, so they can say, "Well, we only need two people here," or "We only need one person here," or "We only need three people here." I'm not sure that I understand what that person was saying; I don't know if that was Eileen or who it was. I just feel that if we have to start submitting paperwork for the observers, we will lose observers because some places in Milwaukee, we're having a real hard time getting observers to the polling site. So, maybe Eileen I think, could you expand on what you were talking about? I'm not real sure I understood what you said.

Attorney Hunzicker responded to Anita Johnson's request for clarification:

- I think I might be able to clarify that. I think what Eileen, and she can jump in as well, but I think what she was saying is, only in the instance where a designated election official does limit the number of people representing an organization, if there happened to be more, whoever is not able to participate as an observer because of that limit, that the election official would give that person some kind of paperwork showing that they were not able to observe for that reason, as a distinction from being kicked out by an election official as simply being limited out under the observer rules. That was my understanding of it; Eileen, if you have more nuance to add, please feel free.

Eileen Newcomer

- Yes, I think what you said is what I was attempting to say, and Anita, just to clarify a little bit further, I'm not saying that the observer or the organizer of the volunteer observers would need to provide paperwork of like, how many people where, but I am saying in the instance where a chief inspector determines that there are too many observers at the polling place and needs to remove people because of that reason, there should be some documentation that people were removed and why they were removed.

Caroline Fochs

- Just a quick couple comments: I believe that the parties can help us out here by limiting sending just one person to a polling site or maybe doing it in shifts so that you're not putting the burden of managing that on the chiefs. Those of you that are observers, that's your one duty that day. Our chiefs are incredibly busy, and what I don't want to see is to have more rules put on our chiefs that bog them down from doing the work that they are supposed to be doing as far as administering the elections. I'm not adverse to the idea about filling out a form if you turn somebody away, but if we could incorporate that into the form that we already have for observers instead of having separate forms for separate situations, that might be a little bit helpful too.
- One last comment about approving floor plans: observers, sometimes I think are blurring the line between being part of the election administration and being observers. To have that approved by the observers in advance is very time consuming and it is injecting them into the election administration, more than I believe is their role.

David Kronig

- I just want to echo Caroline's comments; I don't think that submitting floor plans or anything along those lines is a reasonable solution. I think it would be far too burdensome on our clerks, who are already overworked and under-resourced in many instances.
- I'm not necessarily opposed to having a simple form if the number of observers has to be limited, but again, I want to second the concerns about making sure that it's not burdensome on clerks or chief inspectors.
- And I did just want to quickly note, there have been a couple comments about holding chief inspectors or clerks accountable, there is a process for that. It's a complaint to the Elections Commission under s. 5.05 or s. 5.06.

Ryan Retza

- I did just want to echo my support for the form on if they are limiting observers, to actually present that to the observers so that they don't start going berserk, and I think it would also help at least state, "this is the statutory authority, we have to do this," and that generally would help calm situations if you're turning away people that are going to these sites. There was one other thing I wanted to touch on and now I cannot remember it, so I will raise my hand again if I do.

Attorney Hunzicker responded to the discussion:

- I think in terms of if the Commission does want to do a separate form for this, I certainly think that can be combined just to not have too many different pieces of paperwork, so I think that seems like a possibility to me, just to say that.

Ken Brown

- Racine is actually the fifth largest city in the State of Wisconsin, and while she still has us on the wrong side of the voters and the poll workers, we were able to, over the last couple of years, put together a schematic for every single layout. The first time I went as an observer and realized I was in a spot where there was no place really you could observe because everything was pushed against the wall and it was at a church, they actually discontinued using that church. They found another location and that place is able to be set up properly within our community to allow for observation whether they change the rules or we don't change the rules, it can be worked out. And there once was another situation where it was a school. The rules, or the layout, had been set up. I went into the location, they had ignored that setup and I actually called them on it, they called the clerk and the clerk said, "No, this how it should have been set up so that way everybody's treated properly," and they fixed it. We had some tape, I helped him set it all

up and it was all good. The next time I went back, that room was also set up correctly. So once you do it a time or two, Claire made the point that she's got 180 different locations and it is a long term goal, but you do ten this year or ten this little election cycle or whatever you have to do, you can certainly figure out a way to make them work out that the observers have the access that they need, the poll workers have the access that they need, and the voters get to move smoothly through the process and everything goes really well. So setting up, I don't necessarily think it has to be an order or a rule, but having a floor plan for every voting location in the state would certainly make a lot of sense and it would be easy to correct as needed.

Lana Lee Helm

- I also just wanted to chime in. As a chief inspector, we have had no problems with the observers and I did like the language in this that, "if there are no alternatives," because that does emphasize that the desire is for the observers, and as somebody stated at the very beginning of this discussion, we can focus on the conduct of the observers and not on the number, which might seem intimidating at first, but if they are all conducting themselves in a calm, non-intrusive manner, then that is really the goal, is to allow them to observe all the areas of the election and not just to limit them as far as number.
- I would also say, the idea of a floor plan, at first it might sound burdensome, but actually a lot of times, chief inspectors that have been at the same polling place for a long time, you already kind of do that for the Village to set up. Like, we're in a church, and so we do kind of do that already to set up: "Okay, where we want our tables to be, this is where we want the voting booths to be," so it's kind of already done in that way, so that is something to think about. And yes, I do think there should be some type of an appeal process if people would be told that they can't observe, because we do know there are those, unfortunately, inspectors that just don't want any observers and that's the unfortunate part.

Attorney Hunzicker responded to the discussion:

- I do want to make one small comment on that too, just saying the appeal process, and I think David mentioned this as well, the existence of these rules and these rules coming into the Wisconsin administrative code, would allow usually a s. 5.06 complaint to be filed if these are not being properly followed. So that is an implication of having any rules on the books, is that this would trace back to the complaints that can be filed with the Elections Commission. So there would be an explicit appeal process if someone believed that they were denied the ability to observe who should not have been. So I just want to make clear that just the existence of these rules alone would pretty much immediately allow that possibility.

Julie Seegers

- Well, filing a complaint will be done and dealt with after the day of election. This is something that needs to be dealt with the day of election. And again, where an observer is placed, it is their business where they're placed as a citizen, and they are part of the election process. So, in Racine again, there were many instances where they wouldn't allow the observers in before to see what the floor plan or the layout was, so when they entered they had to argue that they couldn't reasonably observe under s. 7.41, so they had to re-shift the observers during the election. So talk about interfering with the election, having to move observers around, and then there were instances too where it still wasn't good enough. So allowing observers, the floor plan, okay, that might be a little cumbersome before, but at least, or even going in before and observing while they set up so things can be resolved, placement can be resolved, before the opening of Election Day is much more reasonable than putting in a complaint once the Election Day is done.

Attorney Hunzicker responded to the discussion:

- I think some form of redress can happen day-of, so I think I understand that comment.

Ryan Retza

- I remembered what my comment was. It had to do with the floor plans, and I know that making floor plans for each individual polling place is challenging because sometimes they need to switch around things if, you know, one of the disability monitors comes in and they do need to change things for that purpose, but also, just even as a best practice; central counts, recounts, those more high profile locations. I have to say Milwaukee was, and Claire in particular, was very very helpful in 2022, being proactive, especially at central count, giving tours beforehand and all of that. So I just wanted to state my appreciation for her on that particular issue and also just state for the record that best practice, especially for those high profile locations: giving people as much of a heads up as to the setup of them is always preferred.

Eileen Newcomer

- I just want to go back to the conversation around having documentation for if people are turned away because they are limiting the number of observers and whether filing a formal complaint would mitigate that, and I think that filing a formal complaint honestly is very burdensome in Wisconsin and so having somebody leave because they were limited and then having to have them file a complaint seems like a lot when it could just be addressed on Election Day and they actually might, by having the documentation, might reduce the number of complaints from observers if it's more transparent, understood why somebody is being turned away.
- And then I also thought Claire made a really good comment in the chat about there being other reasons why it would be helpful to have this information. So if there's not enough space in a polling place to accommodate the number of observers and it might also be limiting the space for voters as well. And so there might be some accessibility-related concerns with that polling place and this could be something that points to that.

Debbie Morin

- I was waiting to see if anyone would bring this up. So I mentioned this in the chat about "If there are no alternatives due to physical limitations," so the selection of polling places, I know is sometimes really difficult to do, especially with constraints that the elementary schools have now said and things like that, but I just want the idea that when you select a polling place, you keep in mind all these things and one of the things you keep in mind is enough room for observers, because observers need to be there. Not like, "Well, let's find if we can get a small enough polling place where we can limit the number of observers and just deal with the voters, then we don't have to deal with the observers."
- The other issue that I'd like to just interject here is when the determination of limiting the number of observers, I know I'm going to get some pushback from organizations with national offices, I believe that – I'm glad we're open to anyone in the world who wants to come and watch our elections – but if our polling places are getting filled, we have a vested interest as voters, residents, taxpayers of the State of Wisconsin, we should not be eliminated first. Out-of-state observers should be the first to go, and if national organizations are using out-of-state attorneys, for example, well, this might be a way for them to start training some in-state attorneys to be able to be an observer. So I really think that that goes to giving priority to the people who have the most to gain, or the or the most to lose, or has the most interest in this process that you could put this saying, "The first to go are going to be out-of-state people." And in these national elections, there's a lot of out-of-state observers in large municipalities. I run into them all the time. So, I think that might be a better way to limit, or one of the considerations for

limitation of observers. But I really also want to make sure that clerks and election officials take into account, just like I did with the confidential information versus the public aspects of voting: you have to balance those two things, and when you hear that someone's taking those into consideration, you're like, "Hey, they're doing, you know, we're fair-minded, they're fair-minded, we're all trying to just do the best we can here." But when it starts to be like, "Oh, there's no alternatives because the polling place is too small," I'm like, "Well, who decided to use this polling place then?" Those are the questions that I would have, and then like I said, limit the number of observers starting with out-of-state, even out-of-country observers, I've run into observers that come from other countries while I'm observing.

Attorney Hunzicker responded to Debbie Morin's comments:

- I know this was a topic discussed at the first meeting as well, kind of having a difference between Wisconsin observers and observers not coming from Wisconsin, and it's a more difficult point, I think, for the Commission to have rulemaking on. I think it's certainly something that they can consider, but that is another one of the statutory definitions simply saying, "member of the public," which just is a very broad definition, then only allowing limiting based on organization. So again, it just is a more limited aspect of what the Commission is able to do.

Yolanda Adams

- Commenting on the last speaker, there are often times that smaller organizations need the assistance and support of some of the national or national affiliations because there are a lot of polling places and unfortunately, not enough local volunteers. And I'll use Forward Latino as one, League of United Latin American citizens, we're not huge in the State of Wisconsin so oftentimes, we do rely on and request assistance from our national office to help with the poll observing. So I would not be in favor of excluding, or just a blanket, "It's got to be local first," because that works for the larger organizations but it does not always work for the smaller organizations where we need some help because we want to cover all the polling places and there simply aren't enough volunteers from our community.

David Kronig

- I want to echo Yolanda's comments: we would be opposed to giving priority to in-state observers. The majority of the Democratic party's observers always come from Wisconsin, but we also always have a substantial contingent who come from out of state and they play a vital role, and particularly because we encourage a lot of our in-state folks to serve their communities as election inspectors, rather than election observers. And so I think that, to the extent that the rules are going to give priority and to which observers, should get to stay when the number has to be limited, I would propose giving priority to those observers who sign in as representing or being affiliated with an organization over those who sign in as just individuals on their own behalf.

Julie Seegers

- I'd like to say one more thing, I think this, again, this physical limitations being a subjective thing, this should also pertain to not just polling places, but central count as well. The difference between Kenosha's central count and Racine's central count is night and day. Observers are able to move around in central count in Kenosha and watch the processing of the ballots, but in Racine they're not even to come close to it. So again, the floor plan needs to be addressed before the election doors or the counting begins, even in central count, and I don't know if that means that there's a hotline to the clerk or if talking to the chief it doesn't produce any results, a hotline to the clerk, a hotline to the to the particular party or a hotline to WEC to make sure that the rules, in s. 7.41 are being observed by each polling place as well as central count.

Attorney Hunzicker confirmed no one else wanted to speak.

Chat discussion for EL 4.03(1):

11:35:06 From Claire Woodall-Vogg to Hosts and panelists:

I echo David's thoughts for the exact reason he mentions. We would have to rent a convention center for every election, not just generals, with this language.⁵

11:35:54 From Claire Woodall-Vogg to Hosts and panelists:

I also agree with a limit to total number. Otherwise, in my experience, a partisan observer signs back in as representing "themselves"

11:36:07 From Diane Coenen to Hosts and panelists:

I agree with David's and Caroline's comments.⁶

11:36:26 From Katie Reinbold to Hosts and panelists:

I agree with Caroline.⁷

11:38:41 From Debbie Morin to Hosts and panelists:

I agree with Yolanda⁸

11:41:04 From Claire Woodall-Vogg to Hosts and panelists:

I'd suggest we leave it as written but removing "representing the same organization". The word "reasonably" instills a standard in my opinion - it would depend on the entirety of the circumstances.

11:44:11 From Katie Reinbold to Hosts and panelists:

What happens when we have so many observers in a small room that they are now closer than 3 ft?

11:44:49 From Claire Woodall-Vogg to Hosts and panelists:

Yes - i think that is an excellent suggestion about reporting to both the WEC and the municipal clerk/director. It becomes an accessibility issue if a polling place is being chosen that cannot accommodate at least 3 observers, for example.

11:46:13 From Claire Woodall-Vogg to Hosts and panelists:

I suggest we add a procedure for if observers need to be limited in any way.

11:46:28 From Ryan Retza to Hosts and panelists:

I agree with Eileen⁹

11:46:35 From Debbie Morin to Hosts and panelists:

why would a polling place be chosen that can NOT accommodate observers?

⁵ Referencing David Kronig's first comment in this section

⁶ Referencing David Kronig's first comment and Caroline Fochs' first comment in this section

⁷ Referencing Caroline Fochs' first comment in this section

⁸ Referencing Yolanda Adams' first comment in this section

⁹ Referencing Eileen Newcomer's comments in this section

11:48:15 From Diane Coenen to Hosts and panelists:

The Election official should justify limiting observers in a written document that should be written up, shown to the observer and the observer sign off that they were duly notified of the limitations and why the decision was made to limit.

11:50:11 From Kristin Hansen, Common Cause to Hosts and panelists:

I think over all we need a way to hold CI's and/or clerks accountable when they are violating these rules and clearly trying to keep people from observing. Many of the issues have been going on for years and nothing changes.

11:51:17 From Claire Woodall-Vogg to Hosts and panelists:

I fully agree with Diane and the suggested documentation, including how many observers had to be sent away by having them sign off.

11:51:30 From Eileen Newcomer, LWVWI to Hosts and panelists:

Submitting a floor plan to share with observers seems burdensome

11:52:28 From Katie Reinbold to Hosts and panelists:

I don't agree with submitting a floor plan.

11:53:48 From Ken Brown to Hosts and panelists:

Creating it correctly one time, or modifications as needed is not that burdensome. In Racine and Mt Pleasant we have done this, and they have now complied, for the most part, with the exception of having the observers on the wrong side of the voters and PW's. :^).

11:55:17 From Claire Woodall-Vogg to Hosts and panelists:

While we would love to have a floor plan for all 180 polling places and it is a long term goal, the reality is that the floor plan changes on turnout, what room within the building we are placed and having the staff to visit all 180 sites on election day to document such a "floor plan."

11:55:48 From Kristin Hansen, Common Cause to Hosts and panelists:

Could that be on the incident form? Having to start turning away observers would be considered an incident?

11:59:17 From Diane Coenen to Hosts and panelists:

My thoughts were to put the reason for limitations on the same observer log and floors plans can be are ever changing due to the expected voter turnout, so this would become burdensome.

12:04:58 From Claire Woodall-Vogg to Hosts and panelists:

Our 180 chief inspectors all set their own appointments up with building engineers to setup. That would be difficult for us to manage the day before the election. However, I think there needs to be ways for observers to file complaints even if they are not residents of the municipality. I believe that may be the issue right now under the complaint system, but that is not within our purview here.

12:08:48 From Claire Woodall-Vogg to Hosts and panelists:

3 observers per ward as a minimum standard seems very reasonable for a standard for polling place selection in my opinion. I know there is concern about setting forward a number, but that should not be burdensome as a minimum if the polling place is adequate.

12:12:53 From Ryan Retza to Hosts and panelists:

I again would just comment that Wis. Stat. 7.41 does not give the chief inspector or municipal clerk the ability to place an arbitrary cap. Only "reasonably limit the number of persons representing the same organization."

12:13:15 From Debbie Morin to Hosts and panelists:

I totally disagree with David¹⁰

12:14:17 From Claire Woodall-Vogg to Hosts and panelists:

Ryan, not sure if that was in response to me, but i was suggesting a bare minimum - not a max. But that is a good point.

12:14:47 From Karen Huffman to Hosts and panelists:

I want to go on record as being against submitting layout plans ahead of an election. Please excuse me, but I want to be very direct. The Chief and inspectors have taken an oath to serve with the primary goal of providing the most fair and efficient process possible for voters. We set up the day before, in general based on experience, but tweaked for expected turnout. At the polling locations in Mequon, we were mindful of leaving space we for observers, with time to observe. What happened in Racine should not have been allowed to happen, but the election officials need to have the discretion to balance the administration of the election and the voting process with the privileges of observers. The inspectors have taken an oath. The observers have not.

EL 4.03(2)

Attorney Hunzicker shared his screen to show the language of EL 4.03(2) and read the draft out loud: "The designated election official shall maintain an observer log and shall require observers to enter the required information under EL 4.04(1) into the observer log and shall ensure that the photo ID presented conforms to the information entered. The designated election official shall then inform the observers how they may ask questions during the day and direct the observer to an area of the observable location established by the designated election official as an observation area. Observer logs shall be returned to the municipal clerk after the election activities at an observable location have concluded."

- That is particularly if it is not happening in the municipal clerk's office, just to clarify where that should go.

Kristin Hansen

- I just want to point out that when it says "Photo ID conforms to the information entered," a person's driver's license or other ID does not have to have the current address on it, so if they write down their current address, it would not necessarily conform to what's on the ID. The face and the name would – should – but I think some clarification is required there.

¹⁰ Referencing David Kronig's third comment in this section

Attorney Hunzicker responded to Kristin Hansen's comment:

- That's a good point. Yes, if the Commission opts to keep the photo ID requirement for observers, which I would add is not something that is in the statute, it was in the prior draft rules of the Government Accountability Board, it was talked about at the last meeting, but it is, I'd say, one of the more questionable aspects here. Something the Commission is going to need to make a decision on one way or the other, whether observers need to show a photo ID, so I just want to make that clear.

Kristin Hansen

- The forms that we fill out does have a box to check for the chief to say, "Yes, I saw your ID."

David Kronig

- I am generally fine with the language here, I would just propose adding an additional sentence at the end along the lines of, "Designated election officials shall instruct observers that if they were trained, assigned, or affiliated with an organization, they should list that organization in the log," and with the caveat that whatever verbs end up being used in the definition of "representing the same organization" could be swapped in there. And that's sort of my proposed solution to some of the comments previously on "how do you enforce the representing of the same organization?" I don't think the designated election officials should have to do some sort of affirmative enforcement because that puts them in an untenable position, but I think that having that affirmative instruction could be helpful.

Eileen Newcomer

- I like David's comments and as a possible solution to some of the issues that we talked about earlier. I also wanted to lift up Kristin's comment and just to say that in practice, we have seen an issue with this where an observer who lives in-state hadn't updated their ID yet, they were told by the chief that they had to put down their address that was on their ID rather than their home address, and so this actually led to conflict. The person was almost kicked out of the polling place because of this conflict, which just does not need to happen at a polling place. And I really do think it would be better information to have the observer's current address. I guess I don't understand the point of having an address on if it wouldn't be to follow up with that person and if you're following up with that person at their old address, it doesn't really make any sense to me. So I would like to see the language change to, maybe say something about like, "The photo and name reasonably conform to the photo ID," rather than including all components of it.

Ryan Retza

- I did want to agree with a couple of the comments that were made on the photo ID portion, just because of all the reasons that were already stated, and I would suggest, similarly to, sorry, whoever spoke last, that either "The photo ID reasonably resembles the observer," or lower the standard to just say that "A photo ID was presented," as a possibility.
- And then, I was also curious on the phrasing of, "how they may ask questions," instead of just stating who to direct questions to. I guess that would be a question for staff.

Attorney Hunzicker responded to Ryan Retza's question:

- I think the intent there is basically to require election officials just to explain to observers what their options are during the day just so that if they have something they want to talk to an election official about, they know who to go to, and how to go about doing that. So that's the intent of the line; I think if there are better ways of phrasing that, please have a comment on that either now or after the meeting just so that that intent is clear, that that's something that an election inspector is being required to provide to observers. Not in any particularly detailed ways, which is why it's general language, but just so that

there is a communication of where observers can go with questions during the day; that's really the intent there.

Ryan Retza

- I guess my concern was, like if you get to a polling place, sign in as an observer, and they have this "how you may ask questions," they'll just say, "Well, call the municipal clerk," even if they're not at that location. Maybe phrasing it as like, "who they may direct questions to within the observable location," or something like that would be helpful.
- And then my only other comment on EL 4.03(2) is in the GAB 4.02(2), it does state that, "The chief inspector shall make available to each inspector," I'm assuming that was supposed to be an inspector and observer, but for my purposes, I'm going to replace that with observer: "Chief inspector shall make available to each observer a summary of the rules governing election observers." And then I would suggest adding "at that observable location," just because I didn't see that language in the new draft rule.

Attorney Hunzicker responded to Ryan Retza's comment:

- Yes, and I think that is something that can and probably should be added as a requirement; that was in one of the notes I talked about at the very beginning, but I think there probably should be a requirement to have that material at each polling place or other location to give to observers when they sign in, so I think that is a comment we will present to the Commission for inclusion.

Attorney Hunzicker confirmed no one else wanted to speak.

Chat discussion for EL 4.03(2):

12:17:52 From Caitlin Jeidy to Hosts and panelists:

David, can you please provide that text directly here? The language you proposed.

12:18:53 From David Kronig to Hosts and panelists:

"Designated election officials shall instruct observers that if they were trained or assigned by, affiliated with, or otherwise identify as representing an organization, that they must list that organization in the observer log."

12:19:04 From Caitlin Jeidy to Hosts and panelists:

Thank you!

12:21:51 From Eileen Newcomer, LWVWI to Hosts and panelists:

calling the clerk with questions if the observer has questions, would not be a reasonable election day process for observers to ask questions.

12:22:14 From Eileen Newcomer, LWVWI to Hosts and panelists:

^I appreciate Ryan's comment related to that.¹¹

12:22:15 From David Kronig to Hosts and panelists:

I agree with this suggestion that a summary of rules be provided to observers

¹¹ Referencing Ryan Retza's second comment in this section

EL 4.03(3)

Attorney Hunzicker shared his screen to show the language of EL 4.03(3) and read the draft out loud: “The designated election official shall provide each observer with a sticker, badge, or other item that identifies an individual as an observer and distinguishes observers from election officials.”

- This was something talked about at the first meeting.

Eileen Newcomer

- Could they also be required to give the observer the Rules-at-a-Glance document?

Attorney Hunzicker responded to Eileen Newcomer’s question:

- Yes, so I think very similar to Ryan’s last comment, I think an addition that we will have for the Commission when they consider this, is to hand out the rules and guidance to election observers on Election Day. So I think that is something we would include. Of course, the guidance is going to have to be changed in a number of ways after these rules are finalized, but I think that certainly can be included somewhere in this section. So yes, we certainly will have that comment.

Eileen Newcomer

- And I think yeah, so that’s great. I think that would be good to include. And if possible, maybe there could be some language around like, the most recent edition? I know there are times we’ve had observers go and receive an edition from ten years ago and like, rules have changed since then or like, the guidance document had been updated since then. So it would be nice to know that at least the intention is that they’re going to have the most up-to-date version.

Debbie Morin

- I was just looking at some of the, the observer log, the last one where there is like, language that was written, and well, I guess that can be included, but I’m bringing up a question that organizations, because they train observers, does that mean that anyone trained by them would be considered representing that organization? Or if an organization just offers training to anyone interested in learning more, does not necessarily mean that they’re affiliated with that organization. I’m not sure about that.

Attorney Hunzicker responded to Debbie Morin’s question:

- I think that part is really going to come down to these definitions for sub. (18) and sub. (19), how someone representing the same organization is defined, is really going to be whether or not someone can be limited on that basis, so I think it’s really those definition sections that are going to determine whether someone who’s merely trained by an organization or someone who is identifying themselves as representing an organization, would be representing the organization under this statute. So I think it is those definition sections that are going to either go one way or the other on that question, but it is an important question for these rules and for the statute.

Debbie Morin

- Right, so to be able to say that we might need some clarification on that and instead of when, for the purpose of discussion, we can hear it, but if it’s put in the chat, unless you read the chat, you’re not going to be able to weigh in on it, so I just thought I would just state that so that I can weigh in on that issue of training, does training equal representation of an organization?

Attorney Hunzicker responded to Debbie Morin’s comment:

- I’m not actively reading the chat. I do see it, but anyone can add to the chat at any time. The chat is going to be recorded, so that is something that is presented to the Commission after this meeting. So anything that’s in the chat will be something that is considered at the Commission meeting. Probably

we'll do a little editing if there's non-substantive comments and that kind of thing. But substantive comments are all going to be included.

Julie Seegers

- I would just like to add, and I don't know if anybody said this yet so I'm sorry if I'm repeating, but the Rules-at-a-Glance, that should be given at the time that an observer enters the polling place or central count, or it can also be called a Summary of Rules Governing Elections, should also include how observers should challenge voters and voter registrations as well as if there's any issues with the clerk that they're having that aren't being resolved to their liking, so just want to include that.

Attorney Hunzicker responded to Julie Seegers' comment:

- Those are definitely on the table for things that the Commission has been asked to provide for polling places, things on challenges, very much as well.

Eileen Newcomer

- Just a logistical question about the notes in the chat: is somebody else taking the notes? And like, because I know sometimes it's like, "I agree with so and so" as they're talking, is that kind of thing being recorded alongside or should we be more specific in our comments in the chat?

Attorney Hunzicker responded to Eileen Newcomer's question:

- You can always be specific if you want to identify a specific comment that you agree with, but this is being recorded so we have a video, we have someone taking notes and taking minutes, and then we also have the chat. And so we will be, after this meeting, basically reading through and comparing all of those, so I think it is being recorded. I think if you want to put something in your own words, taking the time to write it out, you can put that in the chat, just so you can specify each word kind of at your own pace. But otherwise, anything that you say is being recorded on video and audio, and then we'll have a minutes document created both live and comparing with the video and audio after the fact.

Attorney Hunzicker confirmed no one else wanted to speak.

Chat discussion for EL 4.03(3):

12:25:16 From Ken Brown to Hosts and panelists:

I think the purpose of this exercise is to address issues for observation. I'm glad that Mequon was able to abide by the needs of all of the participants. What several of us have experienced is hostility from the CI's and the City Clerk. complaints have been filed by myself and others related to these issues. I would argue that the very reason we are engaging in this process is because of the abusive/ hostile behavior of the City Clerk of Racine. She has been sued numerous times on various issues only to be not clearly outlined in the rules/ statutes.

12:28:45 From Caitlin Jeidy to Hosts and panelists:

The chat and minutes will be aligned with arguments, etc.

12:28:48 From Ryan Retza to Hosts and panelists:

Caitlyn is also asking clarifying questions if needed

12:29:02 From Eileen Newcomer, LWVWI to Hosts and panelists:

Perfect! Thanks!

12:29:09 From Ryan Retza to Hosts and panelists:

*Caitlin - sorry!

12:29:40 From Karen Huffman to Hosts and panelists:

I understand where you are coming from and found your experience to be appalling. There's just a wide array of experiences throughout Wisconsin so it's hard to develop legislation that addresses all in a balanced manner. I do appreciate your input and perspective.

12:30:37 From Caitlin Jeidy to Hosts and panelists:

Thanks for your input, Eileen. There will also be an opportunity for the members to review the minutes, to make sure everything was captured correctly before heading to the Commission.

EL 4.03(4)

Attorney Hunzicker shared his screen to show the language of EL 4.03(4), introduced the section, and read the draft out loud:

- This is arguably the main one of this rule, this is kind of the central piece of it, so expecting some discussion; some of the discussion that's already happened is related to this one.
- "The designated election official shall establish one or more observable areas to enable observers to readily observe all public aspects of the voting process during the election without disrupting the voting process. An observation area shall be not less than 3 feet nor more than 8 feet from each table at which electors announce their names and addresses to be issued voter numbers or at which election officials announce the name of absentee voters, not less than 3 feet nor more than 8 feet from each table at which electors may register to vote, and not less than 3 feet nor more than 8 feet from each table at which election inspectors remake any ballots. Before remaking any ballot, election inspectors shall announce to observers that the ballot is being remade and the reason for doing so. If observers are unable to hear an elector or election official stating a name or address, an election official shall repeat the name or address. The 3-foot distance described in this paragraph shall be preferred unless it would interfere with voting activities due to the physical limitations of the observable area."
- So obviously this is a large paragraph; there's a lot here. I'll add that the third instance of 3 to 8 feet is not found directly in the statute, but is coming on comments that were received at the last meeting. So I just want to say that the first two 3 to 8 feet are directly from the statute, the third one is not but is a process that is specifically observable in statutes, remaking ballots, even though there isn't a specific distance requirement found in the statute. So I just want to point out a couple of those facts.

David Kronig

- I have a few comments on this section. The first is that the section says, "One or more observation areas," but then delineates several separate observation areas that the designated election officials are required to create. I think it would be helpful to specify that "the same observation area may serve to satisfy these various requirements," where, for instance, if it is possible to set up an observation area to view both the check-in table and registration table, that that would satisfy the requirements here.
- I also, coming on your comment that remaking is a separate process, I think it might make sense to split that out into a separate subsection, rather than having it folded into the rest of this.
- I also want to register my strong opposition to the last sentence that, "The 3-foot distance described in this paragraph shall be preferred." I think the statute is clear that it is somewhere in the 3 to 8-foot distance and I think that we should leave it to clerks and chief inspectors to exercise their judgment as to

what distance is appropriate based on the needs of their particular location without giving a preference to a particular end of the spectrum.

Attorney Hunzicker responded to David Kronig's comments:

- Yes, I think, to the first part of the comment, the intent is that one observer area could cover all of these requirements, depending on the polling place, if it's possible to meet the 3 to 8-foot requirements below for the polling place. If the polling place only has maybe two relevant tables, a small one, that that is intended to be a possibility here. So I think we can clarify that if needed; that certainly was the intent.
- And two, I think I'd agree with your suggestion to break it into two different pieces, partly just for length and clarity; it wouldn't change any of the requirements, I think it's purely for clarity on that.

Ryan Retza

- I've got a couple comments on this too. So in that first sentence, again, I would just go back to s. 7.41(3); I know you have "disrupting the voting process" in there, but also I would just add the language of "not violating s. 12.03(2) or s. 12.035," just to reference it as closely to the statutes as we can.
- I agree with David's comment that there could be some clarification on if one observer area does cover all of this, then they are permitted to do so. I also agree with adding a separate subsection.
- One clarifying point I did want to make in that second to last sentence, where it starts with, "If observers are..." At the end, I would say, "An election official shall repeat the name or address" and then add, "upon request," just for clarification purposes.
- And then I disagree with David on removing that last sentence. I do think that at least establishing a preference, that being more transparent is preferred over setting the box at 8 feet and you can stand behind it is certainly a good message, to at least state that observers are a part of the election process as well, whether you're Republican, Democrat, part of a third party group or just a citizen going in to observe.

Karen Huffman

- I brought this up last time and I just wanted it as a small point, but when we're remaking ballots, particularly in a presidential or general election, and you have several at a time, it really is not practical to announce to anybody that you're doing it, particularly if the chief's table or the inspector's table is in close proximity to the observers. I think it's obvious, just like if somebody's registering to vote or voting, that it's pretty clear when there's a ballot being remade, but announcing it over on top of everything else is just not practical.

Kristin Hansen

- Before I make the comments I was planning to make, I do want to push back a bit on what Karen just said. I've been in places several times where it was announced that a ballot was about to be remade both at central count and at regular polling places. I think that's exactly why it needs to be announced, is because you don't necessarily know it, especially in some of the places that are very large. Unless you happen to be observing that process at that time, you would not know that they are about to remake a ballot, and I think the remaking of a ballot is exactly the kind of thing I would want to observe, to make sure that that's being done properly. Remaking someone's ballot to me is one of the most important, most significant things that can happen. And sometimes it's because the ballot is damaged and won't go into the machine and sometimes it's for other reasons, but I find that to be something really significant and the observer should be made aware that it's about to be happening so that they can observe it.
- And again, I'm thinking about some of the polling places that are very large that I've been in, but going back to the space issue, again, I do think it needs to be clear that – maybe this is just me – but I've been in dozens of polling places, and it's pretty rare that you can stand in one box if it's the kind of place

where they're putting a tape on the floor for you, and observe everything all at the same time. So you would need to maybe be a little bit more careful to specify that there needs to be an observation space at voter registration, at check-in, and at the absentee ballot processing section, if that's being done at that polling place, because unless they're using Badger Books, the registration table is far away from the check-in table and you can't do both at once, so if you have a clerk who's going to say, "Here's your little box to stand in," you can't observe all of that at the same time. So it does need to be a little bit more specific in my opinion.

Attorney Hunzicker responded to Kristin Hanson's comments:

- I think there certainly are possibilities for making some of this more specific and clarifying. I do think that the remaking is specifically observable in statutes. That is why it's getting extra attention here, is that when that does occur, two election officials should be involved and there should be witnesses watching it, just so that's why it's getting the extra attention and language, that specific process, just to state that again.

Robert Newby

- I agree with David's comments, in particular about the idea of eliminating the last sentence, which I would say it should be done. There are issues such as lines of voters, there are voters who prefer social distancing, and there are things that, in a particular situation like having multiple stations at a table where voters are coming to get their ballots, that would make that 3-foot preference often – I could say usually – a difficulty. In addition, the Commission may want to consider making it clear so that observers do not misinterpret, that it is the chief inspector that decides where in that 3 to 8-foot range the observation is, it's not that the observers can be anywhere within that 3 to 8-foot range.

Attorney Hunzicker responded to the discussion:

- I think with the last sentence, just because there have been a couple of comments on that, I think if anyone does want to write in the chat whether or not you think the last sentence, "The 3-foot distance described in this paragraph shall be preferred unless it would interfere with voting activities due to the physical limitations of the observable location." If you think that should be included, you can say "Keep the last sentence," if you think it should be excluded, you can say "Strike the last sentence," or if you have an alternate idea for that, you can put in alternate language. I just think that that is going to be one of those sentences that the Commission could use some sort of data, feedback on how many members of this committee want it there or not. I just think it's a more in-or-out kind of question where that could be useful. So if everyone would, if you have a stance one it, if it doesn't make a difference, you certainly don't need to, but if you do have an opinion on that one, if you could just state that in the chat, and I'm seeing quite a few of you doing that.

Please see the Rule Language Preferences of Committee Members document for an organized chart of members' preferences.

Julie Seegers

- I think that the 3-foot distance that the last sentence that was just discussed, should be worded such as, "The 3-foot distance described in this paragraph shall be the shortest distance that doesn't interfere with voting." Now, I know that that might be a subjective thing, but if our main goal is to not interfere with voting, and in order to allow the observers the right to observe under s. 7.41, they should be allowed to observe at the shortest distance without interfering with the voting process. So that might be different than how the chief or the clerk sets up the areas, and especially when you speak about tables, 3 feet no more than 8 feet from each table, then there have been clerks that have set up the areas that are 8 feet

from the table because they say, “That’s the law, 8 feet,” so it gives them a lot of leeway. So if you say that it “shall be the shortest distance that doesn’t interfere with voting,” then that seems to be the fair way to allow the observer to be able to do their job.

- The other thing I wanted to mention is, at the beginning, “The designated election official shall establish one or more observation areas.” The Wisconsin Integrity Network would like the entire area in a polling place and at central count to be observable minus, obviously, watching how voters vote or seeing the private information presented at the registration table, the IDs and proof of residence and such. So I really believe that we need to protect the voters, yes, and that’s why if we say that it should be the shortest distance that doesn’t interfere with voting, then I think that’s fair to everybody.

Attorney Hunzicker responded to Julie Seegers’ comments:

- I think we can have that language as a possibility in the comments for the Commissioners.

Caroline Fochs

- I just want to go on record being opposed to announcing that the chiefs are remaking a ballot. If the observers, if that is their main concern, they can certainly have a station near where the absentee ballots are being processed and they should be aware that that is going on. I wouldn’t want the observers to think that the ballot is being remade that it’s announced means we’re going to go get them if they’re over at registration, or somehow pull them into the process. I think this inserts them into the election administration, and if they do want to observe that, they can certainly do that. I don’t think that they should be a part of the process, and as far as the last sentence, I too would prefer to have that removed.

Debbie Morin

- I just wanted to, I don’t know, because I know the statute says, “table,” “3 to 8 feet from each table,” and it’s been very, we’ve been splitting hairs on what’s 3 to 8 feet from a 6-foot to 8-foot banquet table where the action is taking place on one end, and now you’re 3 feet from the opposite end of an 8-foot banquet table, and they say, “I’ve fulfilled what I’m supposed to do, you are 3 feet,” and they bring out the tape measure to prove it. So I did like later on, where some of the language that you had said, “Remain at least 3 feet from any election process.” So I like the term “election process” that’s in sub. (6), where it says, “readily observing all election processes.” So maybe to define what the table is, it’s the part on the table where the election process is taking place, and we measure from where the people are sitting, from where the election inspector is sitting, we measure 3 feet from where the procedure is happening, not the end of the table where there’s nothing going on, and that just causes more problems because I’ve gotten those phone calls. I like that language and I’d love to be able to incorporate it and I don’t think it changes the statute, I think it just defines what we mean by table.

Attorney Hunzicker responded to Debbie Morin’s comment:

- So I think I understand that, it’s basically defining where the measurement starts at the table, so I think that I understand that.

Diane Coenen

- Couple of comments here; I did type something as well. We do – at our polls, and my chief election inspectors are trained to – when they’re doing a remake, to announce the name of the voter, and this is for challenge purposes, because any voter can be challenged. So we’re being as transparent as possible. So now they’re going to remake the ballot. We do have our polls set up that observers can be in that area where the chief is remaking the ballot. My concern with the 3 feet is, we announce the name so the observer has the name of the voter, now they’re watching that ballot being remade and they can see – more than likely, because I’ve tested some distances – you can see what’s being marked. So now they

know how the voter voted and they have the name of the voter, so the privacy and the integrity of that ballot is compromised. In my opinion, if we need to make the whole poll basically open for observers, I don't have problems with that, but I am feeling an 8-foot separation is better for remaking ballots for the privacy of the voter. Again, an observer or anyone at the poll can challenge a voter and a remade ballot, but this leaves it open for someone to see how that ballot is being voted, and that is my main concern with observers at that station, however, we do everything we can to accommodate observation. So I'm just very concerned about the privacy for the voter in this instance.

Attorney Hunzicker responded to Diane Coenen's comment:

- Interesting comment there, I think that was not something that I'd thought about. I think there's an additional confidentiality issue when it comes to remaking ballots just if there's any possibility for observers to see what's being written on the ballot, so I think that would probably need to be added somewhere in here at least, possibly in a definition section, for confidentiality, the remaking of any ballots.

Kristin Hansen

- I would agree that even though I do think we should be aware when a ballot is being remade, there needs to be something in there to say, "while maintaining the confidentiality of the vote," yeah, something like that. But again, not to really really parse this stuff, but when you say, "3 feet from the table," if you're talking about 3 feet from the edge of the table not taking into account the person sitting at the table, now the observer is potentially standing a foot away from the back of the poll worker. I mean, like, right over their shoulder. If I had my druthers, it would be 3 feet from the chair the poll worker is sitting in, because you couldn't even back up to get up from the table without banging into somebody who's 3 feet behind you, or 3 feet behind the edge of the table, so I don't know if that's where the accommodation of the 3 feet to 8 feet comes in, but it needs to be reasonable for the poll workers sitting at the tables – that there isn't someone breathing down their necks for fourteen hours. That could be intimidating and anxiety-producing for anyone, so I don't know how you can fix that, but maybe it's 3 feet from the poll workers sitting at the table. Maybe that's too detailed, I'm just saying that kind of is an issue.

Lana Lee Helm

- I was just also thinking of the comment that Diane made, and obviously the way to get around that I would think is to not announce the name so that the observer can see. I mean, it is important when they're remaking the ballot to see, "Okay, I filled in a bubble for this person on this ballot," and that the bubble is filled in the exact same on the remade ballot, and that it's not filled out differently. But yes, you can not reveal the person's name, so that would be one alternative. And then also, announcing the remade ballots, yes, there are many things that are required to be announced during the voting process: the curbside voting, that is announced; processing an absentee ballot, that is supposed to be announced. And all of that is not just for the observers that are there as an observer, but also for those people that are voting to see, "Oh, what are they doing at that table over there?" Like in my polling place, we have the absentee ballot processing right there so that people aren't thinking, "Oh, they've got a stack of ballots, what are they doing with them?" It just is a way for even the voter that is coming in and out, and I think that's the purpose of announcing a curbside ballot. That's the purpose of announcing processing absentee ballots. So that's just one suggestion there.

Ryan Retza

- I guess in order to clarify my comment, would Diane mind if I asked her a question?

Diane Coenen agreed.

Ryan Retza

- Are you referring to the remaking of ballots, of like absentee ballots when they're being processed?

Diane Coenen

- Yes.

Ryan Retza

- So to my understanding, there is no violation of a secret ballot once the envelope is separated from the ballot. So, say you have a stack of ballots that you're putting into the tabulator, obviously at that point the information is already separated between the envelope and the ballots, and then obviously as you're putting those through, it kicks back as an overvote or whatever it may be, there is no identifying information on that ballot, and the inspectors obviously need to transfer votes from one ballot to the new ballot, so there isn't, at that point, an issue with the rights of voters to a secret ballot since there is no information tying the ballot to the voter at that point.

Diane Coenen

- No, that's not correct. When an absentee ballot is taken to the machine to be inserted into the machine, the envelope is still with the ballot. It's removed from the envelope, put in the machine, that's where they're reading the name from the name and the address of the voter, and so they're announcing that, it spits out there's a problem. They fold it back up, they put it in the envelope, and they take it back to the chief inspector. Now, the chief inspector is going to look that ballot over and determine if there's a problem with it. Maybe there's a small tear in it. Maybe they've spilt some coffee on it, whatever the case is. The chief inspector now needs to remake that ballot. They still have the ballot with the envelope, so they're going to announce they're remaking a ballot for "Mrs. Jones," at this this address, and now they start to remake the ballot. They still need to insert that ballot into the machine, and they need to have the name and the address when they put that ballot in the machine.

Ryan Retza

- So this is a question now for Brandon and staff, is that the proper procedure, because those inspectors can then tie that ballot to that voter after reviewing who they voted for?

Attorney Hunzicker responded to Ryan Retza's question:

- I might need to defer to our elections specialist, but my basic understanding is that there is more segregation of ballots and envelopes after they are opened and that once they're open, the ballots would be kind of placed in a stack and not really traceable to the envelopes anymore. At least, that's my understanding of that process.

Ryan Retza

- I guess more specifically, my question comes down to where the name and address is announced, because to my understanding, the process is, as you're reviewing the envelope for sufficiency, that's when you announce the name and address, prior to opening and separating the ballot and the envelope.

Attorney Hunzicker responded to Ryan Retza's comment:

- Yes, that is my understanding too, although I still think I don't want to get too much sidetracked on some of the procedural things. I think there is still a possibility, if there were only one absentee ballot at a polling place, this issue would still potentially be there because if it's the only one in the stack, there might still be an issue if that one needed to be remade, that it could be seen. So I still think being careful with the information on the ballot not being viewable if there was any possibility of it being traced to a voter, is an important consideration.

Ryan Retza

- I guess I get that concern, it's just, again, the processing of absentee ballots is a separate issue not covered by this rule; it just varies a lot depending upon where you are. But at least from my understanding of the proper procedure, there is no violation. I mean, the inspectors can't even violate the right to a secret ballot, that's why they have to flip over the ballot when they separate it from the envelope. So I guess that's just more of a procedural issue. I just wanted to make sure I was addressing Eileen's specific concern there, just because in my opinion, the announcement of remaking a ballot does not also include the announcement of that voter's name or have any markings on the ballot where you can tie the ballot back to the voters themselves, and nobody can violate the voter's right to a secret ballot, including inspectors, to my understanding.

Diane Coenen

- I just want to quickly add, just so you know, maybe you're not aware of this procedure, but the chief inspector must also make sure that in the poll book, the word "remade" is attached to that voter, so they have to have something to know whose ballot is being remade. So they need that envelope to go back to the poll book to write "remade" in the poll book. So there is ways to identify that remade ballot with the voter.

Ryan Retza

- I guess I'll defer to staff on the proper procedure there.

Attorney Hunzicker responded to the discussion:

- I think I do want to move on from the procedural questions.

Ryan Retza

- I guess generally I just wanted to support the announcement of the remakes.

Ken Brown

- I did, also, when Diane brought that point up, I believe that is an incorrect situation. I do not believe that that would have to be denoted and that ballot should be separated from the envelope, and then that ballot is treated as something that's completely unattached to that envelope anymore, and that's been my experience in the different times that I've had to either remake a ballot or witness the remaking of a ballot. I don't think that situation as described was proper, so check out the details on that.
- The other thing, it was referred to earlier about that 3 foot from the table, yes, that does put the poll worker there and their chair and the poll observer should be just looking over their shoulder just like you would have if it was the teacher in your class looking over your shoulder to kind of see what your work is without necessarily interfering with the process. I believe that that is what is intended so that that observer can see that that is an ID that is from the State of Wisconsin, it is a passport, and you can get a bit of a glance at the photograph to see that that person matches the person standing in front of you and make sure that the voter that is there is being honest and making sure that the poll worker that is there is also being honest. It has been reported on more than one occasion that the poll worker was telling people to show up at their particular station and they would pass them through, misrepresenting who they were, and that's the purpose of this observation, is to make sure that those things are not happening.

Julie Seegers

- Eileen put up the Election Day Manual procedures and one thing it says in there is there should be two inspectors remaking a ballot. So if the observers have to be 8 feet away in watching the remake of a ballot, it has to be guaranteed that there is two parties remaking that ballot. So often, and I've heard this complaint many times, that there isn't a person from each party remaking ballots. So, if the observers

knew that there was one person from each party remaking the ballot, maybe it'd be easier to accept the 8 feet away. But again, the procedure, from what I understand, is described to me by observers, that there is a computer-generated tracking number that goes on the certificate and then is transferred to the ballot, so separating those at a time when the ballot has to be remade seems very reasonable to me.

Eileen Newcomer

- I guess my comment is that it would be great if this document complemented what is written in the different manuals like the Election Day Manual, because I think it's important that it's followed, and I think even through this discussion there seems to be some disagreement about whether it shall be announced or not, and to me, that's one of the reasons why we have observers, is to see on the ground and in practice where there are variations from polling place to polling place, or municipality to municipality.

Robert Newby

- Speakers are implying that if a voter did not match the picture on the ID, that that person might be challenged. I'm reading from EL 9.02: "An elector has cause to challenge a person as being unqualified to vote if the challenging elector knows or suspects that any one of the following criteria applies to the person being challenged: 1) the person is not a citizen of the United States; 2) the person is not at least 18 years old; 3) the person has not resided in the election district for the last 10 days; 4) the person has a felony conviction that has not been restored to civil rights; 5) the person has been adjudicated incompetent; 6) the person has voted previously in the same election." None of those talk about if the person's ID match their picture.

Attorney Hunzicker responded to Robert Newby's comment:

- That is correct, the challenging process is coming from part 5 of Chapter 6 and then EL 9, which is merely implementing that statute, so challenges limited to a certain set of things. However, if the photo ID does not conform to the person voting, the check-in process just would not be completed. So it is a requirement to show a valid photo ID and for the name to conform and for the image to reasonably, you know, people change how they look sometimes but for the image to, in the opinion of the election inspector, match to the person, so it really is on the election inspectors to enforce the photo ID requirement.

Attorney Hunzicker confirmed no one else wanted to speak.

The committee took a lunch break at 1:06 p.m.

The committee returned at 1:31 p.m.

Attorney Hunzicker asked committee members to be concise and note agreement and disagreement with others' comments in the chat in order for the meeting to end at a reasonable time. He noted that Debbie Morin's hand had been raised when the committee broke for lunch and allowed her to speak.

Debbie Morin

- You had mentioned that was a good point that someone had brought up that you want to make sure that people can't see how someone else voted, and I just wanted to say that in s. 6.93 where you can challenge an absent elector, from what I was told, and I don't even know if my understanding is correct, but that the challenging of the absent elector takes place before you take the ballot out of the envelope. So once that person, like you check them in, like they're a voter, and they're an absent voter, then anyone challenging that, that's the time they challenge it. But after, you don't challenge it before you put

it in the voting machine, so I just think that maybe it's just a process thing that has to be cleaned up for municipalities that process absentee ballots in their polling places.

Attorney Hunzicker responded to Debbie Morin's comment:

- Yes, that is my understanding as well, that the reading of the elector's name is when the absentee ballot would be challenged, at that moment, when it's still in the envelope.

Chat discussion for EL 4.03(4):

12:32:29 From Diane Coenen to Hosts and panelists:
I think that is covered in the wording one or more areas.

12:35:42 From Claire Woodall-Vogg to Hosts and panelists:
I also support setting 3 feet as the preferred standard over 8 feet

12:36:48 From Lana Lee Helm to Hosts and panelists:
Exactly Ryan! 3 feet should be the preferred distance if it doesn't interfere as clearly stated.

12:36:48 From Eileen Newcomer, LWVWI to Hosts and panelists:
Its not clear for observers that a ballot is being remade. I'd prefer that it is announced and the reason why.

12:37:43 From Julie Seegers to Hosts and panelists:
Agree with Karen the remaking of a ballot is exactly what needs to be observed.

12:39:00 From Julie Seegers to Hosts and panelists:
Add to observe the tabulators as well.

12:39:39 From Julie Seegers to Hosts and panelists:
Sorry, I meant Kristin regarding observing remaking of ballots

12:40:14 From Diane Coenen to Hosts and panelists:
For this process I would suggest 8 ft away so the observer cannot see the markings on the ballots (damaged ballot & remade ballot) because that would breach the voter privacy since the observer may be able to observe the voter name from the absentee envelope.

12:40:42 From Debbie Morin to Hosts and panelists:
I also agree with Kristin re: the importance of remaking a ballot, as well as the observation areas.

12:41:24 From Eileen Newcomer, LWVWI to Hosts and panelists:
The last sentence is fine with me.

12:41:27 From David Kronig to Hosts and panelists:
Strike the last sentence

12:41:34 From Robert Newby to Hosts and panelists:
Strike the last sentence

12:41:41 From Ryan Retza to Hosts and panelists:
Keep the last sentence

12:41:46 From Katie Reinbold to Hosts and panelists:
Strike the last sentence.

12:41:47 From Lana Lee Helm to Hosts and panelists:
Keep the last sentence

12:41:51 From Diane Coenen to Hosts and panelists:
Strike last sentence.

12:41:56 From Kristin Hansen, Common Cause to Hosts and panelists:
Keep

12:41:57 From Debbie Morin to Hosts and panelists:
keep the last sentence

12:42:12 From Karen Huffman to Hosts and panelists:
I think observation of remakes is very important. How to alert the observer not to interfere with the process is the question and perhaps that can be outlined in the guidance or rules.

12:42:14 From Claire Woodall-Vogg to Hosts and panelists:
I think keep it. It still gives the chief the discretion based on the physical limitations and it isn't within 3 feet of the voters necessarily, but the table/election workers.

12:42:57 From Caitlin Jeidy to Hosts and panelists:
Comments received by WEC

12:44:42 From Claire Woodall-Vogg to Hosts and panelists:
I would add though that this is NOT and should not include tabulators based on how I am reading this section. It would be near impossible to allow an observer within 3 feet of a high speed tabulator at Central Count and still have the election workers function.

12:46:21 From Eileen Newcomer, LWVWI to Hosts and panelists:
I believe announcing remaking of the absentee ballot is part of the process outlined in the election admin manual

12:46:21 From Ryan Retza to Hosts and panelists:
Just wanted to write for the record I support the announcement of remaking ballots. They do an excellent job at central counts in Green Bay and Milwaukee, and it alleviates a lot of questions our observers typically have.

12:46:54 From Julie Seegers to Hosts and panelists:
I would suggest "The 3 foot distance described in this paragraph shall be the shortest distance that does not interfere with voting activities..."

12:50:55 From Katie Reinbold to Hosts and panelists:

I agree with Diane¹²

12:56:53 From Claire Woodall-Vogg to Hosts and panelists:

We have a procedure for Central Count workers to also preserve anonymity with remaking ballots, too. I will defer to Diane on the polling place practice, but this is not an issue for us at Central Count and we don't find announcing remakes or rejections burdensome.

12:58:32 From Eileen Newcomer, LWVWI to Hosts and panelists:

Procedure To remake a ballot, the following steps should be followed: 1. At least two election inspectors (if party-affiliated inspectors are present, use one of each party) must participate in this process. 2. Election inspectors shall announce to observers, if present, that a ballot is being remade and the reason for doing so. 3. Note and select a reason for remaking the ballot in the endorsement section of the ballot. pg 103 of the Election Day Manual

13:04:48 From Ryan Retza to Hosts and panelists:

Just want to clarify: if proper procedure is followed, there is no violation of a secret ballot. There should be nothing identifying the voter and their ballot after it is separated from the envelope. Therefore, there should be no issue announcing the remake.

13:08:18 From Julie Seegers to Hosts and panelists:

5.85(3) establishes 2 major parties have to remake a ballot. That should be clear to observers that is the case no matter if it is 3 feet or 8 feet away.

EL 4.03(5)

Attorney Hunzicker shared his screen to show the language of EL 4.03(5) and read the draft out loud: “The designated election official shall establish an observation area behind the election inspectors at each table at which electors announce their names and addresses to be issued voter numbers. If any electronic poll lists are used when voters announce their names and addresses, the observation area shall be positioned to allow observers to observe the screen, but observers shall not be permitted to see the screen of an electronic poll list used to register voters.”

- This is something that was discussed in quite a bit of depth at the first meeting. My understanding that there is going to be some agreement and some disagreement with basically including this section, so I think this is another one of those areas where getting direct feedback from all of you in the chat in comment would be useful. So I think if you want to state that you agree with this section and want it to be included, disagree with the section and don't want it to be included, or would agree with it if it were modified in some way, if you could put that in the chat, I think that would be helpful for the Commissioners on this point, just because I think this is one where there's going to be differences of opinion on it.

Please see the Rule Language Preferences of Committee Members document for an organized chart of members' preferences.

¹² Referencing Diane Coenen's first comment in this section

Ryan Retza

- Generally I think it's fine, the only change I might have had is on the second page, changing the phrase "poll list used to register voters" to "registration form." I think I'm not exactly 100% sure how the Badger Book system works, but to my understanding it's like a separate screen. So I guess my suggestion would just, phrase it "an electronic registration form" rather than a "poll list used to register voters."
- And then I also just wanted to reiterate, there will be some concern about standing behind at the check-in table, but I also just wanted to restate that election observers do have the ability to examine poll lists. Again, that check-in screen is open to inspection on Election Day under s. 7.41, so I just wanted to reiterate that and I'll type whatever else I have in the chat.

Attorney Hunzicker responded to Ryan Retza's comments:

- I will double check with the name; I think I was trying to just use the statutory name for Badger Books, so "electronic poll list." We will look at that and make sure that that terminology makes sense and if it should be more specific to registration when it is used for that purpose, we'll add that language.

David Kronig

- I don't think this section should be included. I think having observers standing behind the check-in table could be intimidating for voters who might be concerned that the observers will be looking at their confidential information. I also think it could be disruptive for election inspectors. And again, I think that there's a lot of concerns about the security of confidential materials and would reiterate what I said earlier that observers only have the right to look at the poll list when it doesn't otherwise disrupt voting operations as it says in s. 6.45.

Julie Seegers

- When you talk about this, it should also include central count as far as I'm concerned because again, there is a location that I'm aware of that they do not let the observers behind the Poll Workers, even though many locations do let observers behind the Poll Workers, I think that it will provide transparency. Observers, do not, again, they're not allowed to ask questions to the poll workers, only the chief election inspector, so I don't know how it would be an interruption to the election process. So the Badger Books almost always has just one person per Badger Book, so for transparency, I think it's very important for an observer to be behind the poll worker table observing the user of Badger Books because that really is part of the Wisconsin critical infrastructure. To have just one person sitting at a Book does not provide transparency. Those Badger Books, it's not like the paper books where they get reconciled. The Badger Books don't get reconciled like the two papers do and that information on the Badger Books gets deleted after I think within five days of the election, so it's really important that an observer stands behind and possibly even an observer should, if they would like to get information on Badger Books, should be provided the same training, even if it's just written training, on what poll workers get so they know what they're looking for on the Badger Book.

Attorney Hunzicker responded to Julie Seegers' comment:

- Just so I'm understanding, I think you were commenting that instead of just electors announcing the names, it would also be when it's a board of absentee ballot canvassers at central count. I think that was your comment there, just so I'm understanding that. I think that's what you meant, just so that at central count, the observers would also be able to be behind that table where the central count announcement would happen for absentee ballots, is that correct?

Julie Seegers

- Yes, and I think watching the workers process the ballots as well, because that gets done at most places in central count but there are some places that you can't see that. The observers should be able to get behind and see, they might not be able to read in detail the name, the signature of the witness, but they should be able to see that there is a signature, they should be able to see that it is filled out completely, so that's another good reason why, again, transparency and fairness.

Caroline Fochs

- I agree with David, I think this should be stricken. From the voter's perspective, they don't know what we're looking at on the screen, so as far as they're concerned it could have all of that personal information that they provided when they registered. Also, the chief inspectors can provide a pollbook that they can view at any time.
- And also, one last comment: if this does remain, I would suggest that including confidential voters as another reason why they can't view the screen, because we do have a few confidential voters here in the city.

Eileen Newcomer

- I think this is assuming observing on Election Day, and I think we also need to make sure that it gives flexibility for setups during in-person absentee voting. I think that a clerk wouldn't want to have the observer, like, behind the desk, in the area. So I just think that I would rather see it give the election official more flexibility while still maintaining that 3 to 8-foot rule.

Claire Woodall-Vogg

- My question is more for any clerks that use the Badger Books: I feel like this is a lot like the conversation we were having prior about photo IDs and whether from a 3 to 8-foot distance, well, first of all, my understanding is you can use the Badger Book to check in a voter and register a voter and most clerks aren't creating separate lines, so it's counterintuitive to me that we'd say that you can sit behind them to observe the screen but not if it's being used to register voters. What, would you have them get up and walk away? But then also, can they actually see confidential information from 3 to 8 feet if someone is registering on a Badger Book? So mine's more questions rather than opinions, but it seems very similar to showing a photo ID. I mean, we've used Badger Books as a test before, I don't think the font was so large that someone sitting five feet away is going to be collecting confidential information.

Attorney Hunzicker responded to Claire Woodall-Vogg's questions:

- As to how the polling places are used, I'm not sure the proportion of polling places that are going to use one Badger Book for both purposes or have different areas, I think the difference that I'm trying to get at here is just that the Badger Books used to check a voter in, the information on the screen would not be anything like a driver's license or a social security number or birth date, but the information used to register a voter would include all of those things. So logistically, I think if it's the same Badger Book being used for both ones, this would certainly be very, or could be very difficult. But it's protecting the different information that is the point of that last clause there.

Claire Woodall-Vogg

- I think because it provides those logistical concerns, then I will put in my comments that I think it should be stricken. Ken says differently, but my understanding was for line efficiency, people are not keeping separate registration tables, at least not in every election.

Debbie Morin

- I just wanted to mention to Claire that I've observed when they use Badger Books, they have a designated Badger Book just for registration and it's not the rest of them, so then they form two separate lines. They have the registration line and then, and I see Caroline shaking her head, but it doesn't happen in every polling place, but the ones I've observed, then you can keep the people that have to do same-day voter registration separate from the people that just want to vote. And I think they do that sometimes, especially if you're going to have large elections, to keep everything moving more quickly because registration takes a lot longer than just stating your name and address.

Toya Harrell

- So when you're using Badger Books for election day registrations, once you've registered that person, it gives you the option to say, do you want to check them in so they can vote; everything is done on one Badger Book. Now we do have a location where our faster typers are there for registration, and again, they do both the registration and the check-in at the Badger Book and at any time an election observer wants to observe that process, then the chief inspector calls me, I come out, I stand next to the election observer and quietly have a conversation with them to let them know what's going on.

Attorney Hunzicker responded to Toya Harrell's comments:

- Thank you for that context too, I think it's helpful to understand that.

Chat discussion for EL 4.03(5):

13:35:12 From Karen Huffman to Hosts and panelists:
Correct 4th line of 5 from "observes" to "observer"

13:36:13 From David Kronig to Hosts and panelists:
Disagree, should not be included

13:36:58 From Katie Reinbold to Hosts and panelists:
I do not agree with putting observers behind election inspectors.

13:38:39 From Toya Harrell to Hosts and panelists:
I agree with David.

13:38:44 From Eileen Newcomer, LWVWI to Hosts and panelists:
I think Chief Inspectors can use their discretion while making sure they meet the 3-8 ft rule.

13:38:55 From Ryan Retza to Hosts and panelists:
Additionally, putting observers behind or to the side of the check in table would keep them out of the way of voters.

13:39:21 From Claire Woodall-Vogg to Hosts and panelists:
I will defer to those that use BadgerBooks, but can't you use the same badgerbook to register and check-in voters? How would you move the registration screen away if someone was suddenly registering? Are there any privacy screens for badger books?

13:40:21 From Kristin Hansen, Common Cause to Hosts and panelists:

I think there needs to be flexibility because of the wide variety of layouts of polling places, so there should not be a requirement that observers be "behind" the tables. In some places being next to the table is the only option.

13:40:22 From Toya Harrell to Hosts and panelists:

if I'm reading your question correctly, Claire, we use Badger Books for EDR's and check-ins.

13:40:43 From Katie Reinbold to Hosts and panelists:

Yes, you use the same BadgerBook for registering and checking in.

13:40:47 From Debbie Morin to Hosts and panelists:

I like section 4.03 (5) as an option for election officials. I've observed in polling locations where the CI specifically placed me behind the election inspectors and others where they placed me behind the voters.

13:40:56 From Katie Reinbold to Hosts and panelists:

We do reconcile our BadgerBooks.

13:41:04 From Claire Woodall-Vogg to Hosts and panelists:

Toya, what is your opinion on this? Would you be exposing confidential info during registration if someone is behind the poll workers? I don't fully understand the issue here.

13:41:05 From Ken Brown to Hosts and panelists:

Absolutely Observers should be BEHIND the election Workers. 3-8 feet. This process has been used for decades.

13:42:14 From Ken Brown to Hosts and panelists:

Julie Seegers comments at 1:40 I agree with completely.¹³

13:42:55 From Diane Coenen to Hosts and panelists:

Behind is not always feasible, so suggested language - remove the wording behind the election inspectors and insert an area within the 3" - 8" requirement.

13:43:14 From Katie Reinbold to Hosts and panelists:

Where does it say that observers should be placed behind election inspectors? My prior municipality, there's no way that would have worked, the town hall was too small. Also, just because something has been in place for decades doesn't mean it's right or the only way.

13:45:25 From Ken Brown to Hosts and panelists:

Claire I am 95% certain that the registration table is separate from the already registered check in

¹³ Referencing Julie Seegers' first comment in this section

13:45:55 From Eileen Newcomer, LWVWI to Hosts and panelists:
some municipalities use badger books to check in and do same day registration on the same point

13:46:14 From Claire Woodall-Vogg to Hosts and panelists:
I think because you could do either and have the right to do either, this rule does not make sense.

13:46:15 From Lana Lee Helm to Hosts and panelists:
Agree with section (5)

13:46:30 From Kristin Hansen, Common Cause to Hosts and panelists:
I have been at several places where voting registration was done with the same books at the same lines. That was part of the point of the books.

13:46:46 From Kristin Hansen, Common Cause to Hosts and panelists:
E-books, I mean.

13:46:51 From Claire Woodall-Vogg to Hosts and panelists:
Agreed Kristin. That is how it was sold to clerks!

13:48:26 From Robert Newby to Hosts and panelists:
4.03 (5) Disagree. Reasons to have observer areas in front but not in back of inspector work tables: No matter what efforts burdensome efforts might made if this were required, it will not be possible in some polling places. Chief inspectors may have materials on other nearby tables, potentially compromising confidential information and material security located there. If inspector needs to repeat name/address, hearing will be better in front of table. Wishes to see items such as photos are weak 3 feet from back of table, as pointed out for reading by some of the committee members advocating for observation in back of table. Wishes to see photos do not lead to a legal reason to challenge an individual voter. Potential intimidation of voters. Potential compromise of confidential information.

EL 4.03(6)

Attorney Hunzicker shared his screen to show the language of EL 4.03(6) and read the draft out loud: “The designated election official shall comply with the distance requirements described in sub. (4) and shall have the discretion to define the width of the observation area, but the width determined by the designated election official shall not prevent observers from readily observing all election processes if a greater width could have been chosen.”

- Again, this is another, trying to balance discretion with allowing observers to observe.

David Kronig

- I think that the language, “If a greater width could have been chosen,” is sort of confusing and could potentially open up to the argument that the entire width of the room being used as the polling location should have been designated as an observation area. So I think there needs to be some sort of clarification or limiting language on what is sort of a reasonable option.

Attorney Hunzicker responded to David Kronig’s comment:

- Yeah, I think that could be tightened up in that definition, just for clarity if nothing else.

Ryan Retza

- I thought this was said somewhere else, but I guess if we wanted to clean that up, because I don't really see any way that this is, or who's making the decision on whether a wider width could be chosen. I mean, I just want to make sure that we also clarify that the space that is designated for observers is also accessible for individuals with disabilities; that includes wheelchairs as well. So I thought it might be in a different section.

Attorney Hunzicker responded to Ryan Retza's comment:

- There is a section with that part, yes.

Ryan Retza

- I just wanted to note that if we do change the language, that that's added there.

Caroline Fochs

- We talked about this at the last meeting; this, in essence, allows the observers to roam from different observation areas, which is most likely at different areas in the polling site. So I don't have any objection for observers to observe in different areas, I would rather that they would check with the chief. And I know it's going to be a little cumbersome, but I would more prefer having them check out at one site and go to a different site because the chief is doing so many things on Election Day, and to try and track where the observers are going and making sure that they're not talking to people and doing what they're supposed to, if the chief knows where that person is supposed to be, that would help, instead of allowing them to roam from one site to the next to the next.

Chat discussion for EL 4.03(6):

13:48:29 From Debbie Morin to Hosts and panelists:

There is even a separate position at the polling location - ERO, Election Registration Official

13:48:31 From Kristin Hansen, Common Cause to Hosts and panelists:

The use of E-books also eliminates the need for separate lines for wards. So one person registering does not hold up the line - the voters continue using the other books.

13:49:47 From Eileen Newcomer, LWVWI to Hosts and panelists:

I agree with Ryan's comment about the need to make the observing area accessible for people with mobility devices.¹⁴

13:49:56 From Julie Seegers to Hosts and panelists:

There should be no front or behind...observers should be able to roam.

13:50:37 From Lana Lee Helm to Hosts and panelists:

checking in and checking out with CI would be burdensome to chief

13:51:03 From Julie Seegers to Hosts and panelists:

Agree with Lana

¹⁴ Referencing Ryan Retza's first comment in this section

EL 4.03(7) and (8)

Attorney Hunzicker shared his screen to show the language of EL 4.03(7) and (8), introduced the section, and read the draft out loud:

- I think that brings up the next two sections, which I wanted to address together, which is really right on that point: where an observer can be and how much freedom they have to move about the polling place after they've checked in and after they're in one observation area, assuming there's more than one.
- Sub. (7): "If more than one observation area is established within an observable location, observers shall be able to move between all such areas without restriction but must remain at least 3 feet from any election process."
- Sub. (8): "If more than one observation area is established within an observable location, observers may move between such areas in a manner established by the designated election official."
- So these are, again, contrasts, these can't both remain in the final rule, it really has to be one, the other, or neither, or a modification, so I think this is another one of the spots where I'd like if everyone can comment if you support either the language in sub. (7) or (8) or a different wording or version of your suggestion. So I think if you could all comment for that, I think this is another one where the Commissioners, they don't have to make a decision based on whether a majority of committee members support any one version, but I think it would be helpful for them to know who and how many people are supporting each one of those. So if you could comment on either sub. (7) or (8), neither, or your version, and then I'm also happy to take questions and comments on the language of either one of those, either tightening it up, improving it.

Please see the Rule Language Preferences of Committee Members document for an organized chart of members' preferences.

Eileen Newcomer

- I just want to make sure that my understanding of what sub. (7) is saying is correct because I know there had been some discussion last time, just about like, letting observers roam around kind of freely but then not crossing the 3 foot line, and what I'm understanding sub. (7) to be, is like there's maybe three designated locations that are marked off, and then people could move from location A to location B and not spend a lot of time between locations, but would have the reign to go from location A to location B without checking in with the chief.

Attorney Hunzicker responded to Eileen Newcomer's question:

- Yes, that is exactly correct. That is the intent of sub. (7), would be for a very free ability to move between the set locations, so long as the observer doesn't in any instance get closer than 3 feet to one of your elections processes, but I think you summarized it exactly as I'd intended it.

David Kronig

- I just want to uplift Caroline's comment on the last section. I think the language at sub. (7), "without restriction," opens the door to observers just sort of free roaming around the polling place, ostensibly between observation areas, but not really, and that could be very disruptive, and I support sub. (8) as written.

Debbie Morin

- What I like about sub. (7) – and I put it in there that I support it – what I like about it is the sense of comradery or the sense of an open, "We're getting along with each other, we're working together to have a good election process," as opposed to having to do the "Mother may I" move; I'll do that and I've done that, where I definitely follow exactly what I'm told, but it would be nice to be, kind of move

over, and hopefully observers can learn, that's the way you participate in this process, it's not going to be this rigid. Because then it looks like, "You're not really welcome here, we don't really want you, we're just putting up with you."

Claire Woodall-Vogg

- I think if you removed the words "without restriction," I think "without restriction" implies that an election official can't impose any restrictions, like not interfering with the line or, "I've asked that if you move from area to area with efficiency," that they would say, "Well, you're restricting me," so I think if you just nix that, the chief inspector can still maintain control and observers are still feeling like they can move about and are welcomed, to Debbie's point.

Chat discussion for EL 4.03(7) and (8):

13:51:03 From Claire Woodall-Vogg to Hosts and panelists:

I oppose 7 and support 8.

13:51:23 From Ryan Retza to Hosts and panelists:

I agree with 4.03(7) & (8) as written. (8) alone I think would suffice.

13:51:24 From David Kronig to Hosts and panelists:

I oppose 7 and support 8 as well

13:51:38 From Robert Newby to Hosts and panelists:

I oppose 7 and support 8

13:51:50 From Caroline Fochs to Hosts and panelists:

i oppose 7 and support 8

13:51:55 From Diane Coenen to Hosts and panelists:

I support (8).

13:52:01 From Toya Harrell to Hosts and panelists:

Appose

13:52:17 From Claire Woodall-Vogg to Hosts and panelists:

Specifically oppose "without restriction" in #7

13:52:25 From Julie Seegers to Hosts and panelists:

I agree mostly With #7 with the exception that observers should be able to move freely respecting the shortest distance of 3 feet that doesn't interfere with the voting process.

13:52:25 From Debbie Morin to Hosts and panelists:

I support 7 and oppose 8

13:52:30 From Toya Harrell to Hosts and panelists:

Appose 7; support 8

13:53:19 From Claire Woodall-Vogg to Hosts and panelists:

That is not how I read #7 with the words "without restriction." I would support #7 if those two words were struck.

13:53:22 From Ken Brown to Hosts and panelists:

I support item 7 as written. Most election areas are a single room with 3-4 stations. New Registration, Voter check in, Ballot pick up and the voting tabulator. Quietly moving between these different areas would not be a distraction to voters. or the Inspectors.

13:53:28 From Eileen Newcomer, LWVWI to Hosts and panelists:

There's too much going on, on Election Day for an observer to have to check in with the Chief before moving from one place to another. I think as long as they're moving between observation areas and moving promptly between locations then it is fine. Agree with 7

13:53:48 From Caroline Fochs to Hosts and panelists:

We do not physically block off an area for observers with tape or some other way. How would we manage this?

13:54:25 From Karen Huffman to Hosts and panelists:

7. Movement is distracting. Would ask that any movement not interfere with the voting process or obstruct the line of site for election officials.

13:54:27 From Ken Brown to Hosts and panelists:

Caroline. We use a blue tape line of 3 feet, behind each of the election stations.

13:54:46 From Sean Dwyer to Hosts and panelists:

I support 8 as written.

13:55:00 From Lana Lee Helm to Hosts and panelists:

I support 7 - CI always has authority to handle any disruptions

13:55:02 From Julie Seegers to Hosts and panelists:

I have not heard of any observers obstructing or being tossed out because of roaming. If you have, please let me know that it is truly a problem.

13:55:02 From Caitlin Jeidy to Hosts and panelists:

David, is your agreement with Caroline in regards to 4.03 (6)?

13:55:26 From Kristin Hansen, Common Cause to Hosts and panelists:

Agree with 7. Have to be able to move between areas to observe different procedures.

13:55:27 From Katie Reinbold to Hosts and panelists:

I oppose 7

13:57:07 From David Kronig to Hosts and panelists:

Caitlin, yes, in that I think the concern she raised was also relevant to the discussion of section 7

13:57:52 From Caitlin Jeidy to Hosts and panelists:
Right. Thanks!

EL 4.03(9)

Attorney Hunzicker shared his screen to show the language of EL 4.03(9) and read the draft out loud: “The designated election officials shall position the observer area to minimize contact between observers and voters and election officials.”

- And this is going to be more or less possible depending on the polling place, but as they’re able.

Attorney Hunzicker confirmed no one wanted to speak.

Chat discussion for EL 4.03(9):

13:56:14 From Ryan Retza to Hosts and panelists:

Fine with (9). Strongly support (10)

14:10:30 From Julie Seegers to Hosts and panelists:

Scratch 9

EL 4.03(10)

Attorney Hunzicker shared his screen to show the language of EL 4.03(10) and read the draft out loud: “All observation areas shall be accessible to observers with disabilities and shall include sufficient space for mobility equipment, chairs, or other disability aids brought by the observer.”

- This is, I think, speaking to Ryan’s comment from before.

Eileen Newcomer

- I like that this is included in here, and there should be something either in writing or as part of the training associated with this that makes it clear that poll workers should not be asking people to prove a disability.

Attorney Hunzicker confirmed no one else wanted to speak.

EL 4.03(11)

Attorney Hunzicker shared his screen to show the language of EL 4.03(11) and read the draft out loud: “The designated election official shall permit observers access to any unused chairs available within the observable location and with unrestricted access to restrooms if available at the observable location.”

Debbie Morin

- I could probably put these two things together: so the impact of these issues on the size of your observation area, because now if its, we’re talking about the width and the length and all that kind of stuff, these are going to impact that. Do we need to incorporate that within the 3 feet? Or will that expand it to beyond the 3 feet? And it can go for the mobility equipment, I know that there was something down in Racine with that van that a voter couldn’t get in with their mobility equipment, but if we’re doing this now for observers as well, that’s going to impact space, the space issue once again, and the same thing with the chairs, so I’ll just put that out there.

David Kronig

- I think it might be worth specifying, sort of the universe that we're considering with respect to unused chairs, like does this require election inspectors to go scour around the church basement, for instance, for any unused chairs?
- The second thing is, instead of "unrestricted access to restrooms" – and I fully agree that observers should have access to restrooms – but I would propose saying, "with the same access to restrooms as that available to election officials, with any reasonable restrictions necessary to ensure smooth operation of the observable location or the security of the building housing the observable location." And reason being, if it's, like, in a school, I think it's reasonable to have some sort of restrictions to ensure the safety of the students.

Ryan Retza

- I was pretty much, I mostly agree with David's point about the "unrestricted" language in there, just being sensitive to the different locations that polling places serve. However, I would probably cut it off at, "The same access that's given to the election officials," just because obviously, polling places can be in pretty sensitive locations.
- And then the unused chairs, I mean, I don't know if "unused" is the right word there, but you could say, just at least having chairs available for observers is very, very important.

Attorney Hunzicker responded to the discussion:

- I will make one comment on the unused chairs part: so I think part of that is meant to, part of sub. (10) is meant to allow anybody who needs to bring a chair to bring it, to be able to bring their own.
- Sub. (11), so I did talk to Barbara Beckert, who was not able to be at this meeting. She suggested that instead of this language to include a section where, if an observer contacts a municipality at a certain point in advance that they need a chair provided, that they would have the ability to do that. I'm not taking a position on that comment, but that was her suggestion, is to add language to that effect, basically that someone can ask for a chair as an accommodation to be provided, rather than relying on whether or not there are chairs in use. I agree that "unused" is probably a little bit vague for this kind of rule.

Julie Seegers

- I would like to see it worded, "The designated election official shall not deny observer access to restrooms or chairs in any observable area to sit in," something to that effect. I know that there is really not a law regarding bathrooms and chairs, but most of these are public places paid by public taxes and I know it's Election Day, but it's still a public area. So if available to the poll workers, the observer should have equal treatment in that respect. It shouldn't be assumed that everyone doesn't have, like, a colostomy bag or a kind of a hidden disability that requires them timely access to restrooms, it's just a humane thing to do and could potentially fall into EL 4.03(10) for accessibility to those with disabilities.

Ken Brown

- I'm most pleased that these particular two issues are in this procedure that we're going through today. I was the reason that this was brought to our attention. There was two 82-year-old people that came in to be observers at a very large gymnasium. They were placed in the middle, they were told they had to bring their own chairs, and I knew that right around the corner there was actually a whole rack of chairs that were available. I called the principal of the school, he said, "Absolutely, we'll be happy to bring them over," brought them over, the chief inspector says, "I refuse to accept those chairs to be delivered here because I have spoken." The same two older people were not allowed to use the bathroom, which was just outside the gymnasium; could've been walked out with the chief inspector, she refused to do it.

This has been going on for six different election cycles with this very same person, and I have a similar situation across town, the other one is a slightly different situation in that the bathroom is downstairs, so anybody with a disability could not necessarily have that access, although you actually have to climb up the stairs I think to get, no, you can't get into the building, but you can get into the bathroom without using the stairs, but any of the poll workers that are there and observers, there's no reason they couldn't be. That school, I contacted the principal a week before the election and he was absolutely delighted, more than happy to provide additional chairs that would be there. They delivered the additional chairs, the chief inspector there, rather than make those chairs available, she put tape around them and used those to create her queue line for people to have to walk around, absolutely deliberately misusing that material – which again is paid for by the taxpayers, whether they're there to vote or whether it's in a public school – which it was the situation, so I think it's very imperative that we make sure that we have availability. If somebody wants to bring their own chair that's fine, but in most of these communities, these are in a public building that has additional folding chairs that could be brought out and accommodate those people. So thank you very much for putting this in and please support me in encouraging the WEC to make this part of our rules that everyone should have to follow; it's just a common courtesy to allow a chair and a bathroom for people who want to observe the process.

Anita Johnson

- All I can say, Ken, is wow. I would say at least two to three designated chairs should be set up for the observers when they come in, and if they need more chairs later then they can do it. I know the chief has a lot to do, but if they could set up two or three chairs that are already there, you don't have to worry about it. They can say, "This is the area that you go to." To me, I think it would be much better for them.

Julie Seegers

- When it says at the end, "chairs available within the observable location and with unrestricted access to restrooms if available," I don't ever know of a location where there's voting that restrooms aren't available, I think that should just be stricken: "if available."

Chat discussion for EL 4.03(11):

13:57:53 From Eileen Newcomer, LWVWI to Hosts and panelists:

Like this addition. I would be nice to also allow observers to bring in their own chairs. I know some of our observers would bring in their own folding chairs if allowed.

13:58:35 From Claire Woodall-Vogg to Hosts and panelists:

Fully support #11 but suggest "unused chairs available within the observable location so long as it does not impede voting operations"

14:00:41 From Debbie Morin to Hosts and panelists:

good point on restroom access, David.¹⁵

14:00:47 From Eileen Newcomer, LWVWI to Hosts and panelists:

maybe "available chairs" rather than unused?

14:01:17 From Claire Woodall-Vogg to Hosts and panelists:

I agree with Eileen about "available chairs"

¹⁵ Referencing David Kronig's first comment in this section

14:01:22 From Kristin Hansen, Common Cause to Hosts and panelists:

Yes, just say chairs must be available. Even a couple. Observers are not going to drag chairs around with them.

14:01:41 From Eileen Newcomer, LWVWI to Hosts and panelists:

Its not clear in how its currently written that it allows people to bring their own chairs. If that could be clarified that would be great.

14:03:26 From Eileen Newcomer, LWVWI to Hosts and panelists:

access to bathrooms should not be unreasonably restricted.

14:03:53 From Julie Seegers to Hosts and panelists:

I know for a fact that one of the observers Ken is speaking about has a urine bag and was denied access restrooms.

14:05:07 From Kristin Hansen, Common Cause to Hosts and panelists:

Agree, Ken!¹⁶

14:05:47 From Toya Harrell to Hosts and panelists:

We have chairs set up and never deny restroom access to our Observers.

14:06:14 From Karen Huffman to Hosts and panelists:

11 Propose scratching "any unused" and "available" so it reads access to chairs within... Restroom access should be same as election officials.

14:06:34 From Eileen Newcomer, LWVWI to Hosts and panelists:

Some polling places are at park pavilions. They may not have bathrooms

EL 4.03(12)

Attorney Hunzicker shared his screen to show the language of EL 4.03(12) and read the draft out loud: "The designated election official of any observable location that is unable to accommodate the observation areas as described in sub. (4) shall record the reason the requirements were not met and shall send a copy of that record to the Commission within 7 days of the election for which the observable location was active."

Debbie Morin

- For what purpose is this section here? What are they doing with all that paperwork? What's going to happen with it?

Attorney Hunzicker responded to Debbie Morin's question:

- I really think this is something that was in the last rule and I think, just so that the Commission is aware if polling places aren't able to accommodate the observation areas, and so that, basically for public awareness of that fact.

¹⁶ Referencing Ken Brown's first comment in this section

Debbie Morin

- So when they send it to the Commission within seven days, will I be able to go on the WEC website and read these reports, these records?

Attorney Hunzicker responded to Debbie Morin's question:

- It's a possibility to post all of them. Certainly it would be available as a public record request; it's an easily identifiable record. So I'd say posting is a possibility, a public record request would be absolutely a possibility, so either are possibilities.

Debbie Morin

- I'm just trying to understand the purpose of that, if it's to be used for some end result. Otherwise it's going to be a lot of extra reporting, of just stuff, maybe there is something that I don't understand, but that was just my question on that one, the purpose of it.

Attorney Hunzicker responded to Debbie Morin's comment:

- Certainly, a comment that something is unnecessary is valuable to the Commission.

Julie Seegers

- Can we go back to sub. (9)? I kind of have the same question on sub. (9). I really don't understand, I didn't get a chance to read it because we went over that too quickly as far as I'm concerned, about the designated election officials. What does it mean to minimize contact between observers and voters and election officials? I guess I'd like to know the purpose of that too.

Attorney Hunzicker responded to Julie Seeger's question:

- I think the purpose of that was, the first meeting there were a number of comments that if observation areas are placed kind of in between voters coming to present their information to election officials, that there can be just a lot of contact initiated that doesn't need to be if could be avoided if they were placed consciously to avoid that contact, and that voters are likely to say "hello" to people they know, voters might be confused about who's an election official and who's an observer. It's really just meant to, if possible, minimize that contact and to have this as something that election officials need to consider when they're positioning the observable locations. So that's the intent of it, but it's certainly not one of the most critical lines in this document.

Julie Seegers

- I think that's covered in so many other, we got the 3 to 8 feet thing and I just don't even think sub. (9) needs to be, I think that could be totally scratched as far as I'm concerned.

Attorney Hunzicker responded to Julie Seegers' comment:

- We can certainly present that.

Attorney Hunzicker confirmed no one else wanted to speak.

Chat discussion for EL 4.03(12):

14:07:00 From Kristin Hansen, Common Cause to Hosts and panelists:
Agree with 12

14:07:02 From Eileen Newcomer, LWVWI to Hosts and panelists:
In favor of the documentation

14:07:21 From Eileen Newcomer, LWVWI to Hosts and panelists:
Agree with 12

14:07:22 From David Kronig to Hosts and panelists:
I also agree with 12 as drafted

14:08:11 From Ryan Retza to Hosts and panelists:
Agree with 12

14:08:47 From Sean Dwyer to Hosts and panelists:
I support 12

14:09:04 From Karen Huffman to Hosts and panelists:
ok with 12. Note for the chat: Red is Kristin Hanson. Orange is Karen Huffman

14:09:39 From Diane Coenen to Hosts and panelists:
Why duplicate reporting. If observers cannot be accommodated, the CI should note that on the Observer Log that is used for observers to sign in and the reasons why it could not be accommodated.

14:10:30 From Julie Seegers to Hosts and panelists:
Scratch 9

EL 4.03(13)

Attorney Hunzicker shared his screen to show the language of EL 4.03(13) and read the draft out loud:
“Election officials shall permit observers to observe absentee ballot certificate envelopes that have been rejected in a manner established by the designated election official.”

David Kronig

- I think I agree with everything that’s written here. I might just propose adding, “and observers may request that election inspectors repeat the name and address of any ballots set aside for rejection.”

Attorney Hunzicker responded to David Kronig’s suggestion:

- I think that could be added to the section above that talked about repeating a name and address, but it does not say it for that reason, so I think we can add in that comment for that section.

Julie Seegers

- I think that should be divided into two different sections: one should say, “The election officials shall permit observers to observe absentee ballot certificate envelopes without handling them and keeping the distance within 3 feet established in EL 4.03(4).” and there should be a second part that says then, “Election officials shall permit observers to observe absentee ballot certificates that have been rejected, stating the grounds on why they are being rejected or having to be remade.”

Attorney Hunzicker confirmed no one else wanted to speak.

Chat discussion for EL 4.03(13):

14:10:39 From Eileen Newcomer, LWVWI to Hosts and panelists:
agree with 13

14:10:44 From Ryan Retza to Hosts and panelists:
Agree with 13.

14:11:08 From Debbie Morin to Hosts and panelists:
also agree with 13

14:11:11 From Ryan Retza to Hosts and panelists:
& David's comment on announcement¹⁷

14:11:50 From Eileen Newcomer, LWVWI to Hosts and panelists:
maybe also add a note to make it known the reason why an absentee ballot certificate envelope was rejected

14:12:16 From David Kronig to Hosts and panelists:
I agree with Eileen's additional suggestion

14:12:44 From Caitlin Jeidy to Hosts and panelists:
Thanks Karen H.

EL 4.03(14)

Attorney Hunzicker shared his screen to show the language of EL 4.03(14) and read the draft out loud:
"Election officials shall permit observers to observe the poll lists, excluding the confidential portion of the lists maintained under ss. 6.36(4) and 6.79(6), Stats., as long as doing so does not interfere with or distract electors on s. 5.35(5), Stats. Election officials shall not permit observers to create or transmit a photocopy, photograph, or video of the poll lists on election-day."

- And this is something that I think Ryan was mentioning before, is allowed by statute: looking at the poll lists on Election Day.

David Kronig

- Sorry to be a broken record on this, I would just propose adding after, "Or distract electors under s. 5.35(5)," the proposed addition would be, "And does not interfere with the conduct of the election under s. 6.45(1)(n)."

Ryan Retza

- I would like to see the s. 6.45 citation in there, just to give it, again, going back to the statutory language.

Julie Seegers

- Which statute states that, anything about transmitting a photocopy, photograph, or video of the poll list on Election Day?

Attorney Hunzicker responded to Julie Seegers' question:

- That part is not in statute. Nope, that part is not in.

Julie Seegers

- Okay. I think there should be something, because if there's not a statute to cover that then I think, what's there to stop people from doing that?

¹⁷ Referencing David Kronig's first comment in this section

Attorney Hunzicker responded to Julie Seegers' comment:

- Certainly that's, I think all of the photocopy, photograph, video lines that are coming, they were in the draft rule, they've been in the guide, they are not coming directly from statute, although they are based on the possible disruption of an election, which is in the observer statute. So it's really an interpretation of that specific part of it, but I think there are a lot of sections coming that are going to talk about photocopy, photograph, and video, so all of those are relevant.

Julie Seegers

- Yes, that's why I brought it up.

Chat discussion for EL 4.03(14):

14:14:14 From Debbie Morin to Hosts and panelists:
as a general practice, use statutory language whenever possible.

14:14:49 From Claire Woodall-Vogg to Hosts and panelists:
I believe there is a strong concern of disruption or voter intimidation with the photography and videography in a polling place

EL 4.03(15)

Attorney Hunzicker shared his screen to show the language of EL 4.03(15) and read the draft out loud:

"Election officials shall not permit observers to handle an original version of any official election document."

- This is primarily talking about thing people would use to register to vote, registration forms, absentee ballot certificate envelopes, ballots themselves, that kind of thing.

Attorney Hunzicker confirmed no one wanted to speak.

Chat discussion for EL 4.03(15):

14:15:21 From Ryan Retza to Hosts and panelists:
Strongly agree with (15)

14:15:24 From Ryan Retza to Hosts and panelists:
...as written

EL 4.03(16)

Attorney Hunzicker shared his screen to show the language of EL 4.03(16) and read the draft out loud:

"Election officials shall not permit observers to observe any confidential information."

- Again, I really think the substance of this is probably more covered in the definition of what's confidential, and then how to logistically carry that out. I think that this is probably less significant on that front than defining what is confidential and what isn't.

Attorney Hunzicker confirmed no one wanted to speak.

Chat discussion for EL 4.03(16):

14:15:45 From Eileen Newcomer, LWVWI to Hosts and panelists:
Agree. But obviously they'll need to be able to sign in an that could include touching the paper.

14:15:59 From Eileen Newcomer, LWVWI to Hosts and panelists:

^agreed to 16

14:24:55 From Debbie Morin to Hosts and panelists:

EL 4.04 (16) add language: "...shall not permit observers to observe any confidential information, while also allowing observers to observe all the public aspects of the voting process"

EL 4.03(17)

Attorney Hunzicker shared his screen to show the language of EL 4.03(17) and read the draft out loud: "The designated official shall a) Warn an observer to cease offending conduct when the observer violates the provision of this chapter or any applicable election statute and b) order an observer to depart from the observable location when an observer does not cease offending conduct following a warning under sub. (a). If the designated election official has been designated by a chief inspector or municipal clerk, the designated election official shall notify the chief inspector, who shall proceed under this subdivision. If the offending observer declines or otherwise fails to comply with the designated election official's order to depart, the official may summon law enforcement to remove the offending observer. The designated election official shall provide a written order to the observer which includes the reason for the order and the signatures of the designated election official, as well as another election official representing the opposite political party, if available. The Chief Inspector, municipal clerk, or both special voting deputies shall have sole authority to order the removal of an observer, but the other election official may not concurrence or disagreement with the decision on the order."

- This is a bit long. This is partly because in the statute, it says specifically that chief inspectors and municipal clerks have this removal power. Other election officials can still make an order, a very similar one under Chapter 7, but this, when it comes to observers, is limited to chief inspectors, if there's a chief inspector at the location or municipal clerk if there's a municipal clerk. So a lot of the language is really just getting to that. If there's a way to simplify it, certainly we would do that.

David Kronig

- I just think that adding a requirement that the designated election official get a signature from an official representing the opposite political party unnecessarily complicates things and invents something that's not in the statute. I think if a chief inspector or a clerk is in the situation where they need to remove a disruptive observer, then making that process as simple and streamlined as possible is the most important thing because a disruptive observer is disrupting the voting process.

Attorney Hunzicker responded to David Kronig's comment:

- Yes, that is correct, that part is not something that is coming directly from the statutes; that was in the old draft rules. I think it was discussed at the last meeting that it is not a statutory part of the process.

Julie Seegers

- I think that anything that, if an observer needs to be removed, then it should be in writing. It should be in writing what the offending behavior was, and that should be provided immediately to the observer before they leave the polling place or central count. I think that that needs to be done immediately so it can be dealt with. Maybe if the observer disagrees, there will be a paper trail created immediately on what the offensive behavior was and the reason for being removed.

Claire Woodall-Vogg

- I guess I don't understand why we are adding in, "the election officials who are not chief inspectors." None of our chief inspectors are affiliated with a political party, and I don't know if that's in statute, I

can't remember, but I don't think they are supposed to be, and why we're having other election officials sign off from an opposite party. I agree that it should be in writing, I think that's already part of statute, or it's certainly part of procedure, but it just seems overly complicated to involve other election officials when the chief inspector is in charge of the polling place.

Attorney Hunzicker responded to Claire Woodall-Vogg's comment:

- Yeah, I think this is a section that could be simplified in a number of ways, but the Commissioners will have those opinions.

Eileen Newcomer

- I think Claire makes a good point, and I also want to say that I like the paper trail and the documentation where the reason why somebody would be ordered to leave is given in writing to the observer, and then it is also submitted to the Elections Commission.

Debbie Morin

- I know that there is a WEC form out there that needs to be completed when someone is ordered to leave the polling place, so I don't even know if that's covered in statute anywhere, it might just be an administrative process or procedure, but so does that mean if anyone's ordered to leave the polling place, that can be done with or without a written form being complete? They have within seven days to turn it into WEC after the election is over, stating what the offense was by a particular observer. So I am not sure, I'm wondering if they need to give that person something in writing or if they can just say you're, I've heard it said, "I'm telling you to leave and if you don't leave I'm going to call the police," and the observer just goes, "Okay." We've been told in the Rules-at-a-Glance that the chief inspector is in charge and you have to do what they say, and I've followed that even when they've been wrong, and I just say, like when another observer has complained about what I'm doing, and the chief then orders me to stop and I will say, "I will follow your order because you're in charge, not because that's correct." And then I will leave and I'll go get the correct information which then the chief inspector is informed with, and then I'm allowed to come back and continue whatever it was the other observer didn't like that I was doing. So I mean, it gets kind of dicey if you don't know as an observer you can question some of this, and you do it obviously respectfully and you start to feel bad because you are pulling the chief inspector away from what they are supposed to be there for and that's to conduct an election, so I think that needs a little more clarification as to what the actual process is.

Attorney Hunzicker responded to Debbie Morin's comment:

- I think the Rules-at-a-Glance document currently is not backed by administrative code, so this is what hopefully will ground that requirement there, and this would require both providing a written document to the observer who's being removed and also in sub. (18), which I think I'll blend in now as well, the election official would be required to send a copy of that to the Elections Commission as well, so that there would be a record of that coming to the Commission, which again would be a public record document created for this purpose.

Lana Lee Helm

- Okay, I just was going to respond to Claire's comment: yes, in at least where we are, we do have chief inspectors that are party-affiliated, and so I do think that is good that there is, that in the document it does give the opportunity to, if there is an election official representing the opposite political party, that that's a good option.
- I do also like the writing being given and in fact, I would really like if – and then this may not be realistic – but to have some kind of an appeals process immediately, like not having to wait a day. Yes,

the observer would leave the area to remove any situation, but sometimes, we know there are situations where it might just be a personality conflict, or something that isn't maybe legitimate, but I don't know how that could be even worked out or how we could work that out, but just to have some kind of a check and balance on that.

Attorney Hunzicker confirmed no one else wanted to speak.

Chat discussion for EL 4.03(17):

14:18:49 From Katie Reinbold to Hosts and panelists:
I agree with David's comments for observer removal.¹⁸

14:19:03 From Ryan Retza to Hosts and panelists:
I agree with (17) as written.

14:20:08 From Ken Brown to Hosts and panelists:
I agree the offense shall be in writing and immediately. Paper trail created and the observer has easy access to legal council as needed.

14:21:13 From Karen Huffman to Hosts and panelists:
Agree with David that an official designated by the chief inspector or municipal clerk to serve in their absence be required to observe the same rules as the chief inspector or municipal clerk in the event an observer needs to be removed.

14:23:03 From Claire Woodall-Vogg to Hosts and panelists:
In reality, if someone is causing a disturbance in the polling place, keeping them present long enough to then receive a form that has to be written in duplicate does not seem realistic. However, getting the observer's address (from sign in sheet or otherwise) or email and sending them a copy within 24 hours seems more reasonable.

14:23:48 From Katie Reinbold to Hosts and panelists:
A situation with an observer would be noted on the incident report. If it's a quick situation that the observer needs to leave in that moment, the paperwork isn't feasible. We could follow up though after the election.

14:24:38 From Eileen Newcomer, LWVWI to Hosts and panelists:
For some reason I'm getting some direct chats that are meant for the general record. People may want to go through their chats and make sure they were sent to everyone.

14:24:55 From Debbie Morin to Hosts and panelists:
EL 4.04 (16) add language: "...shall not permit observers to observe any confidential information, while also allowing observers to observe all the public aspects of the voting process"

¹⁸ Referencing David Kronig's first comment in this section

14:25:27 From Anita Johnson to Hosts and panelists:

I agree with Dave for observer removal.¹⁹

EL 4.03(18)

Attorney Hunzicker shared his screen to show the language of EL 4.03(18) and read the draft out loud: “If an observer is ordered to leave an observable location by a designated election official, the incident shall be recorded and the designated election official shall, within seven days of the incident, provide the Commission a copy of the order and any other documentation of the incident. Commission staff shall submit a summary of the Commission of all reported incidents in which observers were ordered to leave an observable location pursuant to this chapter.”

- This is very closely linked with the process in sub. (17).

Diane Coenen

- I just wrote a comment and I just wanted to say that an incident log at the poll is required, so everything that happens throughout the day must be noted by the chief inspector, or their designated representative, I guess. So if somebody’s removed, that would be written on the log. I think it would be duplicative to put together a summary for the Commission regarding that that incident. It’s already on the log, I think the log could be copied and sent to the Commission instead of redoing it on another form.

Attorney Hunzicker responded to Diane Coenen’s comment:

- If this is read to say something other than that, your explanation is what was intended here, so I think this can be rewritten if anything is unclear. So all that would be required of the municipality would be to send what they’re already writing up of the incident to the Elections Commission. It would then be on the Elections Commission staff to write up, in a summary way for the Commission, anyone ordered to be removed under that chapter, for their awareness. And if they would want to in the future address any of those kinds of incidents. So that can be clarified to show what election officials are required to send and then what is on just Commission staff after that point, so I will update that.

Julie Seegers

- So to go along with this, or at the end of this particular, to me all of this is a moot point if observers can’t report incidents. There is not one EL written for what observers can do if there is any incidents that they want to report, and I’m going to give you an example: this last election, I was observing at a polling place in Kenosha County – this won’t be long, I promise – a clerk did not provide the registration at the registration desk, the ineligible voter list, that is statutorily mandated under 6.29(2)(am). The person doing the registering never heard of such a list, he said. When I pointed this out to the clerk, who the chief referred to me, the clerk told me it was on her computer and then walked away. And then I proceeded to tell her that should not be on your computer, that should be at the registration desk as well. I called my observer hotline, who directed me to call the WEC attorney, who said he would call the clerk. I don’t even know if that happened, there’s a lot of story in between, but I won’t go into it. I don’t even know if the WEC attorney did get ahold of the clerk, because the clerk let the registering person continue to register new electors without checking the ineligible voter list; he was still not given a copy of that. There was no resolution, and the other observer and I, we made copious notes about this. So the next day I call the WEC attorney to inquire about what happened because they, again, they were still registering people after I complained without that list. That is against the law. I had to leave a message for the WEC attorney, and he never did call me back to tell me if it was resolved. It was obviously not

¹⁹ Referencing David Kronig’s first comment in this section

resolved that day, so we need to include something here for observers, because that needed to be fixed that day. I even said, “Why can’t these people who are registering vote provisional until this gets straightened up?” That was not even taken into consideration. I was belittled, I was glared at by the workers at the polling place all because I wanted to make sure that they were following the law. What is an observer to do? What was I supposed to do there? Nothing was done, we weren’t backed up, and I can’t tell you how many times that, and there’s been many complaints that have been sent into WEC and nothing is done, so what is the recourse for observers? That’s my question.

Attorney Hunzicker responded to Julie Seegers’ question:

- I think first, certainly it is true that there is an ineligible voter list, and that should be at the polling place, that does sound correct. I think the main recourse is the s. 5.06 or s. 5.05 compliant process, I mean, that is the statutory process. I think as far as these rules go, there could be an addition of language that links it to that s. 5.05 or s. 5.06 process. I think also, the requirement described above for election officials to explain to observers who they can go to for questions is important if an observer needs to raise an issue, because that is a benefit of observers; if there’s a process that is not being followed, to be able to communicate that to the election officials that day, that certainly could prevent errors from happening and from being perpetuated throughout the day, so I think there does need to be that feedback loop.

Julie Seegers

- But that’s after the fact – I’m sorry, excuse me – but that’s after the fact. They still let people register to vote without the list. That was breaking the law. So should I have called the authorities? What should I have done in that case? I had no recourse for somebody that was breaking the law.

Attorney Hunzicker responded to Julie Seegers’ question:

- I mean, I think the recourse is to file a complaint – I know that is after the fact – or to try and contact the chief inspector or the municipal clerk. I think those are the options.

Julie Seegers

- I talked the chief and she was very angry with me, and she went into her office and closed the door. So again, no recourse, and they were breaking the law, so there really needs to be something – a hotline? I mean, can WEC provide a hotline for people to call? I mean, you’re supposed to be the specialists on this, and I think that if people have questions and need to make sure people follow the law, that’s a blatant breaking the law. Again, there has to be a hotline, there has to be something that can be done immediately. I mean I’m sure that you might get comments that might not be anything that’s breaking the law, or they might be something minute or whatever, but these kinds of things are important when somebody is breaking the law, and it should be looked at immediately, so after the fact does not work.

Attorney Hunzicker responded to Julie Seegers’ comment:

- Thank you, we will take that to the Commission for them to consider.

David Kronig

- In response to Julie’s points, I agree that I think the law already provides the recourse, which is a complaint under s. 5.05 or s. 5.06. I also think that the fact that that process exists in statute means that that is the legislature’s current preferred method for resolving these sorts of issues, and that it would sort of be outside the purview of what this committee or even the Commission would be able to do, is set up a separate process. I think that would have to be a legislative solution if the legislature wanted to add an additional process.

Kristin Hansen

- I do want to respond to Julie because this has happened to me too, where I was like, “Hey you guys, where’s the ineligible voter book?” and they were like, “What?” When we do election protection, we encourage people to use the [866]-OUR-VOTE hotline that’s available to anyone, and the complaint goes straight to the lawyers, the lawyers call the city clerk, if the city clerk doesn’t respond properly, then they call it up to the Wisconsin Elections Commission, and I’ve had a lot of luck getting things resolved within minutes calling through that chain. So if you can do your observation through an organization that does that kind of chain, maybe that would help in a case like that, but yeah, I understand what you’re saying about, after the fact doesn’t help the people who may have erroneously registered to vote and get themselves in bigger trouble or other things. But it’s 866-OUR-VOTE, is the hotline we give out to everyone, voters and observers alike, and they’re fully manned with lawyers on Election Day and I think that would be a good offer to a good option for you.

Debbie Morin

- I know that David was talking about, there’s already a process in place, and I know those EL-104s, those inspector statements, seem to be, if I understand this correctly – which is a big if – seems to be kind of like a picture of what happened in the polling place – everything that was happening in the polling place. These things should be put on the EL-104s but I’m noticing when I observe that those EL-104s are not being used in that fashion, are not being used to commemorate everything that’s happening in that polling place so there’s a record, so you can go back and you can see. Some are using them that way, some are not, and maybe because that form is already there and it’s supposed to be used, if the election inspectors can be trained or discussed on the proper use of that, and including all of the information on that, that we wouldn’t have to duplicate all of these efforts in another form. I’d love to see a greater use of the EL-104s, and then kind of get a picture of what was happening in that polling place. So that’s my comment about sub. (18), if they’re using, like I think Claire talked about, the EL-104s, so just some consistent use of those forms, already established.

Chat discussion for EL 4.03(18):

14:25:44 From Diane Coenen to Hosts and panelists:

#18 - again duplicative. The CI must write up an incident for everything that happens at the poll and if someone is removed, an incident must be written up. A copy of that log could be sent to the Commission.

14:26:21 From Ryan Retza to Hosts and panelists:

Agree with (18) as written.

14:26:32 From Eileen Newcomer, LWVWI to Hosts and panelists:

I need to jump off. Thank you for this opportunity. I look forward to the notes. Brandon I will follow up with you about the portions of the conversation that I will miss.

14:26:35 From Kristin Hansen, Common Cause to Hosts and panelists:

I am uncomfortable with the "opposite party" part of 17, because that requires people to identify themselves as members of a party. I can imagine the CI saying out loud "I need a Democrat" or "I need a Republican" when poll workers should be seen as neutral by voters.

14:26:43 From David Kronig to Hosts and panelists:
Agree with 18

14:28:23 From Claire Woodall-Vogg to Hosts and panelists:
Agree with 18. We issue the official order to leave form with the details and then have Chief's write a reference to that accompanying form, the time, and the observer who was ordered to leave on the 104.

14:29:30 From Lana Lee Helm to Hosts and panelists:
The CI knows who the party affiliated workers are and we have opposing parties sign bags, tapes and other forms throughout the day without yelling out "I need a Democrat" lol.

14:36:35 From Julie Seegers to Hosts and panelists:
Kristen, what is that organization and phone number?

14:36:58 From Julie Seegers to Hosts and panelists:
Thank you!!

14:37:04 From Ken Brown to Hosts and panelists:
1866ourvote

Draft EL 4.04 Conduct of observers.

Attorney Hunzicker reminded committee members of the time constraints of the meeting, the option to submit comments in the chat, and the option to submit additional comment for the Commissioners after the meeting. He noted that comments submitted in those forms would be presented to the Commissioners for consideration in addition to the spoken comments.

Ryan Retza

- Only question for clarification on sub. (1): is the "time range spent" in the polling place? I know that's not on the current observer log that WEC provides to municipalities. I also know the space on the sign-in sheets are relatively limited, so I don't know the requirements of, other than having a sign-in sheet, writing down your name of the observer, stating if you're a Wisconsin resident or not, if there's a way to simplify that to declare that you're an elector who can challenge under some provisions of s. 6.93, I believe it is, or 5. Just something to consider on the observer form itself if you're adding more boxes to it.
- In sub. (2) I would like to see added after "Be subject to removal from the polling place," I'd like to see added, "Following a warning under EL 4.02(17)(a)," just to make sure that it's consistent.
- Sub. (3), would like to also add another sentence at the end of it just stating that "All questions shall be answered by the designated election official in a timely manner," just because obviously, as things progress throughout the day, things can build up and that can be more stress on the election official themselves, so just kind of getting questions answered, concerns answered, and concerns addressed right away should be the goal of communicating with that designated election official. I think that was all I had and I will type whatever else I have in the chat.

David Kronig

- I can also quickly run through all of my comments on EL 4.04: in sub. (1), by defining "photo identification" with reference to s. 5.02(6m), that would exclude observers from being able to use, for instance, an out-of-state driver's license or ID or a photo ID from a federally-recognized tribe that's not

in Wisconsin. I would propose some sort of clarification that out-of-state IDs are acceptable to sign in as observers, as has been standard practice.

- In sub. (2), as I've mentioned, I would specify that the sole remedy for any observer who believes that an election official has given an unlawful command is to file a complaint under s. 5.05 or s. 5.06. Reason for that being, I think that that's something that should be determined after Election Day and not disrupt what is a very busy day for the chief inspector or clerk already.
- Under sub. (11), I don't think that observers should be required to refer a voter to an election official if the voter initiates a conversation. I believe practice up to this point has been if the voter initiates the conversation, the observer may answer the voter's questions in a manner that does not disrupt the polling place, and so I would propose that that be permitted in addition to referring the voter to the election official. Also in sub. (11), I think I would add, "A brief wave or greeting to an individual known to the observer shall not constitute a violation." I don't think you want an observer waving to everyone who comes in because that could be confusing.

Julie Seegers

- I already put a couple in the chat. Sub. (8), what is the purpose of sub. 8? Can you explain that?

Attorney Hunzicker shared his screen to show the language of EL 4.04(8), read the draft out loud, and responded to Julie Seegers' question:

- "No observer may display the name or likeness of, or text related to, a candidate, party, or referendum group appearing on the ballot, or display text which describes, states, or implies that the observer is a governmental official."
- This is really just to, it's very closely related to sub. (7); it goes a little bit further and is a bit more protective of, so electioneering does not state whether or not you can have text or likenesses, so this is a little bit more restrictive on what observers can bring into the polling place than what voters can bring into the polling place. Electioneering is prohibited equally, but that's the effect of what it would do, just as an extra effort against intimidation of any voters. That's the purpose of what it is doing, is to be slightly more specific of what is not allowed than the electioneering statute related to observers.

Julie Seegers

- Sub. (10), I had a comment on that: "No observer may use a communication device inside an observer area to make an audio or video communication." Again, there is no statute from what I understand regarding that, but I would also think it should be added, "between the hours that maybe, 7 am and 8 pm, or when the polls close." I think hours need to be put on that.
- Sub. (12): "Observers may communicate as needed with a designated election official and any other election officials." I think it should say, "Observers may communicate as needed with a designated election official and any other election official shall try to keep conversations private by preventing others from listening, moving to a remote location, or outside," because sometimes, the situation that I had, it just created a lot of disturbance and animosity among people that didn't understand what the conversation was, so maybe suggesting, you know, go somewhere a little quiet. Doesn't necessarily have to be outside, but to a quiet location so other people don't need to misunderstand the conversation.

Attorney Hunzicker adjusted the format of the discussion:

- I think what Ryan and David and Julie have been doing here, going through this section as a whole, I think in the interest of time, that probably is worthwhile. I'd prefer to go line by line, but I don't want to take the time with me reading as something that slows us down, so I think I do just want to open up the floor on this section for anyone who has comments on any of the specific subsections, to bring your

comment and I will you call on you. And I'm happy to discuss any specific language on these, it's not meant to be a restriction, just purely based on time.

Debbie Morin

- I have a question on sub. (1): Is it necessary to obtain the address of the observer? If you look at the statute, it basically says, "Each person permitted to observe under this subsection shall print his or her name and sign and date a log maintained by the chief inspector," and everyone else who's in a place where you can observe. So I don't understand the purpose of getting the observer's full name, street address, and municipality, and the statute doesn't say that's required. So that's my question there. Maybe, instead of having to do that, I think it's been explained to me that, "We need to know if you are a person who can challenge an elector, so we need to know if your address is in Wisconsin" Well, can we just have, like, a box? "I'm an eligible Wisconsin elector" and check the box, and they can confirm it when they look at the ID? Which, we don't even know if they should be looking at the ID, that's not in the statute either. It's been pretty heavy-handed with the control of the observers, there must be a good reason why. When I first started observing there was none of this, and then all of a sudden it actually turned out that as an observer I needed to show my ID before the voters were required to show their ID, so I don't understand what the control of that is, and it'd be nice to get an explanation.
- The only other question I have in here is the time range spent observing on the observer log; so when I sign in, I don't get access to that observer log, again. Unless now, I'm going to be required to go find the chief when they're not busy and then sign out and then if I want to come back, sign back in? That's a lot of administrative tasks related to something that's not even directly to the voters; these are observers. So I'd like to understand the rationale for that and I'd like to make that easier for an observer to follow and not gather so much information on the observers. I just don't know if it's necessary; I'd like to understand the necessity of it.

Attorney Hunzicker responded to Debbie Morin's questions:

- I think that is very much correct, that a lot of what is here is not required by statute. Statute really only requires the signature and then it does, I think, more strongly imply that if you're there representing an organization, that you make that known so that an election official can reasonably limit the number of people representing an organization. I think the reason for the street address and municipality is to be able to contact the observer after the fact if that's ever needed, but those are not statutory requirements. I think criticisms of the inclusion of photo ID or of street address and municipality is very much an open question on whether the Commission would be including those elements, so I think if anyone does not believe that a street address and a photo ID should be required of observers, I think that is certainly something to put in the comments, as again, it is not a statutory requirement. I think it's been there in the elections guidance for quite a few years, but whether or not it will make it into this final rule is very much an open question. I think if anyone does have a comment on that specifically, that would be a very good idea to raise that.

Karen Huffman

- I think it would be helpful to have the observers log in and log out, so that they have to inform the chief inspector directly when they're coming in, especially when they're leaving so they just don't leave, and we don't know if they're off to the restroom or if they're done for the day. Also, it helps because if they are doing us a service by being there and observing what's going on with the voting process, it helps to know what time frame they were there for because we also have inspectors, some who work half day, some who are full days, and if there are issues, it's helpful to know when the observer was there. So that would be for the first one, and be simple, not a lot of paperwork to sign in and sign out.

- The second one is for sub. (13). If an observer is helping a voter, his role has changed and I'm not sure if it's practical to have an observer become a voter assistant and then go back to being an observer. Maybe then the observer role ends, and if there are limitations to the number of observers there can be, if he or she is helping other voters, then it's time to step aside from the observer role for a bit.

Attorney Hunzicker reiterated that he was going through the entirety of EL 4.04 due to time constraints, advised committee members to put comments in the chat, and confirmed that no one else wanted to speak on EL 4.04.

Chat discussion for EL 4.04:

14:42:29 From Karen Huffman to Hosts and panelists:

4.04 1. I think it's good to know when the observers sign in and out as it helps to know what they observed and when. Also helps to know when they leave if they haven't informed the chief.

14:42:59 From Ryan Retza to Hosts and panelists:

Good catch by David - would prefer just removing the citation for the ID requirement²⁰

14:43:14 From Katie Reinbold to Hosts and panelists:

Thank you for this opportunity. I need to jump off and will email my comments.

14:43:24 From Julie Seegers to Hosts and panelists:

4.04(1) observer should acknowledge receiving a written copy of the rules. (2) ...following a warning

14:44:03 From Ryan Retza to Hosts and panelists:

Prefer to keep (11) as-is

14:44:39 From Claire Woodall-Vogg to Hosts and panelists:

I do as well on #11. Otherwise there is no quality control for answers.

14:45:13 From Robert Newby to Hosts and panelists:

I support David's suggestions for 11.²¹

14:46:43 From Claire Woodall-Vogg to Hosts and panelists:

I think #10 should be struck and location specific

14:52:29 From Diane Coenen to Hosts and panelists:

I do not agree with 4.04(1) that the observer must sign out. CI's are very busy and there is no purpose for the sign out from administering the election perspective. Remove address from log as well.

14:53:16 From Caroline Fochs to Hosts and panelists:

I agree with Karen Huffman regarding observers logging in and logging out²²

²⁰ Referencing David Kronig's first comment in this section

²¹ Referencing David Kronig's first comment in this section

²² Referencing Karen Huffman's first comment in this section

14:53:20 From Anita Johnson to Hosts and panelists:

I don't think that Id and address should be required by the observers. Signing in and out should be sufficient.

14:53:20 From David Kronig to Hosts and panelists:

Provided that out of state licenses be permitted, as has been standard practice, I support maintaining the requirement that observers show photo ID to sign in. It hasn't been burdensome in our experience, and I think it's important to verify who is there in the event that they become disruptive at any point.

14:53:26 From Debbie Morin to Hosts and panelists:

No need for street address and photo ID for observers.

14:53:27 From Lana Lee Helm to Hosts and panelists:

I don't think observers should sign in and out - no time for CI's to monitor every time they come in and out. Agree with just a box saying if they are Wisconsin resident so that we know if they can challenge.

14:53:57 From Julie Seegers to Hosts and panelists:

Agree with Lana

14:53:58 From Claire Woodall-Vogg to Hosts and panelists:

I also agree about signing in and out. I do not think it is burdensome and perhaps you don't make it a requirement, but an optional addition for chiefs to use? It would be nice to have in our case.

14:54:50 From Julie Seegers to Hosts and panelists:

Include Recourse in this section too

14:54:58 From Claire Woodall-Vogg to Hosts and panelists:

I have to run unfortunately due to another meeting, but will send in my feedback after the meeting. Lots of opinions on what remains! :)

Draft EL 4.05 Location specific requirements.

Attorney Hunzicker stated he would go by the subsections and then accept any comments on the entirety of the subsection.

EL 4.05(1) Polling Place.

Ryan Retza

- I know that this is one of the sections that you did the two different options: do not support A, do support B. However, I think we should also add in there that “no observer shall be permitted to disrupt the polling place setup, and all questions that the observer has should be directed to the chief inspector or their designee,” just to, again, clarify that.
- In sub. (1)(d), “audio recordings of the observable location until after the polls close, or until the last voter in line votes, or until absentee ballots are done processing as well.” The only reason I say that is because obviously machine tapes are a matter of open record as well, and I know that there are some

political parties and groups that are interested in getting the final results at the end of the night right away, so just taking that in consideration after the polls close.

David Kronig

- As between sub. (1)(a) and sub. (1)(b), I support sub. (1)(a). I think that it would be quite burdensome and disruptive to allow observers to be there during the setup of polling places, which my understanding is, it varies by polling place when that begins, whether it's that morning, the day before, or the weekend before, and I think making all of that open to observation would be unduly disruptive. And I think one potential compromise is that in sub. (1)(a), perhaps it could say, "Observers shall be allowed to observe beginning at 7 a.m. or whenever machines are zeroed out on Election Day, whichever is earlier."
- On sub. (1)(c), I would defer to the clerks and chief inspectors on this call, but my understanding is that, particularly for polling places that serve a large number of wards, that having each organization allowed one observer per ward might not be feasible from a space perspective, so I would suggest eliminating sub. (1)(c), and in sub. (1)(d) I would propose adding, "Photographs, videos, or audio recordings of the interior of the observable location."

Attorney Hunzicker responded to Ryan Retza and David Kronig's comments:

- I think the "or zeroing" language, that does make sense, and I think we can clarify the 8 p.m. versus when voters are still actually going through the voting process if there was a line at 8 p.m., so I think that is something that I would correct based on Ryan's comment there.
- I think also for sub. (1)(a) and sub. (1)(b), this is another one of those areas where if you want to signal support for one version or the other, that would be particularly useful for the Commission, since only one of these general possibilities is going to make it into the final rule, and I think them knowing who's supporting it and how many people are supporting which one will be genuinely helpful to them when choosing between those options. So I think that this is another spot where if you specify either sub. (1)(a) and sub. (1)(b), and any adjustments that you would make to it, that would be very helpful for us.

Please see the Rule Language Preferences of Committee Members document for an organized chart of members' preferences.

Debbie Morin

- I think maybe with this, like I'm noticing that Claire said people can come in as early as 6:00, 6:15, I know the election inspectors are busy at that time, but this might be a way for people to look at the setup at the polling place, I mean, observers. If they really care about it that much, get here before the voters get here and look it over and talk to me quickly, I mean, don't take all my time because I have other things to do, but look it over and then if there's something we can tweak that we missed, that would be helpful. Let's have that discussion before we open the doors to the voters, and then you come in half an hour to an hour later and you start expecting things to be moved around once we've been running this process for an hour or so. I think that might have some possibilities to develop that part of it, that part of the layout of the polling place as opposed to submitting the layouts of the polling place a week ahead of time for observers to make a special trip down to the clerk's office to look at them if they want to go in and they really want to have some look ahead of time to see if there might be an issue, then get there before 7:00 the way the workers have to do.

Attorney Hunzicker confirmed no one else wanted to speak.

Chat discussion for EL 4.05(1):

14:55:03 From Debbie Morin to Hosts and panelists:

I like the last sentence of EL 4.04 (11)

14:55:45 From Anita Johnson to Hosts and panelists:

I also have another meeting and have to run. Thanks for the opportunity today.

14:56:07 From Ken Brown to Hosts and panelists:

EL 405 (1). I support B

14:57:01 From Lana Lee Helm to Hosts and panelists:

I support 4.05 (1) B

14:57:18 From Julie Seegers to Hosts and panelists:

405(1) (b) ...including the zeroing of the voting machines, observe the floor plan.

14:57:43 From Julie Seegers to Hosts and panelists:

Support B with the above exception

14:58:31 From Diane Coenen to Hosts and panelists:

Support b. our doors to the poll are open as soon as the CI gets there, typically 6-6:15 am.

We do not restrict people from coming in.

14:59:00 From Ryan Retza to Hosts and panelists:

Support (b)

14:59:24 From David Kronig to Hosts and panelists:

I support 4.05(1)(a) over (b)

14:59:25 From Julie Seegers to Hosts and panelists:

No statute to support 4.05 (d). Should be able to take any kind of recordings before and after the polls close

14:59:34 From Robert Newby to Hosts and panelists:

Support a

14:59:52 From Caroline Fochs to Hosts and panelists:

I am in favor of 4.05(1)(a) with language allowing them in prior to 7:00. (b) is not workable as we set up our polling sites the day before.

15:00:26 From Karen Huffman to Hosts and panelists:

4.05 1 Prefer a with language to include observation of the zeroed out machine immediately prior to first vote.

15:01:20 From Karen Huffman to Hosts and panelists:

405 1 c If there are multiple observers per ward, could end up with more observers than site can hold. Eliminate c

15:01:56 From Karen Huffman to Hosts and panelists:

405 1 d Agree with David ...add "the interior of" in front of the observable location

15:02:52 From Debbie Morin to Hosts and panelists:

I prefer EL 4.05 (1) b. - both for the zeroing of voting machines and possibly, hopefully, to address minor, potential floor plan issues.

EL 4.05(2) Municipal Clerk Office or Alternate Site.

Ryan Retza

- I can type this too, but again, I would support sub. (2)(a) over sub. (2)(b). Again, the return of the absentee ballots during the hours such activities may occur at the clerk's office, we would consider to be a part of the voting process. Again, that doesn't mean you can sit there at 3 a.m. because that's obviously not when they're accepting ballots, but if it is in a public building and they are accepting those absentees, then that should be permitted.
- Sub. (2)(e), I was just going to essentially make this a little bit more concise. I would prefer to see language that says, "Observers shall be permitted to observe at all alternate absentee ballot sites," and just scratch out that last section there and you could even use the clarifier of "Wis. Stat. § 6.855" just to make sure that that's further defined.

Attorney Hunzicker responded to Ryan Retza's comments:

- That might be a very good way to simplify what is intended by sub. (2)(e).

David Kronig

- As between sub. (2)(a) and sub. (2)(b), I prefer sub. (2)(b), we've been over this ground before so I don't want to rehash it. I would also still propose adding to sub. (2)(b), that, "The municipal clerk's office is not an observable location when alternate absentee ballot sites have been designated pursuant to s. 6.855."
- Under sub. (2)(c), I don't believe that there is always room for two observers in a municipal clerk's office, particularly in some of our smaller town and village halls.
- I think that sub. (2)(d) should be struck. I think that I would have a lot of concerns about the security and integrity of election materials, letting observers come into the secure storage areas where clerks keep absentee ballots prior to Election Day, and I also think that it would be very disruptive for our clerks who have a lot going on while they're trying to make sure that all of the right ballots get to the right wards.
- I think that Ryan's proposed implication of sub. (2)(e) is a good one and would support that.

Attorney Hunzicker responded to David Kronig's suggestions:

- I think between sub. (2)(a) and sub. (2)(b), this is another one where if everyone who has a preference, and I want to explain this one just a little bit: so sub. (2)(a) is allowing really just observation of the in-person absentee voting, and then any other delivery of absentee ballots that is happening at that time. Sub. (2)(b) makes observable outside of the hours that in-person absentee voting is taking place, but inclusive of hours where someone may return a voted absentee ballot to a clerk, that that process is also observable. I think it is important also to mention that even if, whether or not the Commission chooses sub. (2)(a) or sub. (2)(b), the return of an absentee ballot to a clerk may be observable separately. The question here is really whether the Commission can regulate it under Wis. Stat. § 7.41. The observation of that process really is, the resolution of that question would not resolve whether the process is observable in any other way. It's a question of what the Commission can regulate under this rulemaking,

is the relevant question for us. I do just want to be clear that whichever way the Commission goes on this, the question of how that process might be observed would not be completely resolved by this rulemaking.

Please see the Rule Language Preferences of Committee Members document for an organized chart of members' preferences.

Ken Brown

- In Racine County, or actually City of Racine, we have a city bus that goes around, a little van that you can vote on absentee for the first ten days before the actual Election Day happens. This bus will be in one location for 3 hours, then it will take the ballots back to City Hall to the municipal clerk's office, and then it will go back out again. My understanding is that in Madison, they're doing something similar where they're using the dormitory, they use one dormitory for 3 hours, allow students to come and vote there, and then they go to another, set it up at another location later on. My concern is on election night, any ballots that are cast, there's a tape run that's run over to the county clerk, who has the tabulation and that can be matched up, but in these 3-hour windows, there's no tape generated because they've got ballots for any of the different municipality wards within that municipality that are on that bus. They will not allow an observer to transport with them that secure box and ensure that that observer can verify that that box has now been properly legally received at the municipal clerk's office without having been tampered, altered, or stuffed in any other way. This creates a real problem that I think affects these students voting in Madison, as well as on this bus and I'd like to see that addressed somehow.

Attorney Hunzicker responded to Ken Brown's comment:

- I think at least some of what you're saying was intended to be addressed by sub. (2)(d) and sub. (2)(e) within this draft.

Debbie Morin

- My question is on sub. (2)(c), and I know someone was talking about bringing it up: "The same organization shall not be limited to less than two observers per municipal clerk's office located." So it's observers representing the same organization. If they're not representing the same organization, is there any limit on the number?

Attorney Hunzicker responded to Debbie Morin's question:

- No, and this goes back to that part of the statute that allows election officials to limit based on the organization and not based on the total number, so it really is working within that statutory constraint, is what this is intending to address.

Debbie Morin

- Okay, thank you for that clarification.

Attorney Hunzicker confirmed no one else wanted to speak.

Chat discussion for EL 4.05(2):

15:04:27 From Debbie Morin to Hosts and panelists:
I prefer EL 4.05 (2) a.

15:04:54 From Julie Seegers to Hosts and panelists:
Support 2(a), (c), (d) (e) restate as "observers shall be permitted to observe at all alternate absentee ballot sites."

15:05:41 From Diane Coenen to Hosts and panelists:
Support 4.05(2) a.

15:06:11 From Lana Lee Helm to Hosts and panelists:
Support 4.05 (2) a

15:06:19 From Caroline Fochs to Hosts and panelists:
I am in support of 4.05(2)a.

15:06:30 From Kristin Hansen, Common Cause to Hosts and panelists:
That is not true about UW Madison²³

15:06:52 From Toya Harrell to Hosts and panelists:
Never heard of that²⁴

15:07:27 From Julie Seegers to Hosts and panelists:
Observers need to be able to follow the chain of custody every step of the way.

15:07:44 From Karen Huffman to Hosts and panelists:
405. 2. Prefer a over b. c designating the number of observers may be problematic for space management in some city clerk offices. d. Eliminate.

15:09:33 From Robert Newby to Hosts and panelists:
eliminate (2) d

EL 4.05(3) Absentee Ballot Canvass.

Attorney Hunzicker introduced the section:

- This is, again, the Board of Absentee Ballot Canvassers, commonly called central count, but I'm not using that term here just because it is statutorily defined and I want to keep that distinction here. So this is the Board of Absentee Ballot Canvassers, where all absentee ballots within a municipality would be brought and processed on Election Day.

Ryan Retza

- The only addition I might have to sub. (3) is also adding something similar to what's already at the polling places in s. 4.05(1)(b), which would permit them to enter prior to the commencement of the Board of Absentee Ballot Canvassers.
- I do support sub. (3)(a), (c), and (e), the only clarification I had with sub. (3)(e) is that if it's determined disruptive by the Board of Absentee Ballot Canvassers, then they can regulate it as a board.

Attorney Hunzicker responded to Ryan Retza's comments:

- Yes, I think that makes sense, and I think in all of these cases, the election officials, if something is disruptive, that would always still apply, but I think adding in that language here makes sense as well.

²³ Referencing Ken Brown's first comment in this section

²⁴ Referencing Ken Brown's first comment in this section

David Kronig

- I support sub. (3)(b) over sub. (3)(a), but with the same proposed compromise that I gave with respect to polling places, that I think allowing observers to observe the zeroing of equipment on Election Day is reasonable, so I propose adding that²⁵ to sub. (3)(b) as a compromise instead of sub. (3)(a), which I think could be too disruptive. I think having one observer per processing table would require most municipalities who use central count to rent much bigger spaces than they currently have available, but they may not have the money to do so, particularly for smaller elections, so I propose striking sub. (3)(c), and I support sub. (3)(d) over sub. (3)(e). I don't think that photos, videos, or audio is necessary within central count and could be disruptive.

Attorney Hunzicker clarified the difference between (3)(d) and sub. (3)(e):

- The reason these are here for this one and they weren't for some of the other locations is just because there are, if not zero voters, there are far fewer voters at an absentee ballot canvass. So the possibility of disruption to voters is less, although there is of course still a possibility of disruption to the voting process. But that's why this option is here for this one and it wasn't there for the other ones. Again, both for sub. (3)(a) and sub. (3)(b), and sub. (3)(d) and sub. (3)(e), registering agreement and disagreement with any of those options would be useful feedback for the Commission for all of those options.

Please see the Rule Language Preferences of Committee Members document for an organized chart of members' preferences.

Attorney Hunzicker confirmed no one else wanted to speak.

Chat discussion for EL 4.05(3):

15:10:15 From Julie Seegers to Hosts and panelists:

Strongly agree with (b), but would like the ability to observe the set up as well.

15:10:34 From Diane Coenen to Hosts and panelists:

Support 4.05(3) d. - do not support e.

15:11:42 From Julie Seegers to Hosts and panelists:

I made a mistake. I support (3)(a) because it does include the set up

15:11:43 From Ryan Retza to Hosts and panelists:

Support 4.05(3)(a), (c), (e)

15:12:14 From Sean Dwyer to Hosts and panelists:

I do believe selection e could be eliminated

15:12:15 From Diane Coenen to Hosts and panelists:

Support 4.05(3) b. and c.

15:12:19 From Julie Seegers to Hosts and panelists:

Also support 4.05 (3)(c) and (e)

²⁵ "Observers shall be allowed to observe beginning at 7 a.m. or whenever machines are zeroed out on Election Day, whichever is earlier."

15:12:33 From Lana Lee Helm to Hosts and panelists:

I support 4.05 (3) (a), (C) and (E)

15:12:37 From Robert Newby to Hosts and panelists:

support (3) b over a, delete c, support d over e

15:12:45 From Karen Huffman to Hosts and panelists:

405. 3 Support b over a, again allowing zeroed out machine immediately prior to first vote, and d over e.

15:13:04 From Ken Brown to Hosts and panelists:

Absentee Ballot Canvas at either Central Count or Canvass I support e. Allow video

15:13:57 From Debbie Morin to Hosts and panelists:

I prefer EL 4.05 (3) a. and e.

EL 4.05(4) Absentee Voting in Residential Care Facilities and Retirement Homes.

Attorney Hunzicker presented the draft language for EL 4.05(4):

- There was quite a bit of discussion on this topic at the last meeting. We tried to add in all the different perspectives into this rule.

Ryan Retza

- I support all of it except for sub. (4)(e). On page 13 of the WEC manual on the conduct of elections inside of retirement homes, I think that explanation in page 13 is a lot more specific and I think beneficial to both special voting deputies and observers. If space is available, so I would just propose that we use the language on page 13, and I will type that once I track that down on the WEC website.²⁶

Julie Seegers

- I know that I was part of that huge discussion last time, and again, the most important is the right to vote as privately and independently as possible. Voter rights can easily be taken advantage of, however, especially among our most vulnerable in our communities. If an election official who is paid by a municipality, such as a special voting deputy, is in the room at the request of the resident, which is done when the absentee ballot request is filled out, that becomes a polling place as outlined in s. 6.87[(6)](b), that states, “For purposes of the application of s. 7.41,” the public’s right to access, “the home” – so that means the room of the resident, the resident’s room – “or facility shall be treated as a polling place.” Of course, staying within the 3 feet observation rule, unless that just is not possible, then the observer should be able to observe from the doorway so as to honor the spirit of s. 7.41 and 6.875[(6)](b). And truly, I don’t know any observer who cares and even keeps track of any one of our vulnerable electors and who they vote for, what they care about is that the process of administering the vote was done fairly and properly. And again, it is when an election official goes into a resident’s room, they were invited to do that, and so that does make it a polling place.

Debbie Morin

- My question is, observing the registration of the residents of a residential care facility, I know that EROs can go into those facilities before special voting deputies bring in the ballots, are observers allowed to observe the process of registering these voters, like observers are allowed to observe that process at a

²⁶ Manual language quoted in the chat discussion below

polling place on same-day voter registration, or at an in-person absentee voting site? That's my question and I was in the middle of typing it, that's just what I want to know.

Attorney Hunzicker responded to Debbie Morin's question:

- I think certainly it would be observable if it's occurring at the same time, just because it would be part of the observable process as the special voting deputies are carrying out their duties. I think if it's occurring at a different time, I think that's less likely that the Commission can regulate it under this statute, but still, if that's something you want to see in the rule, we've got your verbal comment here and if you finish typing it out we'll have that one too, so I think definitely if it's at the same time, I'm less sure if it's not at the same time, but something for the Commission to consider on this subpart.

Ken Brown

- This is another situation we had in Racine, where the city clerk would only allow from the Republican Party one individual who had to sign up for all the different shifts. This particular person actually had to take time off of work in order to do it. The clerk would not permit anyone else to be trained to have the ability to fill in on their days off or whatever to help with this process. I'd like to see that addressed in the future, if not specifically in this, that the city clerk should accept those who are available to do the process if it cannot be all done in a single day or episode. And in the City of Racine, we have over a dozen different locations that is required.

Chat discussion for EL 4.05(4):

15:14:05 From David Kronig to Hosts and panelists:

I support the entirety of absentee voting in residential care facilities as drafted here

15:14:44 From Kristin Hansen, Common Cause to Hosts and panelists:

Common Cause does not support allowing observers into people's private rooms at care facilities.

15:15:06 From Ryan Retza to Hosts and panelists:

p.13 of WEC manual: "There may be instances when voting occurs in a resident's room. If space permits, observers are allowed inside the resident's room, and in an observation area from 3 to 8 feet where the voting occurs, as determined by the SVDs. If space constraints prevent accommodating an observation area within that distance, the special voting deputies shall document the actual location of the observation area and the reasons why it could not be located within the 3 to 8 feet distance."

15:15:30 From Ryan Retza to Hosts and panelists:

Would support that ^

15:16:01 From Ken Brown to Hosts and panelists:

The Libertarian Party supports observers access to all voting location process as permitted by space available.

15:16:04 From Karen Huffman to Hosts and panelists:

Agree with 405.4 Voting for Residential Care facilities proposed legislation as written.

15:17:27 From Diane Coenen to Hosts and panelists:

We follow the WEC Care Facility manual as written and make every effort to accommodate observers. This section should mirror the manual.

15:17:34 From Julie Seegers to Hosts and panelists:

Agree with (4)(a) because it is a statute. Agree with (b)

15:18:02 From Debbie Morin to Hosts and panelists:

Are observers allowed to observe the registration of residential care facility's residents?

15:19:29 From Lana Lee Helm to Hosts and panelists:

Agree with p. 13 of WEC manual as referenced by Ryan and (4)

15:19:52 From Caroline Fochs to Hosts and panelists:

Agree with 405.4 Voting for Residential Care facilities proposed legislation as written with one exception. (f) should add at the end of the sentence or private rooms while the voter is voting.

EL 4.05(5) Recount. and EL 4.05(6) Central Count.

Attorney Hunzicker presented EL 4.05(5) and (6) at the same time:

- So again, recounts; we did discuss this a little bit above. I'm not sure if the s. 9.01(3) is covered by s. 7.41 or not; I think it's an open question. The last draft rule did include it, so the Commission absolutely might decide to include this. It is simply a question on whether or not it is covered under s. 7.41. If it is, other sections will be edited to include it; if not, it would be taken out. I think, as has been discussed, what's going on at a recount is different, and the needs of the parties and counsel are different than it is in any of the other observable locations, so just with that caveat.
- Central count, we also discussed earlier. No Wisconsin municipality that I'm aware of currently uses this process. The rules need to cover this; I think, pretty explicitly, it would need to cover this central count process, however, I don't think there's anyone with experience in how that plays out at the moment.

Ryan Retza

- Again, my only other addition to the recount section – if this is something that this rule is covering – would be that candidate representatives and their counsel and candidates themselves would be prioritized if the board of canvassers is limiting representatives from the same organization.
- Again, my only addition to sub. (6)(d), which is what I would support over sub. (6)(c), is that “it is not disruptive as determined by the municipal clerk.”

Attorney Hunzicker responded to Ryan Retza's comment:

- Yes, as for sub. (6)(c) and sub. (6)(d), that's again the difference between allowing photographs or not. This would be another location where it would be very unlikely that there would be any voters present because these are ballots that would be delivered from each polling place to a central counting location where they would all be fed through a tabulator, probably one of the high-speed tabulators, which is, I believe, the point of the statute.

Please see the Rule Language Preferences of Committee Members document for an organized chart of members' preferences.

David Kronig

- I just want to echo my agreement with Ryan, that candidates and their counsel and representatives be given priority where space requires limiting a number of people at a recount. Just to underscore the reasoning for that which, you alluded to, I think because the statutory language says that “the petitioner, all opposing candidates and interested persons shall be entitled to be present,” that’s very different than the language of s. 7.41, which says, “any member of the public.” The legislature clearly intended it to be the more limited slice of people who are entitled to be at a recount. I fully support full, open, public access to a recount where space is available, but if space is limited, then I think priority should be given to the people that the statutory language suggests.
- As to the central count section, I just think that this should probably mirror whatever the final language for the absentee ballot canvass section is. I don’t see any reason why there should be a difference.

Attorney Hunzicker responded to David Kronig’s comments:

- I think the one significant difference here is that – and this might be more relevant to other parts of this rule – is that there shouldn’t be any names of voters read out loud, just because the checking in of the voter and the processing of the ballots would still be occurring at the polling place in this instance, so it really is just the final tabulation that would occur at the central count. Just to highlight that one distinction, is that the names and addresses of voters would simply not be present at central count, where it would be at the other one. I’m not sure if that would make a difference between what’s written here or not, but that is a significant difference between those two areas.

Ken Brown

- Just one thought on there: when you are using the absentee ballot process, you are giving up a little bit of your privacy; you are allowing your name and address to be read in public before people in the central count location, in the case of the five or six cities that we have in our area. So whether or not they would be recorded or not, I don’t think there’s any reason they shouldn’t be recorded. No voters are actually present in that location, other than people who have already either cast their ballot or submitted theirs through the absentee process. They’re there to observe and they’re there to process. There’s no reason that can’t be filmed to ensure that everything is handled properly.

Attorney Hunzicker confirmed no one else wanted to speak.

Chat discussion for EL 4.05(5) and EL 4.05(6):

15:20:36 From Julie Seegers to Hosts and panelists:
Agree with Central count(6)(d).

15:21:05 From Diane Coenen to Hosts and panelists:
I do not support c. for Central Count because of remakes, unless they are segregated. I have no frame of reference for Central Count and would defer to others with experience.

15:21:14 From Ken Brown to Hosts and panelists:
Agree with Central Count (6) D as well

15:21:38 From Julie Seegers to Hosts and panelists:
No voters present. No statute to support or not support it.

15:22:02 From Diane Coenen to Hosts and panelists:

I made a mistake - I do not support d. because of remakes.

15:22:22 From Sean Dwyer to Hosts and panelists:

Agree with Central Count {6} D as well.

15:22:26 From Ryan Retza to Hosts and panelists:

Agree with (6)d with the clarification so long as It is not disruptive as determined by the municipal Clerk

15:22:59 From Lana Lee Helm to Hosts and panelists:

Agree with 6D

15:24:20 From Julie Seegers to Hosts and panelists:

Agree with Ken about being able to film in CC²⁷

Draft EL 4.06 Media observers and post-observation practices.

EL 4.06(1)

Attorney Hunzicker shared his screen to show the language of EL 4.06(1) and read the draft out loud: “After all voting activity has concluded within the observable location, candidates may be present and the prohibition of creating or transmitting photographs, videos, and audio recordings does not apply unless it is disruptive or interferes with the administration of the election.”

- So, as I believe Ryan commented earlier, “After all voting activity has concluded” is an important line because there can be people in line after 8 p.m. and the entire process of the voter – checking in, possibly registering, and voting – can happen after 8 p.m. provided they’re in line first. Also, in rare instances, a court can order that a polling place stay open late. That could happen if there’s a natural disaster or something like that. So, just want to make sure that “After all voting activity has concluded” means whenever all of that is finished, and the election inspectors become canvassers and the canvassing opens as an official public meeting. So this is really just trying to account for that transition between the election inspectors to canvassers, and then any observers to, still observers, but observers under the public meetings law.

Ryan Retza

- So Brandon, if this is in this section, would we even need the clarification in all the other sections, other than maybe SVDs?

Attorney Hunzicker responded to Ryan Retza’s question:

- Quite possibly not. I need to go back and check, see if there’s anything else I was hoping to accomplish with that, but this might address that.

Ryan Retza

- If you and Jim determine that this would cover pretty much everything, then I would just support getting rid of all the other clarifications, except for in our residential care facilities, just making sure that no recording can take place there.

²⁷ Referencing Ken Brown’s first comment in this section

Attorney Hunzicker confirmed no one else wanted to speak.

Chat discussion for EL 4.06(1):

15:24:47 From Ryan Retza to Hosts and panelists:
Fine with 4.06(1)

15:25:15 From David Kronig to Hosts and panelists:
Agree with 4.06(1) as drafted

15:26:01 From Ken Brown to Hosts and panelists:
Agree with 4.06 (1) as drafted.

15:26:12 From Karen Huffman to Hosts and panelists:
405 5 & 6 Agree with David's comments regarding providing preference to candidates and their representation if there are space limitations. Also would eliminate d. against creation and transmission of photos, videos and audio.

15:26:31 From Julie Seegers to Hosts and panelists:
4.06 Not covered by any statutes

15:27:09 From Caitlin Jeidy to Hosts and panelists:
Received by WEC, thank you for the comments

EL 4.06(2)

Attorney Hunzicker shared his screen to show the language of EL 4.06(2), introduced the section, and read the draft out loud:

- This is the media one, so I'm hoping in particular that the media representatives on the call will provide all of their thoughts on this one.
- I'm going to read this one out loud first: "Observers from communications media organizations shall identify themselves and the organization they represent to the designated election official upon arriving at the observable location and shall sign the observer log as provided by section EL 4.04(1). Communications media observers shall be permitted to use video and still cameras at the discretion of the designated election official provided the cameras are not used in a manner that allows the observer to see or record any confidential information and provided the cameras do not disrupt or interfere with voting or disrupt the orderly conduct of the election. The Commission may also use video and still cameras at polling places, municipal clerks' offices, central counting locations, or absentee ballot canvas locations or authorize others to do so for purposes authorized by the Commission."
- That last sentence is particularly regarding our accessibility surveyors who are sent out each election, so it's meant to, even though they're excluded from the definition of "observer," I wanted to put in language to allow them to conduct the survey that they need to conduct, to ensure accessibility compliance.

Bill Barth

- First, this has been a very interesting exercise, just observing as you talk about observers and elections, to see how serious everyone has been, to see how detailed everyone has been and how committed to running free and fair elections.

- Regarding specifically the media section on this, we in the media have always wanted to be responsible, we want to have access to identify ourselves and who we may be upon entering polling places. It's entirely reasonable, also, to have the ability to use video, still cameras, while not interfering with the election in any way or being disruptive or endangering privacy, also makes plenty of sense, we have no objection to that.
- At the end of this where you mentioned that the Commission may be using pictures or video and audio or whatever you may be in different spots, I'm assuming that is all covered under the open records act and would be accessible as necessary, if it was deemed necessary to go back and check and see how things were being done.

Sean Dwyer

- I would agree with Bill's comments as well. In instances of covering canvasses and recounts in the past, we've always done this. I think that this paragraph does provide a good summary of what's expected of us, and I have no objection to being identified and identifying when we come in for coverage. Again, I would harken back to my comments earlier today, that there will be probably people who will want to try to stream this process, and that's something that maybe needs to be discussed, but I do think this second paragraph does a good job of summarizing, and I think it is fair and reasonable. And again, we are very much open to making it as transparent as possible, and I think having media there allows the general public to participate in the process when they're not able to be there in person.

Attorney Hunzicker responded to Sean Dwyer's comment:

- Yes, also just to mention again the conversation earlier on definitions of media, and who would be falling under this section is something the Commission will need to consider. We have the comments from earlier on that, but certainly that definition is a very critical one, just in terms of who would be able to use videos and cameras under this section.

Julie Seegers

- The open records act should apply to observers too then, in this situation. This really excludes observers and really discriminates against observers, so to me it should be all or nothing: either there can be media as far as observers taking videos, because if the media can, then observers should be able to. If they're responsible, we train observers to be responsible. Observers know they're not supposed to take pictures of people filling out their ballots or any ballot, we know that. That's a pretty simple concept, so to me, this is very discriminatory against observers. The open records act should apply to everybody.

Attorney Hunzicker responded to Julie Seegers' comment:

- Yes, I do think that's a significant comment, that what this section is doing is allowing media observers to be defined to have one additional ability, which is to take video and photographs, so I think that should be something stated clearly here, that that is what the section is doing.

Ryan Retza

- Do you or anybody on the WEC team know of special designations for media in 5-12?

Attorney Hunzicker responded to Ryan Retza's question:

- I don't believe that there are any, not to my knowledge.

Ryan Retza

- Okay, because similar to what Julie said, it just feels like we're arbitrarily creating a special class of individuals inside of polling places, which, I'm sure it gets frustrating for some of the observers, I'm sure it gets frustrating for some of the workers as well. But if we are creating this distinct class of undefined individuals who can be in a polling place, then I think again there does need to be some sort

of credentialing process or some sort of visual credentials so that voters can see, “Is this a person a part of the media?” Even if it is a self-credential, I think that would be helpful as well to address some of the social media concerns, but I just think there needs to be something that indicates you are a member of the media, no matter what medium you use to do so.

Attorney Hunzicker responded to Ryan Retza’s comment:

- Yes, this is one of the points that, this is in the current Commission guidance, this was in the draft rule from ten years ago, so it is a historic practice in Wisconsin, and this is trying to put that into words here, but I think certainly something the Commission will need to be considering very carefully: whether and how to make this distinction.

Caroline Fochs

- I’m in favor of allowing the media in to photograph and videotape, the only think I would add is permitting them to capture likenesses of voters only with their permission. Again, we do have some confidential voters and I would hate that their faces show up on the evening news and without their knowledge, so I would request that that is added as well.

David Kronig

- I agree with Caroline’s comments just now. I also think that having our opens records laws already, and First Amendment law, frankly, already recognize that there are balances to be drawn that things aren’t all or nothing. I think that allowing observers to take photos would be unduly disruptive, but allowing a degree of public access via properly-credentialed media is a reasonable line to be drawn. To the extent that the Commission wants to view this as an all-or-nothing thing, then I would be more inclined to say that no photos or videos are allowed.

Attorney Hunzicker responded to David Kronig’s comment:

- Just to clarify, there’s no doubt at all that media can be observers in a polling place, it really is just the question on what kind of recording can be done.

Julie Seegers

- I know I spoke once about this already, but I just wanted to tell you that when I was – I think I mentioned this before – when I was observing the machine testing, cameras came in and they tried to interview me. I was with other observers and they tried to interview all us observers and we all refused, and they kept asking us if we were there because we were opposing the kind of machines that were being used when we didn’t even know at the time what kinds of machines were being used. And so they kept zooming in and out of my face, they were able to walk in areas that we weren’t able to walk into; we had a taped off area. So that evening when I watched that news segment, they stayed on my face almost the whole time; it was an intimidation thing. And that’s exactly it, it can be abused. So to me, I’m a voter, and I’m there as a citizen, and I felt like I was being intimidated because they felt that they agreed with the kind of machines they had. I wasn’t even educated at the time about the machines. So it was very intimidating and I did not appreciate it at all, and it was very disruptive to the whole process of observing the machines.

Kristin Hansen

- I’m going to give this a lot of thought and email you some more proposed text, but this could get completely out of hand because, you know, we’re all here because we’ve done this, we’re very experienced, we take this all very seriously. If we say any observer can do anything they want inside a polling place with cameras and videos, you could have someone come in and record the faces of every single voter coming in there. You could have someone standing there snapping a photo of every single

voter as they vote. That is intimidation; there is no way that voters aren't going to feel that that is completely overstepping, for them to not be able to walk in, vote, and walk back out with having someone videotaping them or taking their picture and posting it, potentially, on social media. "Here's all the people that voted at this polling place today, do you see anyone you think is illegal?" I mean, there's a lot of people out there that would take massive advantage of something like that, so I'm going to be very forcefully against that idea.

- On the other hand, I do see the advantage to having a modest amount of media, especially if something crazy is happening; that's what the real media in the United States is for. If there's a brawl happening at a polling place, or there's a polling place that is so dysfunctional that something needs to be done about it right now, that's where the media is very helpful and can preserve that for posterity. So the balance needs to be set here, and I honestly think credentialed media being allowed to photograph and video in a non-destructive way is the answer; it's been working for a long time it seems like, so I'm in favor of this: the way it has been all this time.

Attorney Hunzicker responded to Kristin Hansen's comments:

- Certainly, I think the Commission is very much aware of needing to be careful with this section and regulate it in a way that does not intimidate voters. So I think that is very much under consideration here with this section, but please do submit your comments on this part.

Bill Barth

- First of all, we are not reinventing a wheel here. I've been in the media for decades in Wisconsin and the media has always had access. So there's nothing new in what we're discussing. Back to the points made earlier that the media, being responsible, needs to sign in, needs to accept identifying ourselves. Legacy media, I can tell you, generally, it would be very rare when they are not able to show credentials if they needed to show credentials. And when we began this conversation several hours ago now, I mentioned at one point that putting an emphasis on conduct makes a lot of sense and that if we are exercising proper caution and behaving ourselves as media, then there won't be a problem. If we are not, then it is the obligation of election officials to show us the door. And I would hope that if I had any brother in there who were not behaving themselves, that election officials would do their job.
- There is a situation here where government has a First Amendment obligation as well to respect freedom of the press, and there is nothing more important in the public interest than reporting on elections, and you have to have access in order to report on elections, so I would hope that no one is questioning that.
- As far as photographing, personally I can't speak for everyone in the state, but in Beloit and the surrounding area, when we had cameras in an election zone in a polling place, we're not going to take someone's picture and run it on the front page of the newspaper without that person knowing their picture was being taken and having their permission to do so. The law says that people have a right to privacy where they have an expectation of privacy, so certainly in a polling place, one could argue that there is a certain element of an expectation of privacy. Outside a polling place, if there's a line that goes halfway around the block, I don't know that that's an expectation of privacy as the law would view it, but I think the central point here is that this is not new; this has been the practice in the state for as long as I can remember in the media, which is over four decades, so I think the record suggests that the media has been responsible.
- And as Julie, I believe, says she had a bad experience, I don't doubt that at all. But there again, that goes to the element of conduct, and if someone from the media is in a given space and not behaving, their conduct is reprehensible, then I would hope that the election officials would exercise their discretion to deal with it.

Sean Dwyer

- Just in the interest of time, I agree with Bill, and I know that Julie's story is anecdotal, but I would also say that the media has had a record of covering elections in a competent and fair way. When we go into a polling place, we are always credentialed. And again, I'm not saying that that is always the case, but our news organization is always credentialed. We also shoot our video from where we're told to shoot the video. But I'd also say that voting is a public process; we're not allowed in the polling booth, we're not showing how that person is voting. We may show the back of their legs, we may show their ballot go into a machine, but I do think the vast majority of our coverage when it comes to Election Day is respectful and competent.

Debbie Morin

- You guys have been very patient, you media people sitting here all day, waiting for finally the last item on our agenda. So this goes back to the question I raised when we first started: where is the statutory support for us addressing this issue in this manner? Because that's where it should start; the rules amplify what the law says, and if we're putting in rules where there's no law, I don't know how they stand. And maybe the reason we're having this discussion is because of the evolution of media. Both of you guys discussed about, there's new media, there's not just legacy media, things are evolving, things are changing, we need to kind of address what that will be, and that is such a huge issue beyond this, that I don't know if we can address it in the observer area. A media can come in and observe like anyone else, write what they observe in their newspaper or talk about it on their broadcast, but I don't know if they should have, at this point, there's nothing in the law that gives them a special place in the observer language, and we haven't even started to talk about A.I. yet. So there's a lot, and we really do need to get on it, but I don't know if we're the place to do it. I'm wondering if this should be taken up with the legislature so that the law can reflect the reality we're living in now, as opposed to what it used to be in the fifties or sixties.

Attorney Hunzicker responded to Debbie Morin's question:

- Yeah, I think an additional clarifying law on this point certainly would be useful. I think there is a limitation on who can be present within a polling place, and it's basically election officials, voters, and observers. So I think that's the motivation to include a section for media within this observer rule. But again, the comment that the Commission should be not specifically regulating media here is something I think the Commission would consider as well. It is in the old draft document, it is in the Election Rules-at-a-Glance document the Commission has used for many years, and it is also the historic practice to have at least some presence of media in polling places, so I think the challenge is how either to represent that in this rule, or how to ensure that the needs of observers are respected but still also respecting the freedom of the press at the same time. So that really is the balance that we're hoping to strike here, but it's, again, an issue that the Commission is going to need to be making the decision on.

Ryan Retza

- An offshoot of this conversation is obviously, the legislature is very sensitive around the scopes of rules as they were submitted. Anything that goes beyond that, I can see the JCRAR raising issues with it and potentially kiboshing the whole thing. So I would just hope that the Commission considers that as well.

Attorney Hunzicker responded to Ryan Retza's comment:

- Yes, and I think certainly, the intent here is to regulate media under s. 7.41 as election observers. Again, even if this section was struck, media would still be permitted to observe elections, there simply wouldn't be any language differentiating between who can use video and camera within a polling place, I think is what would be lost in that case.

Attorney Hunzicker confirmed no one else wanted to speak.

Chat discussion for EL 4.06(2):

15:33:05 From Sean Dwyer to Hosts and panelists:
Don't believe the section prohibits observers

15:33:16 From Kristin Hansen, Common Cause to Hosts and panelists:
Not all observers are trained properly. Proper media should be treated differently, in my opinion.

15:34:03 From Ken Brown to Hosts and panelists:
Not all media personnel are trained properly.

15:35:41 From Ryan Retza to Hosts and panelists:
Agree with Caroline re: confidential listings²⁸

15:40:31 From Sean Dwyer to Hosts and panelists:
Disagree, the media has been covering elections for decades. And in most instances does not disrupt the outcome of elections.

15:40:47 From Ryan Retza to Hosts and panelists:
Again - agree with the need for credentialing

15:41:13 From Karen Huffman to Hosts and panelists:
4.06 Very conflicted about media credentials. Should be known, pre-approved entities taking into consideration disruption to the process. Social media, in particular, and certain news outlets can do more damage than harm. If this will be on the books for the next 10-20 years, we need to think carefully about the wording and access. I think voters should expect the greatest amount of privacy afforded them in each polling place and for each method of voting (in person v absentee).

15:41:31 From Karen Huffman to Hosts and panelists:
I meant damage than good.

15:41:33 From David Kronig to Hosts and panelists:
I can't hear him

15:41:43 From Lana Lee Helm to Hosts and panelists:
can't hear Sean

15:42:01 From Julie Seegers to Hosts and panelists:
I disagree. Having the media there will exacerbate any situation. There is plenty of news to be had outside of the Polling places.

²⁸ Referencing Caroline Fochs' first comment in this section

15:42:41 From Julie Seegers to Hosts and panelists:
The media could just as easily take pictures of all the voters too.

15:42:57 From Julie Seegers to Hosts and panelists:
And could be used for nefarious reasons.

15:45:27 From Lana Lee Helm to Hosts and panelists:
Good points Bill - thank you!²⁹

15:46:02 From Julie Seegers to Hosts and panelists:
What statute allows the media to be there? Should also cover observers.

15:46:55 From Julie Seegers to Hosts and panelists:
If the media can roam around the polling place, why can't observers who have been trained?

15:47:37 From Ryan Retza to Hosts and panelists:
I would say that: if observers at recounts are not addressed, then the media should not be covered by this rule either. Expands the scope of the rule under Wis. Stat. 7.41. I would say rules should apply across the board as "members of the public"

15:48:29 From Julie Seegers to Hosts and panelists:
Exactly, Debbie...Rules like free range of the media without statutes should not happen.

F. Open Discussion of Additional Election Observer Rule Topics

Attorney Hunzicker opened the meeting for participants to share comments on the rules as a whole or anything additional they would like the Commission to hear when it considers the rule.

Diane Coenen

- I'll try and be brief on this. So some of the things that I had heard were how chief inspectors or polling or election inspectors, whatever their title is, or role, being rude or not accommodating. And what I want to say is that I think that the Commission should really think about this, so training by WEC: so municipal staff and even poll workers get trained by WEC, and they give us best practices and guidelines, etc. But in my twenty-five years, they have barely touched at all on observer rules, and possibly – I do my own training as well as poll workers and I do touch on it a lot – but possibly many clerks do not touch on it either. So because observing is part of the process and should be welcomed by accommodating to the best of our ability and at the observation locations, they should not be met by a defensive attitude by the election officials at the poll – or not even at the poll, it could be in the clerk's office – but that could be directly related to the lack of training on observers.
- Also, there's a lot of turnaround in chief inspectors, poll workers, etc., and so a new chief inspector, they may not always be confident in their knowledge based on not much training, and they don't want to make a mistake. They want to appear confident at the poll, they're in charge, they're supposed to supervise, and so sometimes because of not enough experience or knowledge, they may come off as being very defensive and just say "no" to a lot of things they shouldn't be saying no to. So I think that in today's political environment, I think training on observers, especially now with these new rules we're

²⁹ Referencing Bill Barth's second comment in this section

putting together, or laws, etc., I think it's critical, and I think WEC needs to develop training for how the workers at the polls should address and work with observers and making accommodations as well for any type of disability.

Attorney Hunzicker responded to Diane Coenen's comment:

- Yes, I do think that's a good idea, that if these rules, if we're able to get this promulgated and enforced by 2024, which is the hope for this rule, that the Commission could also update guidance, create new guidance, and create trainings related to these rules. So that certainly is a hope that I have going forward for these rules.

David Kronig

- Just one brief comment, which is to note that nothing in this draft addresses observer conduct during curbside voting, which I think might be something worth considering for future iterations of this draft, but mostly just wanted to thank everyone on this committee for a really good discussion and for the seriousness with which everyone took this, and to thank Brandon and Commission staff because I know putting this together is a ton of work.

Ken Brown

- Just very quickly once again to cap off, I really appreciate the fact that some of the issues that we had here in Racine and across the state were taken seriously enough by WEC to put together this committee to bring all of these issues forward, to go through them one by one, and have a chance to really clean this up. I would follow up with that that I do not support mandatory training of poll observers because for a lot of people, this is their very first step into participating in the election process and they can actually learn simply by being quiet and sitting off to the side; they could be handed a booklet at the polling location and work from there. Again, thank you to everyone for participating and thank you to the WEC for putting this together.

Attorney Hunzicker provided some closing remarks:

- I would just like again to thank all of the committee members here. I think these comments and this feedback is tremendously helpful, so I will be reading every single line in the minutes and in the comments, and trying to improve and adapt this draft document for the Commission when it next considers these rules, and we will be going through line by line with the Commission as well, talking about this draft and which sections they're going to alter and support and ultimately approve for the final rule. So for all committee members, I would also invite you to send any additional thoughts or comments that you want the Commission to consider; you can do that by email. I will also send a follow-up email, probably tomorrow morning after this meeting, so that anyone can get any final thoughts to the Commission before they meet again on this rule, and I'll probably put about a two week window for giving additional written comments for the Commission. I anticipate the Commission next taking this up I believe August 4. It may not finish the entire rule in one meeting, I could see this taking multiple meetings just given time constraints of Commissioners, but again, I very much thank everyone for being here today. It's a long meeting but extremely helpful, and I really appreciate all of your perspectives and comments today, so thank you, and I hope you have a good evening and a happy Fourth of July.

The meeting ended at 3:47 p.m.

Chat discussion for Item F:

15:52:41 From Ryan Retza to Hosts and panelists:
Agree with Diane 100%! More training is certainly needed.

15:53:25 From Caroline Fochs to Hosts and panelists:
I agree, observers should have mandatory training. I as the Clerk would be willing to do the training.

15:53:54 From Julie Seegers to Hosts and panelists:
We do train our observers.

15:54:51 From Ryan Retza to Hosts and panelists:
Thank you to the WEC staff & team!

15:54:58 From Julie Seegers to Hosts and panelists:
There hasn't been one complaint in the last couple of years on any of our Republican observers.

15:55:08 From Karen Huffman to Hosts and panelists:
Well said, Diane. Observers are an important part of the process, but training is not consistent across all organizations. Thank you to those who participated today.

15:55:16 From Robert Newby to Hosts and panelists:
Thank you Brandon for conducting.

15:55:18 From Julie Seegers to Hosts and panelists:
Because they are well trained.

15:55:23 From Diane Coenen to Hosts and panelists:
I meant more training of clerks/clerks staff/pollworkers/CI by WEC and procedures for best practices being developed. Signing off - thank you Brandon and everyone for your valuable input.

15:55:53 From Ryan Retza to Hosts and panelists:
I was agreeing with Diane on more training for clerks/inspectors. Certainly important!

15:56:01 From Caroline Fochs to Hosts and panelists:
Thank you everyone!

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June 29, 2023 Advisory Committee meeting minutes prepared by:

DocuSigned by:

Caitlin Jeidy

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Caitlin Jeidy, Elections Specialist

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Anna Langdon, Help Desk Staff

August 7, 2023



Wisconsin Elections Commission

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Wisconsin Elections Commission

Second Advisory Committee Meeting Concerning Admin. Rule Statement of Scope SS 089-22
201 W. Washington Avenue, Second Floor
Madison, Wisconsin
9:00 a.m. June 29, 2023

Advisory Committee Meeting: Rule Language Preferences of Committee Members

Throughout the second advisory committee meeting, Attorney Hunzicker asked committee members to indicate a preference between two alternate versions of the draft rule language. Members' general preferences for the options Attorney Hunzicker presented are organized below. Members' full comments can be found in the minutes for the advisory committee meeting starting at the page number listed for each section. Members' opinions on rule language that were unprompted by Attorney Hunzicker are not included in this document, but can be found in the minutes.

Members present:

- Karen Huffman - Poll worker selected by the Democratic Party
- Robert Newby - Election observer selected by the Democratic Party
- David Kronig - Democratic Party representative
- Ken Brown - Libertarian Party representative (alternate for Jim Sewell)
- Lana Lee Helm - Poll worker selected by the Republican Party
- Debbie Morin - Election observer selected by the Republican Party
- Ryan Retza - Republican Party representative
- Kristin Hansen - Common Cause Wisconsin representative (alternate for Erin Grunze)
- Yolanda Adams - Forward Latino representative
- Eileen Newcomer - League of Women Voters representative
- Anita Johnson - Souls to the Polls representative
- Julie Seegers - Wisconsin Election Integrity Network representative
- Caroline Fochs – Clerk selected by the Wisconsin Municipal Clerks Association
- Diane Coenen – Clerk selected by the Wisconsin Municipal Clerks Association
- Toya Harrell – Clerk selected by the Wisconsin Municipal Clerks Association
- Katie Reinbold – Clerk selected by the Wisconsin Municipal Clerks Association

Wisconsin Elections Commissioners

Don M. Millis, chair | Marge Bostelmann | Joseph J. Czarnecki | Ann S. Jacobs | Robert Spindell | Mark L. Thomsen

Claire Woodall-Vogg - Executive Director, Milwaukee Election Commission representative

Bill Barth - Wisconsin Newspaper Association representative

Sean Dwyer - Wisconsin Broadcasters Association representative

EL 4.01(18) and (19)

- Full discussion begins on page 12 of the minutes
- Sub. (18): “Representing the same organization’ means individuals who are members of the same organization.”
- Sub. (19): “Representing the same organization’ means individuals who identify as representing the same organization.”
- Whether committee members prefer sub. (18) or (19)

Committee member	EL 4.01(18)	EL 4.01(19)	Other suggestion
Debbie Morin		Support	
Claire Woodall-Vogg		Support	
Ryan Retza		Support	Agrees with David Kronig on the “member” language
Toya Harrell		Support	
Katie Reinbold		Support	
Lana Lee Helm		Support	
Robert Newby		Support	
Kristin Hansen		Support	
David Kronig		Support	I prefer 19 but think that it should include additional language: “deployed, assigned, trained by, or identify as representing”
Diane Coenen		Support	
Julie Seegers		Support	
Eileen Newcomer			I like David's suggested addition to 19
Karen Huffman		Support	19 with the language proposed by David Kronig

EL 4.03(4)

- Full discussion begins on page 30 of the minutes
- “The designated election official shall establish one or more observation areas to enable observers to readily observe all public aspects of the voting process during the election without disrupting the voting process. An observation area shall be not less than 3 feet nor more than 8 feet from each table at which electors announce their names and addresses to be issued voter numbers or at which election officials

announce the name of absentee voters, not less than 3 feet nor more than 8 feet from each table at which electors may register to vote, and not less than 3 feet nor more than 8 feet from each table at which election inspectors remake any ballots. Before remaking any ballot, election inspectors shall announce to observers that the ballot is being remade and the reason for doing so. If observers are unable to hear an elector or election official stating a name or address, an election official shall repeat the name or address. The 3-foot distance described in this paragraph shall be preferred unless it would interfere with voting activities due to the physical limitations of the observable location.”

- Whether to keep or strike the last sentence of EL 4.03(4)

Committee member	Keep	Strike	Other suggestion
Eileen Newcomer	X		
David Kronig		X	
Robert Newby		X	
Caroline Fochs		X	
Ryan Retza	X		
Katie Reinbold		X	
Lana Lee Helm	X		
Diane Coenen		X	
Kristin Hansen	X		
Debbie Morin	X		
Claire Woodall-Vogg	X		
Julie Seegers			I would suggest “The 3 foot distance described in this paragraph shall be the shortest distance that does not interfere with voting activities...”

EL 4.03(5)

**** Members who explicitly indicated they agreed/liked or disagreed with the subsection are listed under “Keep” and “Strike,” respectively

- Full discussion begins on page 40 of the minutes
- “The designated election official shall establish an observation area behind the election inspectors at each table at which electors announce their names and addresses to be issued voter numbers. If any electronic poll lists are used when voters announce their names and addresses, the observation area shall be positioned to allow observers to observe the screen, but observers shall not be permitted to see the screen of an electronic poll list used to register voters.”
- Whether or not this section should be included in the rules

Committee Member	Keep	Strike	Other suggestion
Ryan Retza	X		Phrase it “an electronic registration form” rather than a

			“poll list used to register voters.”
David Kronig		X	
Julie Seegers	X		Include central count in this section (observers would also be able to be behind the table where the central count announcement happens for absentee ballots)
Caroline Fochs		X	If this does remain, I would suggest that including confidential voters as another reason why they can't view the screen, because we do have a few confidential voters here in the city.
Claire Woodall-Vogg		X	
Toya Harrell		X	
Debbie Morin	X		
Diane Coenen			Behind is not always feasible, so suggested language - remove the wording behind the election inspectors and insert an area within the 3" - 8" requirement.
Lana Lee Helm	X		
Robert Newby		X	

EL 4.03(7), (8)

- Full discussion begins on page 47 of the minutes
- Sub. (7): “If more than one observation area is established within an observable location, observers shall be able to move between all such areas without restriction but must remain at least 3 feet from any election process.”
- Sub. (8): “If more than one observation area is established within an observable location, observers may move between such areas in a manner established by the designated election official.”
- Whether committee members prefer sub. (7) or sub. (8)

Committee member	EL 4.03(7)	EL 4.03(8)	Other suggestion
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Claire Woodall-Vogg	Oppose	Support	Would support sub. (7) if the words “without restriction” were struck
Ryan Retza	Support	Support	I agree with 4.03(7) & (8) as written. (8) alone I think would suffice.
David Kronig	Oppose	Support	
Robert Newby	Oppose	Support	
Caroline Fochs	Oppose	Support	
Diane Coenen		Support	
Toya Harrell	Oppose	Support	
Julie Seegers	Support		
Debbie Morin	Support	Oppose	I agree mostly with #7 with the exception that observers should be able to move freely respecting the shortest distance of 3 feet that doesn’t interfere with the voting process.
Ken Brown	Support		
Eileen Newcomer	Support		
Karen Huffman			7. Movement is distracting. Would ask that any movement not interfere with the voting process or obstruct the line of site for election officials.
Sean Dwyer		Support	
Lana Lee Helm	Support		
Kristin Hansen	Support		
Katie Reinbold	Oppose		

EL 4.05(1)(a), (b)

- Full discussion begins on page 68 of the minutes
- Sub. (1)(a): “Observers shall be allowed to observe beginning at 7 a.m. on election day and ending at 8 p.m. or when the last voter who was in line to vote at or before 8 p.m. has finished voting. After 8 p.m., observers may remain at the polling place to observe canvassing under Wisconsin’s open meetings law.”
- Sub. (1)(b): “Observers shall be allowed to observe as soon as the election inspectors begin setting up the polling place, including the zeroing of the voting machines. After 8 p.m., observers may remain at the polling place to observe canvassing under Wisconsin’s open meetings law.”

- Whether committee members prefer either sub. (1)(a) or sub. (1)(b)

Committee member	EL 4.05(1)(a)	EL 4.05(1)(b)	Other suggestion
Ryan Retza	Oppose	Support	Add to sub. (1)(b), “no observer shall be permitted to disrupt the polling place setup, and all questions that the observer has should be directed to the chief inspector or their designee,”
David Kronig	Support		Add to sub. (1)(a), “Observers shall be allowed to observe beginning at 7 a.m. or whenever machines are zeroed out on Election Day, whichever is earlier.”
Ken Brown		Support	
Lana Lee Helm		Support	
Julie Seegers		Support	405(1) (b) ...including the zeroing of the voting machines, observe the floor plan. Support B with the above exception
Diane Coenen		Support	
Robert Newby	Support		
Caroline Fochs	Support		I am in favor of 4.05(1)(a) with language allowing them in prior to 7:00. (b) is not workable as we set up our polling sites the day before.
Karen Huffman	Support		4.05 1 Prefer a with language to include observation of the zeroed out machine immediately prior to first vote.
Debbie Morin		Support	

EL 4.05(2)(a), (b)

- Full discussion begins on page 71 of the minutes
- Sub. (2)(a): “Observers shall be permitted to observe the in-person issuing and voting of absentee ballots under s. 6.86(1)(b), Stats, as well as the return of voted absentee ballots during the hours such activities may occur at a municipal clerk’s office whose office is located in a public building, or at an alternate absentee ballot site.”
- Sub. (2)(b): “Observers shall be permitted to observe the in-person issuing and voting of absentee ballots under s. 6.86(1)(b), Stats, during the hours such activities may occur at a municipal clerk’s office whose office is located in a public building, or at an alternate absentee ballot site. The return of voted by-mail absentee ballots to a municipal clerk’s office or alternate site is not covered by this chapter unless it occurs in the same location and during the same hours as the issuing and voting of absentee ballots.”
- Whether committee members prefer either sub. (2)(a) or sub. (2)(b)

Committee Member	EL 4.05(2)(a)	EL 4.05(2)(b)	Other suggestion
David Kronig		Support	(2)(b) with the addition, “The municipal clerk’s office is not an observable location when alternate absentee ballot sites have been designated pursuant to section 6.855.”
Ryan Retza	Support		
Debbie Morin	Support		
Julie Seegers	Support		
Diane Coenen	Support		
Lana Lee Helm	Support		
Caroline Fochs	Support		
Karen Huffman	Support		

EL 4.05(3)(a), (b)

- Full discussion begins on page 73 of the minutes
- Sub. (3)(a): “Observers shall be permitted to observe the setup of the absentee ballot canvassing location, including the zeroing of election equipment, on election day and during all hours when a board of absentee ballot canvassers is meeting to canvass absentee ballots.”
- Sub. (3)(b): “Observers shall be permitted to observe during all hours when a board of absentee ballot canvassers is meeting to canvass absentee ballots.”
- Whether committee members prefer either sub. (3)(a) or sub. (3)(b)

Committee Member	EL 4.05(3)(a)	EL 4.05(3)(b)	Other suggestion
Ryan Retza	Support		
David Kronig		Support	Sub. (3)(b), but with the same proposed clarification as sub.

			(1)(a): “Observers shall be allowed to observe beginning at 7 a.m. or whenever machines are zeroed out on Election Day, whichever is earlier.”
Julie Seegers	Support		
Lana Lee Helm	Support		
Robert Newby		Support	
Karen Huffman		Support	405. 3 Support b over a, again allowing zeroed out machine immediately prior to first vote,
Debbie Morin	Support		
Diane Coenen		Support	

EL 4.05(3)(d), (e)

- Sub. (3)(d): “Observers shall not create or transmit photographs, videos, or audio recordings of the observable location.”
- Sub. (3)(e): “Observers may create or transmit photographs, videos, or audio recordings of the observable location.”
- Whether committee members prefer either sub. (3)(d) or sub. (3)(e)

Committee Member	EL 4.05(3)(d)	EL 4.05(3)(e)	Other suggestion
Ryan Retza		Support	Sub. (3)(e), clarifying that if it’s determined disruptive by the Board of Absentee Ballot Canvassers, then they can regulate it as a board
David Kronig	Support		
Diane Coenen	Support	Do not support	
Julie Seegers		Support	
Lana Lee Helm		Support	
Robert Newby	Support		
Karen Huffman	Support		
Ken Brown		Support	
Debbie Morin		Support	
Sean Dwyer			I do believe selection e could be eliminated

EL 4.05(6)(c), (d)

**** Attorney Hunzicker did not specifically solicit feedback on these; however, they were either/or subsections

- Full discussion begins on page 77 of the minutes
- Sub. (6)(c): “Observers shall not create or transmit photographs, videos, or audio recordings of the observable location.”
- Sub. (6)(d): “Observers may create or transmit photographs, videos, or audio recordings of the observable location.”
- Whether committee members prefer either sub. (6)(c) or sub. (6)(d)

Committee Member	EL 4.05(6)(c)	EL 4.05(6)(d)	Other suggestion
Ryan Retza		Support	Sub. (6)(d) with the clarification, “so long as it is not disruptive as determined by the municipal Clerk”
Julie Seegers		Support	
Diane Coenen		Do not support	
Ken Brown		Support	
Sean Dwyer		Support	
Lana Lee Helm		Support	



Wisconsin Elections Commission

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DATE: September 7, 2023

TO: Members, Wisconsin Elections Commission

FROM: Meagan Wolfe
Administrator

Prepared and Presented by:
WEC Staff

SUBJECT: Revised Uniform Instructions

1. Purpose

At the June 1, 2023, meeting, the Commission directed staff to further evaluate the Uniform Absentee Ballot Instructions and address three requests. These requests were:

- Clarify ballot return guidance for central count jurisdictions; determine whether the ballot should be returned to the polling place, central count, or the clerk's office. Provide a legal analysis of what the law allows voters to do.
- Clarify language in the section on correcting ballot mistakes. Consider consequences if voter does mail a ballot with a mistake.
- Study the overall concept of the uniform instructions document and consider alternative formats to make it less text-heavy.

These requests are each addressed in the following sections.

2. Ballot Return Guidance.

The Uniform Instructions currently inform voters that they can return their absentee ballots by dropping the ballots off personally at either the municipal clerk's office or at their polling place or central count location. This is consistent with existing Commission guidance to both clerks and voters.

However, in the wake of the Teigen decision from the Wisconsin Supreme Court, many municipalities are divided on the question of whether an absentee voter can return a voted absentee ballot in-person to their polling place, or central count, on election day.

Wisconsin Elections Commissioners

Don M. Millis, chair | Marge Bostelmann | Joseph Czarnecki | Ann S. Jacobs | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

Commission staff believe statute and precedent support both sides of this issue. Accordingly, staff recommend that the Commission consider the analysis in the discussion below and accordingly determine whether voters are authorized to return voted absentee ballots to their polling place or to central count.

Section 6.87(4)(b)(1) describes the procedure for how a voter can return an absentee ballot after they receive it by mail from their municipal clerk. “The envelope shall be mailed by the elector, or delivered in person, to the municipal clerk issuing the ballot or ballots.” Wis. Stat. § 6.87(4)(b)(1). Based on this text alone, a straightforward argument could be made that election inspectors at polling places meet the definition of municipal clerk, as employees, which would allow voter return of absentee ballots to polling places.

However, in 2022, the Wisconsin Supreme Court interpreted § 6.87(4)(b)(1) in the context of unmanned drop boxes, and held that an “absentee ballot must be returned by mail or the voter must personally deliver it to the municipal clerk at the clerk’s office or a designated alternate site.” *Teigen v. Wis. Elections Comm’n*, 2022 WI 64, P4, 403 Wis. 2d 607, 976 N.W.2d 519 (Emphasis added). The *Teigen* court explained that § 6.87(4)(b)(1) “contemplates only two ways to vote absentee: by mail and at the office of the municipal clerk or an alternate site as statutorily described. No third option exists.” *Teigen*, 2022 WI 64 at P28.

None of the justices in the *Teigen* decision discussed § 6.87(6), which states:

The ballot shall be returned so it is delivered to the polling place no later than 8 p.m. on election day. Except in municipalities where absentee ballots are canvassed under s. 7.52, if the municipal clerk receives an absentee ballot on election day, the clerk shall secure the ballot and cause the ballot to be delivered to the polling place serving the elector's residence before 8 p.m. Any ballot not mailed or delivered as provided in this subsection may not be counted.

The passive language of the first sentence of § 6.87(6), “ballot shall be returned so it is delivered,” could support an argument that the Legislature did not intend to restrict ballot return to the polling place solely to the municipal clerk. Specifically, the first sentence of § 6.87(6) does not specify who must return the ballot, and the language of the statute gives no reason to believe that it cannot be an absentee voter. This argument is further supported by the next sentence — “if the municipal clerk receives an absentee ballot...” (Emphasis added). Use of the conditional word “if” in this context, as opposed to “when,” could illustrate that the Legislature did not consider the municipal clerk to be the sole individual responsible for the return and delivery of ballots to the polling place by 8 p.m. on election day.

Similarly, in other election statutes, the Legislature specifically stated when the municipal clerk alone must take a certain step in the absentee ballot counting process. See Wis. Stat. §§ 6.15(4)(a) (“Clerks holding new resident ballots shall deliver them to the election inspectors in the proper ward or election district where the new residents reside ...”), 6.88(1–2) (“the clerk shall enclose [an absentee ballot], unopened, in a carrier envelope which shall be securely sealed and endorsed with the name and official title of the clerk”). One could use these statutes to argue that the Legislature

did not intent to restrict ballot return to municipal clerks only, because if they had, they would have directed municipal clerks to perform this task in § 6.87(6).

Another provision, § 6.86(3)(a), states that authorized agents of hospitalized voters are permitted to return voted absentee ballots to polling places on election day. On one hand, one could argue that this subsection is further evidence that the Legislature contemplated that ballots may be returned directly to polling places by someone other than the municipal clerk. On the other hand, one could also argue that § 6.86(3)(a) is evidence that the Legislature knew how to specify who could return absentee ballots to polling places, and if they intended to allow voters to return voted absentee ballots to polling places, they would have clearly indicated as such in § 6.87(6).

Ultimately, the analysis hinges on how strictly the Commission, or municipal clerks, interpret Teigen. On its face, the language of Teigen seems to clearly say that the only two ways voters can return absentee ballots are either by mail or by delivery to the office of the municipal clerk or a designated alternate absentee site. However, the existence of § 6.87(6) and § 6.86(3)(a), neither of which were discussed or cited by Teigen, illustrate that the Teigen court may have been focused on answering the specific question before it of whether drop boxes were lawful, and did not intend to issue a far-reaching ruling that would disturb other election administration procedures. After all, there were subsequent legal questions raised by the Teigen holding, such as the impact on voters who need ballot return assistance due to a disability, that later needed to be modified by further court rulings. See *Carey v. Wis. Elections Comm'n*, 624 F. Supp. 3d 1020 (W.D. WI 2022).

We now know the narrower view on Teigen return considerations, in conjunction with other provisions of law and practical reality, are problematic. For instance, clerks may keep limited office hours on election day or close the office while working in the polling place itself. Staff now ask that the Commission weigh these important questions.

3. Correcting Ballot Mistakes

Current language regarding mistakes is lengthy and may be confusing for some voters. As a result, the Commission asked staff to create alternatives that are clearer and less verbose.

Current Language:

Correcting Ballot Mistakes

- If you make a mistake while marking your ballot or otherwise require a replacement ballot, contact your municipal clerk. Your municipal clerk's contact information is listed below.
- If there is not enough time to request a replacement ballot and you have not returned your ballot, you may still vote in-person at the polls on Election Day.
- Different types of voters have different deadlines for requesting a replacement ballot. Please see below for additional details.

5:00 p.m. on the Thursday before the election

- Regular absentee voters
- Permanent overseas voters
- Temporary overseas voters

5:00 p.m. on the Friday before the election

- Military voters*
- Indefinitely confined voters

*If the ballot contains federal offices, military voters away from home may request replacement ballots until 5:00 p.m. on Election Day

Attempts to clarify mistake procedures are somewhat complicated by the unresolved litigation in Kormanik v. WEC, 2022CV1395. A temporary injunction in Kormanik prohibits the WEC from providing any interpretations or information that “contravenes” Wis. Stats. §§ 6.84, 6.86(1)(ar), 6.86(5) and 6.86(6), except as otherwise provided in Wis. Stat. § 6.87(9), in addition to prohibiting us from relying on certain previous ballot spoliation guidance docs.

The obvious challenge is that it is impossible to know what “contravenes” these statutes because, 1) the court has not yet ruled on the merits of Kormanik’s suit, and 2) the statutes at issue do not answer the question of whether a voter can spoil or correct a ballot they have already turned in. One option to avoid conflicts with the injunction is to provide the relevant statutes as-is, without summary or distillation. This technique states the law as written but fails to satisfy the Commission’s desire for clear and concise language. Including all statutory language as-is would look something like this:

Correcting Ballot Mistakes

Please contact your municipal clerk if you make a mistake while marking your ballot or while completing the return envelope. **DO NOT MAIL OR OTHERWISE RETURN** an absentee ballot or absentee return envelope containing a mistake. You can receive a replacement ballot and envelope by request.

Under state law: “Whenever an elector returns a spoiled or damaged absentee ballot to the municipal clerk, or an elector’s agent under sub. (3) returns a spoiled or damaged ballot to the clerk on behalf of an elector, and the clerk believes that the ballot was issued to or on behalf of the elector who is returning it, the clerk shall issue a new ballot to the elector or elector’s agent, and shall destroy the spoiled or damaged ballot. Any request for a replacement ballot under this subsection must be made within the applicable time limits under subs. (1) and (3)(c).” Wis. Stat. § 6.86(5).

If there is not enough time to complete a replacement ballot and you have NOT returned you may still vote in person at the polls on Election Day. Additionally: “Except as authorized in sub. (5) and s. 6.87(9), if an elector mails or personally delivers an absentee ballot to the municipal clerk, the municipal clerk shall not return the ballot to the elector. An elector who mails or personally delivers an absentee ballot to the municipal clerk at an election is not permitted to vote in person at the same election on election day.” Wis. Stat. § 6.86(7).

In the alternative, the Commission may choose to remove all detailed guidance from this section, and instead simply direct voters to seek help if they make a mistake. Since the municipal clerks have the statutory authority on ballot spoliation the uniform instructions might direct voters to contact them directly. This language would look much simpler:

Correcting Ballot Mistakes

Please contact your municipal clerk if you make a mistake while marking your ballot or while completing the return envelope.

Commission staff chose to err on the side of simplicity, and thus present designs with this memo that reflect the simpler, seek help language.

4. Revised Designs

Commission staff developed new draft designs, incorporating the Commission's guidance to pursue less text-heavy instructions. These new designs are presented for further consideration and feedback. Enclosed with this memorandum are:

Appendix H.1 - Uniform Absentee Instructions – Old Version. This is the current uniform instructions document, provided for comparison purposes.

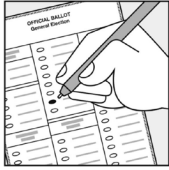
Appendix H.2 – Draft Uniform Instructions Presented June 2023. This is the draft document presented to the Commission on June 1, 2023. Highlighting in the document shows revised language, and is not intended to reflect the final appearance of the instructions.

Appendix H.3 – Draft Uniform Instructions Presented August 2023. This is a revised draft based on Commission feedback during the June 1, 2023 meeting.

Appendix H.4 - Draft Uniform Instructions Presented August 2023 +QR. This version is nearly identical to H.3, but adds a scannable QR code to help voters rapidly obtain their municipal clerk's contact information.

Confirm the envelope from your clerk contains your ballot and the envelope you'll use to return your ballot.

- 1 Read and follow the instructions on your ballot. Mistakes may prevent your votes from being counted.
- 2 You must vote your ballot in the presence of an adult witness:



- Start by showing the witness your unmarked ballot.
- Mark your ballot in the presence of your witness.
- Your witness must confirm that you are the one completing your ballot but, because voting is a private activity, your witness cannot tell you who or what to vote for and cannot see the choices you make on your ballot.

Who can be a witness?

- A witness must be a U.S. Citizen who is at least 18 years old.
- For military or overseas voters, your witness must be at least 18 years old but is not required to be a U.S. Citizen.
- A witness can be a friend, spouse, family member, neighbor, etc.

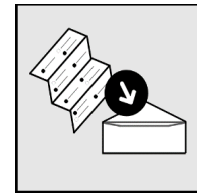
Who cannot be a witness?

- A candidate on the ballot for this election.

If you're having trouble finding a witness or have questions about the witness requirement, please contact your municipal clerk or the Wisconsin Elections Commission for assistance. Contact information can be found on the back of this page.

- 3 Refold your voted ballot and place it inside of the return envelope.

- 4 Seal the envelope in the presence of your witness.



- 5 Fill out the required sections of the form on the absentee return envelope.

To make sure your ballot is counted, double check the following before you return it:



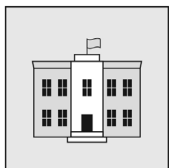
- **Your voter information:** this section is usually completed by your clerk and includes the date of the election, the county and municipality in which you are registered, your name, the address where you are registered, city, and zip code.
- **Voter Signature:** you (or your assistant) must sign in the Certification of Voter section.
- **Witness Signature and Address:** your witness must sign and provide their **full** address (street number, street name, city) in the Certification of Witness section.
- Make sure your ballot is in your envelope and make sure the envelope is sealed properly.

If any of the required information above is missing, your ballot **will not be counted**.

- 6 Return your ballot.



- Your ballot must be received in time to be delivered to your polling place **no later than 8:00 p.m. on Election Day**. There are a few options for returning your ballot.
You can:
 - Mail it back
 - Drop it off at your municipal clerk's office
 - Drop it off at your polling place or central count location



- The United States Postal Service recommends mailing your ballot at least one week before Election Day. Returning a ballot from overseas may take longer.
- **Absentee ballots may not be returned by email or fax.**

Getting Assistance

If you need help reading or filling out your ballot or absentee return envelope, you may ask for assistance from anyone who is not your employer or a representative of your labor union. Your assistant may also serve as your witness. Explaining how to fill out your ballot or return envelope is not “assistance.”

With your ballot

- Your assistant must sign in the Certification of Voter Assistance section.
- Your assistant can read your ballot to you or fill out your ballot under your direction, but cannot tell you how to vote.

With your absentee return envelope

- If someone signs your absentee return envelope on your behalf, make sure they also sign in the Certification of Assistant section.
- Your assistant may also serve as your witness.

Correcting Ballot Mistakes

- If you make a mistake while marking your ballot or otherwise require a replacement ballot, contact your municipal clerk. Your municipal clerk’s contact information is listed below.
- If there is not enough time to request a replacement ballot and you have not returned your ballot, you may still vote in-person at the polls on Election Day.
- Different types of voters have different deadlines for requesting a replacement ballot. Please see below for additional details.

5:00 p.m. on the Thursday before the election

- Regular absentee voters
- Permanent overseas voters
- Temporary overseas voters

5:00 p.m. on the Friday before the election

- Military voters*
- Indefinitely confined voters

*If the ballot contains federal offices, military voters away from home may request replacement ballots until 5:00 p.m. on Election Day

Voter Photo Identification Information

- If you have received your ballot, then a copy of your photo ID is already on file or you are exempt from the requirement. You do not need to provide another copy of photo ID unless instructed by your clerk.
- If you have questions about the photo ID requirement, please contact your municipal clerk.

If you have any questions, please contact your municipal clerk for assistance.

Municipal Clerk Contact Information

(Name of Municipal Clerk)

(Name of Municipality)

Phone:

Email:

Fax:

State Election Official Contact Information

Wisconsin Elections Commission

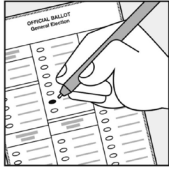
Help Desk: (608) 261-2028

Email: elections@wi.gov

For voter information, check out MyVote.wi.gov

Confirm the envelope from your clerk contains your ballot and the envelope you'll use to return your ballot.

- 1 Read and follow the instructions on your ballot. Mistakes may prevent your votes from being counted.
- 2 You must vote your ballot in the presence of an adult witness:



- Start by showing the witness your unmarked ballot.
- Mark your ballot in the presence of your witness.
- Your witness must confirm that you are the one completing your ballot but your witness cannot tell you who or what to vote for and cannot see the choices you make on your ballot.

Who can be a witness?

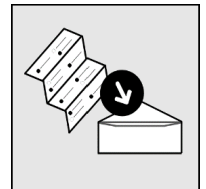
- A witness must be a U.S. Citizen who is at least 18 years old.
- For military or overseas voters, your witness must be at least 18 years old but is not required to be a U.S. Citizen.
- A witness can be a friend, spouse, family member, neighbor, etc.

Who cannot be a witness?

- A candidate on the ballot for this election.

If you're having trouble finding a witness or have questions about the witness requirement, please contact your municipal clerk or the Wisconsin Elections Commission for assistance. Contact information can be found on the back of this page.

- 3 Refold your voted ballot and place it inside of the return envelope.
- 4 Seal the envelope in the presence of your witness.
- 5 Fill out the required sections of the form on the absentee return envelope.



Voter

- **Your voter information:** this section is usually completed by your clerk and includes the date of the election, the county and municipality in which you are registered, your name, the address where you are registered, city, and zip code.
- **Voter Signature:** you (or your assistant) must sign in the Certification of Voter section.
- Make sure your ballot is in your envelope and that the envelope is sealed properly.

Witness

- **Signature and Printed Name:** your witness must sign **AND** print their name
- **Address:** your witness must provide their full address, which is their street number, street name, and municipality

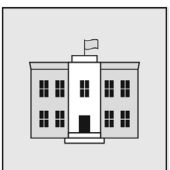
If any of the required information above is missing, your ballot **will not be counted**.

- 6 Return your ballot.

Unless you are a voter with a disability, you must personally return your own ballot and it must be received in time to be delivered to your polling place **no later than 8:00 p.m. on Election Day**.



- Mail it back. The United States Postal Service recommends mailing your ballot at least one week before Election Day. Returning a ballot from overseas may take longer.
- Drop it off at your municipal clerk's office.
- Drop it off at your polling place or central count location.
- Voters with disabilities have the right to assistance in returning an absentee ballot. The voter's assistant can be anyone who is not the voter's employer, an agent of the employer, a representative of their labor union, or a candidate on the ballot.
- **Absentee ballots may not be returned by email or fax.**



Getting Assistance

If you need help reading or filling out your ballot or absentee return envelope, you may ask for assistance from anyone who is not your employer or a representative of your labor union. Your assistant may also serve as your witness. Explaining how to fill out your ballot or return envelope is not “assistance.”

With your ballot

- Your assistant must sign in the Certification of Voter Assistance section.
- Your assistant can read your ballot to you or fill out your ballot under your direction, but cannot tell you how to vote.

With your absentee return envelope

- If someone signs your absentee return envelope on your behalf, make sure they also sign in the Certification of Assistant section.
- Your assistant may also serve as your witness.

Correcting Ballot Mistakes

- If you make a mistake while marking your ballot or while completing the absentee return envelope, or if you otherwise require a replacement ballot, contact your municipal clerk. Your municipal clerk’s contact information is listed below.
- Do **not** mail or otherwise return an absentee ballot or absentee return envelope containing a mistake without **first** contacting your clerk to indicate that you request a new ballot.
- If there is not enough time to request a replacement ballot and you have not returned your ballot, you may still vote in person at the polls on Election Day.
- Different types of voters have different deadlines for requesting a replacement ballot. Please see below:

5:00 p.m. on the Thursday before the election

- Regular absentee voters
- Permanent overseas voters
- Temporary overseas voters

5:00 p.m. on the Friday before the election

- Military voters*
- Indefinitely confined voters

*If the ballot contains federal offices, military voters away from home may request replacement ballots until 5:00 p.m. on Election Day

Voter Photo Identification Information

- If you have received your ballot, then a copy of your photo ID is already on file or you are exempt from the requirement. You do not need to provide another copy of photo ID unless instructed by your clerk.
- If you have questions about the photo ID requirement, please contact your municipal clerk.

If you have any questions, please contact your municipal clerk for assistance.

Municipal Clerk Contact Information

(Name of Municipal Clerk)

(Name of Municipality)

Phone:

Email:

Fax:

State Election Official Contact Information

Wisconsin Elections Commission

Help Desk: (608) 261-2028

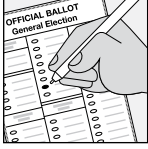
Email: elections@wi.gov

For voter information, check out MyVote.wi.gov

Uniform Instructions for Wisconsin Absentee Voters



- STEP 1**
Read and follow the instructions on your ballot.
Mistakes may prevent your votes from being counted.

- STEP 2**
 **You must vote your ballot in the presence of an adult witness:**
- Mark your ballot in the presence of your witness.
 - Your witness cannot tell you who or what to vote for and cannot see the choices you make on your ballot.

Who can be a witness?

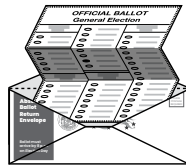
- ☒ A witness must be a U.S. Citizen who is at least 18 years old.
- ☒ For military or overseas voters, your witness must be at least 18 years old but is not required to be a U.S. Citizen.
- ☒ A witness can be a friend, spouse, family member, neighbor, etc.

Who cannot be a witness?

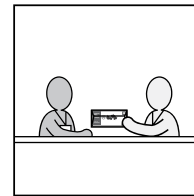
- ☒ A candidate on the ballot for this election.

If you're having trouble finding a witness or have questions about the witness requirement, please contact your municipal clerk.

- STEP 3**
Refold your voted ballot and place it inside of the return envelope.



- STEP 4**
Seal the envelope in the presence of your witness.



Make sure your envelope is completely sealed

- STEP 5**
Fill out the required sections of the absentee return envelope.

Required Elements:

Your voter information
(may already be complete)

Voter Signature
Witness Signature
Witness Printed Name
Witness Address

- STEP 6**
Return your ballot.

Unless you are a voter with a disability, you must personally return your own ballot and it must be received in time to be delivered to your polling place **no later than 8:00 p.m. on Election Day.**

- Mail it back. Allow at least **one week** for mail.
- Drop it off at your municipal clerk's office.
- Drop it off at your polling place or central count location.
- Voters with disabilities have the right to assistance in returning an absentee ballot. The voter's assistant can be anyone who is not the voter's employer, an agent of the employer, a representative of their labor union, or a candidate on the ballot.
- **Absentee ballots may not be returned by email or fax.**

Getting Assistance

If you need help reading or filling out your ballot or absentee return envelope, you may ask for assistance from anyone who is not your employer or a representative of your labor union. **Your assistant may also serve as your witness.**

With your ballot	With your absentee return envelope
<ul style="list-style-type: none">• If someone signs your absentee return envelope on your behalf, make sure they also sign in the <i>Certification of Assistant</i> section.• Your assistant may also serve as your witness.	<ul style="list-style-type: none">• Your assistant must sign in the <i>Certification of Voter Assistance</i> section.• Your assistant can read your ballot to you or fill out your ballot under your direction but cannot tell you how to vote.

Ballot Mistakes

Please contact your municipal clerk if you make a mistake while marking your ballot or while completing the return envelope. Please also contact your municipal clerk if you have questions about the timing of requesting and returning a new ballot if you make a mistake.

Voter Photo ID

- If you have received your ballot, then a copy of your photo ID is already on file or you are exempt from the requirement. You do not need to provide another copy of photo ID unless instructed by your clerk.
- If you have questions about the photo ID requirement, please contact your municipal clerk.
- If you have any questions, **please contact your municipal clerk** for assistance.

Municipal Clerk Contact Information

(Name of Municipal Clerk)

(Name of Municipality)

Phone:

Email:

Fax:

State Election Official Contact Information Wisconsin Elections Commission

Help Desk: (608) 261-2028

Email: elections@wi.gov



**Check absentee ballot return status, find
voter information, and more on
MyVote.wi.gov**

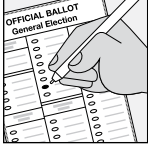
Uniform Instructions for Wisconsin Absentee Voters

EL-128 | Rev 08-2023 | Wisconsin Elections Commission, P.O. Box 7984, Madison, WI 53707-7984 |
(608) 261-2028 | elections.wi.gov | elections@wi.gov

Uniform Instructions for Wisconsin Absentee Voters



STEP 1
Read and follow the instructions on your ballot.
Mistakes may prevent your votes from being counted.

STEP 2
 **You must vote your ballot in the presence of an adult witness:**

- Mark your ballot in the presence of your witness.
- Your witness cannot tell you who or what to vote for and cannot see the choices you make on your ballot.

Who can be a witness?

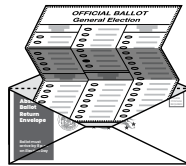
- ☒ A witness must be a U.S. Citizen who is at least 18 years old.
- ☒ For military or overseas voters, your witness must be at least 18 years old but is not required to be a U.S. Citizen.
- ☒ A witness can be a friend, spouse, family member, neighbor, etc.

Who cannot be a witness?

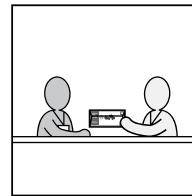
- ☒ A candidate on the ballot for this election.

If you're having trouble finding a witness or have questions about the witness requirement, please contact your municipal clerk.

STEP 3
Refold your voted ballot and place it inside of the return envelope.



STEP 4
Seal the envelope in the presence of your witness.



Make sure your envelope is completely sealed

STEP 5
Fill out the required sections of the absentee return envelope.

Required Elements:

Your voter information
(may already be complete)

Voter Signature
Witness Signature
Witness Printed Name
Witness Address

STEP 6
Return your ballot.

Unless you are a voter with a disability, you must personally return your own ballot and it must be received in time to be delivered to your polling place **no later than 8:00 p.m. on Election Day.**

- Mail it back. Allow at least **one week** for mail.
- Drop it off at your municipal clerk's office.
- Drop it off at your polling place or central count location.
- Voters with disabilities have the right to assistance in returning an absentee ballot. The voter's assistant can be anyone who is not the voter's employer, an agent of the employer, a representative of their labor union, or a candidate on the ballot.
- **Absentee ballots may not be returned by email or fax.**

Getting Assistance

If you need help reading or filling out your ballot or absentee return envelope, you may ask for assistance from anyone who is not your employer or a representative of your labor union. **Your assistant may also serve as your witness.**

With your ballot	With your absentee return envelope
<ul style="list-style-type: none">• If someone signs your absentee return envelope on your behalf, make sure they also sign in the <i>Certification of Assistant</i> section.• Your assistant may also serve as your witness.	<ul style="list-style-type: none">• Your assistant must sign in the <i>Certification of Voter Assistance</i> section.• Your assistant can read your ballot to you or fill out your ballot under your direction but cannot tell you how to vote.

Ballot Damage & Mistakes

If you make a mistake while marking your ballot or completing the return envelope, **please contact your municipal clerk.** They can also field questions about how to request a new ballot and return it if you make a mistake.

You can find their information below.

Voter Photo ID

- If you have received your ballot, then a copy of your photo ID is already on file or you are exempt from the requirement. You do not need to provide another copy of photo ID unless instructed by your clerk.
- If you have any questions, **please contact your municipal clerk** for assistance.

Find Your Municipal Clerk



myvote.wi.gov/en-us/
My-Municipal-Clerk

State Election Official
Contact Information
Wisconsin Elections Commission
Help Desk: (608) 261-2028
Email: elections@wi.gov



Check absentee ballot return status, find
voter information, and more on
MyVote.wi.gov



Wisconsin Elections Commission

201 West Washington Avenue | Second Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8005 | elections@wi.gov | elections.wi.gov

DATE: For the September 7, 2023 Commission Meeting

TO: Members of the Wisconsin Elections Commission

FROM: Meagan Wolfe
Administrator

SUBJECT: Clerk Guidance Concerning Ballot Timeline for the April 2024 Spring Election and Presidential Preference Primary

Overview

This memorandum provides an overview of Wisconsin Elections Commission guidance in support of the state law that requires a ballot be sent to each voter with an active absentee request on file 47 days prior to the Presidential Preference Primary. This scenario only occurs every four years, in a Presidential election year, when the Spring non-partisan election is paired with the Presidential Preference. Having a federal contest on the April ballot means that the state law requiring ballots to be sent out 47 days before an election is triggered. Wis. Stat. § 7.15(1)(cm). The statutory deadline to send out ballots for the April election, when no federal contest is present, is 21 days prior to the election.

Spring Primary for April Non-Partisan Election	April Ballots Mailed 47 Days Before April Election	Presidential Preference Primary & Spring Non-Partisan Election
February 20, 2024	February 15, 2024	April 2, 2024

The 47th day prior to the Presidential Preference Primary is February 15, 2024, which is five days before the Spring Primary on February 20, 2024. This requirement is established by Wis. Stat. § 7.15(1)(cm) which states:

“The clerk shall send or transmit an absentee ballot for the presidential preference primary to **each elector** who has requested that ballot **no later than the 47th day before the presidential preference primary** if the request is made before that day, or, if the request is not made before that day, within one business day of the time the request is received.”

The February primary results determine what candidates continue on to the April ballot. Considering that the primary is not being held, much less certified, until well after the 47th day, this statutory deadline becomes impossible.

This memorandum asks the Commission to determine when absentee ballots should be sent to all voters prior to the April 2024 Spring Election and Presidential Preference. For the purpose of this memo, the Commission will consider both the deadline for sending ballots to regular absentee voters and Military and Overseas voters (UOCAVA) for which there are federal considerations.

Wisconsin Elections Commissioners

Don M. Millis, chair | Marge Bostelmann | Joseph Czarnecki | Ann S. Jacobs | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

Background

The 47-day statutory provision was enacted as part of 2011 Wisconsin Act 45. While this is the fourth Presidential Preference Primary for which the requirement was in effect, the focus of the 47-day deadline has previously been on providing absentee ballots to military and overseas electors in order to comply with the federal deadline of 45 days for those electors. The 45-day deadline was established by the MOVE Act of 2009, which amended UOCAVA with legislative changes (namely, additions) made in §§ 577-581. The Government Accountability Board was subject to a federal court consent decree in 2012 to report compliance with the federal deadline during the Presidential Primary. In 2016, the Board continued to focus on the federal deadline for military and overseas electors to receive absentee ballots and the state's 47-day deadline was used as a tool to comply with the federal requirement.

Despite this past practice, the above statutory language for the 47-day deadline clearly applies to all absentee voters with a request on file for the Presidential Preference Primary. The Legislative Council memo summarizing the legislation which became Act 45 highlighted that it required county clerks to distribute Presidential Preference Primary ballots to municipal clerks 26 days earlier than under previous law and additionally required municipal clerks to distribute those ballots to each elector who requested one 26 days earlier than under previous law.

February 20, 2024, Spring Primary will have not occurred prior to the state's 47-day transmission deadline, thus making the ability for a clerk to issue a single ballot to a voter for the April 2, 2024, Spring Election and Presidential Preference impossible.

Definitions

For the purpose of this memorandum, we will first define the types of voters and types of ballots impacted.

Regular Voter: This category includes all non-UOCAVA voters who have requested an absentee ballot prior to the April 2024 Spring Election.

UOCAVA Voter: This category includes military, overseas, and temporarily overseas voters who have requested a ballot prior to the April 2024 Spring Election.

“A” Ballot (or “Presidential Preference Only Ballot”): For the purposes of this memo and the process described below, an “A” ballot would contain only federal contests. In the case of the April 2024 Spring Election, the only federal contest would be the Presidential Preference. Unless there were a special election for a federal contest needed in April of 2024, no other contests would appear on the “A” ballot.”

“B” Ballot (or “Full Ballot”): For the purposes of this memo and the process described below, a “B” ballot would contain all contests and candidates approved for the April 2024 Spring Election. This ballot would include both the Presidential Preference contest along with all other non-partisan local contests and candidates approved for ballot access. The “B” ballot is also referred to as the “full” ballot for the Spring 2024 Election.

Previous Commission Action on Issuing Presidential Preference Ballots to Voters

The Commission last addressed this longstanding problem at its February 12, 2020, meeting, where it directed clerks to adjust the timeline to issue ballots to various types of voters ahead of a Presidential

Preference election. Specifically, the Commission directed clerks to issue ballots containing the Presidential Preference contest only, also known as an ‘A’ ballot, *only* to UOCAVA voters, and to issue a ‘B’ ballot containing all of the contests once those ballots were available. The Commission decided that clerks should not issue an ‘A’ ballot to all voters until the Spring Primary contests were certified and clerks had the ability to print ballots containing all of the contests, including the Presidential Preference, for the April 4, 2020, election. This decision was based off of clerk concerns about widespread voter confusion for regular voters, the desire to comply with the 2012 federal consent decree and to provide UOCAVA voters as much time as possible to complete their ballot, and the inability to print and issue ballots before the February Spring Primary was certified.

Guidance on Processing and Counting Ballots

In support of the Commission’s decision to direct clerks to only send ‘A’ ballots to UOCAVA voters, staff had provided a memo in 2020 that outlined administrative procedures for issuing, organizing, and counting ballots to all county and municipal clerks on February 5, 2020. For the purposes of this process, an ‘A’ ballot was defined as a Presidential-only ballot and a ‘B’ ballot is the official, or full, ballot containing the presidential preference contest and all other state, county and local contests. These procedures aligned with current procedures used by local officials to review and sort absentee ballots prior to Election Day, and were designed to minimize poll worker confusion, create efficiency in ballot processing, avoid counting multiple ballots for a single voter, and to give voters the maximum opportunity to return a voted official ballot.

They are also consistent with how state law outlines absentee ballot processing at the polling place ([Wis. Stat. § 6.88\(3\)](#)) and at a central count facility ([Wis. Stat. § 7.52\(3\)](#)). These statutes provide that, after the absentee ballot certificate has been examined and deemed sufficient, the poll workers “shall take out the ballot without unfolding it or permitting it to be unfolded or examined” and the “inspectors shall then deposit the ballot into the proper ballot box and enter the absent elector's name or voting number after his or her name on the poll list in the same manner as if the elector had been present and voted in person.” These statutes support the earlier guidance provided to clerks that, in most instances, only the ballot that will be counted should be removed from the certificate envelope for processing. In the instance both “A” and “B” ballots are returned, the poll worker will know which is “A” and which is “B” by an indicator which is printed on the return envelope label. In addition, poll workers will not know if the ballot that is being processed has a vote for any specific contest, including the Presidential Preference contest. This process will make it difficult, if not impossible, for poll workers to try to control for undervotes in the Presidential Preference contest by comparing a voter’s ‘B’ ballot to their ‘A’ ballot.

Staff guidance instructed municipalities to organize and alphabetize ballots into several different categories and further sort those ballots based on reporting unit and how they should be adjudicated on Election Day. An additional goal of these procedures is to ensure that more than one ballot is not counted for a voter who has returned both an ‘A’ and ‘B’ ballot. State law requires the number of ballots cast to be reconciled with the number of voters recorded on the poll list when votes are tallied. [Wis. Stat. § 7.51\(2\)](#) provides that any time the number of ballots exceeds the number of voters local board of canvassers members should draw down, or select ballots to be removed at random, until the numbers reconcile. This process requires separating likely absentee ballots from ballots voted at the polling place, with the goal of removing those ballots only from the respective pool that contained the extra ballots. The result of a draw down is unlikely to identify the superfluous ballot(s) that should not have been counted, and the process often results in the removal of ballots due to election official error.

Similar reconciliation procedures are outlined for municipalities that centrally count their absentee ballots. [Wis. Stat. 7.52\(4\)](#).

1. Sort by ballot type ('A' ballots and 'B' Ballots)
2. Further sort by voter type (permanent overseas ballots v. regular, military and temporary overseas ballots)
3. Identify ballots that can be counted as opposed to ballots which need to be held until after 8:00 pm on election day for processing

In addition, the suggested order for processing ballots was identified for use by poll workers using the below guidelines. The categories and timelines were identified to ensure any voter with an outstanding 'B' ballot, or a voter who has returned a 'B' ballot with an insufficient certificate envelope, has every opportunity to return a voted absentee 'B' ballot for counting. These standards also acknowledge voters who returned an 'A' ballot by mail, but not their 'B' ballot still have the opportunity to vote a 'B' ballot in person on election day.

Process any time throughout the day:

1. 'A' ballots from permanent overseas voters with sufficient certificate envelopes
2. 'B' ballots from military, temporary overseas and regular voters with sufficient certificate envelopes

Hold for processing after 8:00 pm

1. 'A' Ballots from military, temporary overseas and regular voters who have not yet returned their 'B' ballot
2. 'A' Ballots from voters who returned a 'B' Ballot
3. 'B' Ballots from military, temporary overseas and regular voters with insufficient certificate envelopes

These procedures may also have the effect of delaying the final tabulation of unofficial election night results and the transmission of those results to the counties. There may be a significant number of ballots that should be held for processing until after the polls closed and the majority of the 'A' ballots must be remade before being processed on the optical scan equipment. These ballots will be remade using the statutorily required processes for remaking ballots that are outlined in WEC training materials.

Clerk and Poll Worker Training

Like 2020, if the Commission approves this approach, staff will create a new memo for clerks distilling the guidance from the Commission that will be distributed through Clerk Communications on the WEC website and via the clerk "ListServ." This information will also be distributed in the WEC Newsletter multiple times ahead of the February 15, 2024, deadline. Staff will also conduct at least one webinar ahead of February 15, 2024, that will outline administrative procedures for issuing, managing and processing 'A' and 'B' ballots in the clerk's office, at the polls on election day, and in the statewide voter registration system. The webinar will be recorded and posted to the agency website and The Learning Center (TLC) along with a document that provides answers to participant questions that are not answered live.

Revised Instructions for Voters

In 2020, the Commission approved sending instructions to UOCAVA voters with both their "A" and "B" ballots. instructional inserts that were used by clerks in 2020 are attached to this memo and it is

recommended that the Commission approve allowing clerks to use them again. The instructional inserts are to avoid confusion for UOCAVA voters and help them understand that while they will receive two ballots, only one ballot will be counted on election day. The insert in the 'A' ballot, is intended to set the expectations that most UOCAVA voters should anticipate the arrival of a second ballot, and a separate insert addressing the 'B' ballot that explains the purpose of the second ballot and plainly states they are eligible to vote in the Presidential Preference contest even if they have returned a voted 'A' ballot. It also makes clear that if both ballots are received, the full "B" ballot will be counted and that the "A" ballot will be rejected.

Statutory Change Needed

Ideally, this situation would be remedied by a statutory change. It is WEC staff's understanding that the Wisconsin County Clerks Association and Wisconsin Municipal Clerks Association have been working with their respective legislative committees to endorse such a statutory change. Worth noting, this change would not be appropriate for an administrative rule. Administrative rules are meant to address specifics of a statutory procedure when they are absent from law. Administrative rules are not appropriate for changing or re-defining clear statutory language. In this instance, the statutes are clear but are conflicting and logistically impossible.

To make the Legislature aware of this statutory impossibility, the Commission could direct WEC staff to send a letter to the Wisconsin Legislature including this memorandum and the Commission's vote on this matter and request that the Wisconsin Legislature consider changes to Wis. Stat. § 7.15(1)(cm) ahead of the April 2, 2024, Spring Election and Presidential Preference. In this letter, the Commission could consider and recommend specific changes to the Legislature, including whether regular voters need to receive a Presidential Preference Primary ballot 47 days ahead of the election, or whether a shorter time period exists that accounts for the difficulties posed by the February Spring Primary. For UOCAVA voters, federal law requires they receive their ballots for the Presidential Preference no later than 45 days prior to the election. The Commission could ask the Legislature to either solidify the "A"/"B" ballot process for UOCAVA voters in state statute. The other option would be to consider changing the date of the Presidential Preference election in the future- this would be a much more significant change and would require extensive analysis to understand the other statutory deadlines, such as ballot access and challenges, that could be impacted.

Recommended Motions

Motion #1: The Commission directs clerks to send 'A' ballots containing only the Presidential Preference contest to military, permanent overseas, and temporary overseas voters by February 15, 2024, to comply with state law and the federal MOVE Act. The Commission directs clerks to then send 'B' ballots containing all the contests to military, permanent overseas, and temporary overseas voters (UOCAVA) as soon as full ballots become available or by March 12, 2024, whichever is sooner.

Motion #2: The Commission further directs that because it is impossible to send a full ballot to regular voters by the 47-day deadline, that clerks mail ballots to regular voters as soon as the February Primary has been certified and full ballots become available or by March 12, 2024, whichever is sooner.

Motion #3: The Commission directs WEC staff to send a letter to the Wisconsin Legislature indicating the Commission's vote, attaching this memo, and requesting that the Legislature consider changes to Wis. Stat. § 7.15(1)(cm) ahead of the April 2, 2024, Spring Election and Presidential Preference, to remedy the impossibility of the statutory deadlines.

Explanation to accompany Presidential Preference-Only (A) Ballots

Dear Voter:

The enclosed ballot is a “Presidential Preference-Only” ballot. This ballot has been sent to you in order to comply with Wisconsin state law that requires Presidential Preference ballots to be sent to absentee voters 47 days before the election.

Your full ballot will arrive around the middle of March. You will receive a full ballot which will contain the both Presidential Preference Vote contest and well as all other nonpartisan offices up for election.

Please mark your selections and return this ballot. **When you receive the full ballot around the middle of March, also mark your selections and return that ballot.** When absentee ballots are processed on election day, whichever ballot has been returned will be counted. If both ballots have been returned, the full ballot will be counted. **Your votes will not be counted twice.**

If you have questions, please contact me.

Name of municipal clerk and contact information

Explanation to accompany Official Spring Election and Presidential Preference (B) Ballot

Dear Voter:

In February you were sent a “Presidential Preference-Only” ballot. This ballot was sent to you in order to follow Wisconsin state law requiring that ballot to be sent 47 days before the election. You were also told a full ballot containing the Presidential Preference contest as well as all nonpartisan offices up for election would be coming in the middle of March. **This is that ballot.**

The enclosed ballot is the Official Ballot for Spring Election and Presidential Preference Vote. **Please mark your selections and return this ballot,** even if you voted and returned the Presidential Preference-Only ballot. **Your votes will not be counted twice.**

If you have questions, please contact me.

Name of municipal clerk and contact information

Explanation to accompany Presidential Preference-Only (A) Ballots

Dear Voter:

The enclosed ballot is a “Presidential Preference-Only” ballot. This ballot has been sent to you in order to comply with Wisconsin state law that requires Presidential Preference ballots to be sent to absentee voters 47 days before the election.

- **Your full ballot with all offices up for election will arrive around the middle of March.**
- Please mark your selections and return the enclosed ballot.
- When you receive the full ballot around the middle of March, also mark your selections and return that ballot.
- Election Inspectors will count whichever ballot has been returned but will give preference to the full ballot.
- **Your votes will not be counted twice.**

If you have questions, please contact me.

Name of municipal clerk and contact information

Explanation to accompany Official Spring Election and Presidential Preference (B) Ballot

Dear Voter:

In February you were sent a “Presidential Preference-Only” ballot. This ballot was sent to you in order to follow Wisconsin state law requiring that ballot to be sent 47 days before the election. You were also told a full ballot containing the Presidential Preference contest as well as all nonpartisan offices up for election would be coming in the middle of March. **This is that ballot.**

The enclosed ballot is the Official Ballot for Spring Election and Presidential Preference Vote. **Please mark your selections and return this ballot**, even if you voted and returned the Presidential Preference-Only ballot. **Your votes will not be counted twice.**

If you have questions, please contact me.

Name of municipal clerk and contact information



Wisconsin Elections Commission

201 West Washington Avenue | Second Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8005 | elections@wi.gov | elections.wi.gov

DATE: September 7, 2023

TO: Members, Wisconsin Elections Commission

FROM: WEC Staff

SUBJECT: Polling Place Accessibility Toolkit

Overview

At the first quarterly meeting on February 2nd, 2023, the Commission directed staff to create a toolkit to aid clerks in ensuring their polling places were as accessible as possible. The motion asked staff to develop a disability toolkit with appropriate signage and election notices to be made available to all municipalities. This new toolkit alerts clerks to the multiple free items they can request for their municipality through the Accessibility Supplies Program administered by WEC staff, including signage specifically for voters with disabilities. This toolkit also aims to inform clerks about easy to complete tasks that they and their poll workers can complete to allow voters to easily enter their polling place and cast their ballot in a private and independent fashion.

As notices change from election to election, staff wanted to present the notices in an easily updatable way and have added a sample Type B and Type C notice as an addendum to the Polling Place Accessibility Toolkit. These notices are required to be at each polling place under Wis. Stat. § 5.35(6)(a)1. Staff will ensure that the applicable notices are linked to the toolkit on the WEC website ahead of each election and plans on covering best practices on ensuring all required election notices are in a large font and placed in a public fashion in future trainings and webinars.

Updates

Staff revisited existing guides like the Polling Place Set-Up Guide and Polling Place Accessibility Quick Fix Guide and added more images and examples. These images and examples were created by the U.S. Department of Justice as they oversee the implementation of the Americans with Disabilities Act (ADA).

The toolkit also includes the Accessibility Supplies Order Form (EL-502) and the Election Day Accessibility Checklist created by Disability Rights Wisconsin. The Quick Fix Guide now notes when supplies are available in the Accessibility Supply Program. Additionally, staff added a new section to the Order Form. Below the individual listings for each supply, there are three kits, the Temporary Standard Accessible Parking Space Kit, the Temporary Van Accessible Parking Space Kit, and the Accessible Entrance Kit. Each kit groups together the supplies needed to implement a quick fix or best practice. The Order Form also refers clerks to the Quick Fix Guide for further instructions.

Wisconsin Elections Commissioners

Don M. Millis, chair | Marge Bostelmann | Joseph Czarnecki | Ann S. Jacobs | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

Future Updates

Staff will place the updated toolkit on the agency's website and will promote the toolkit in upcoming trainings focused on accessibility and general updates ahead of the 2024 election cycle. Staff will also solicit feedback from clerks about the toolkit and any improvements or additions that can be made, and staff will update the Commission about those accepted suggestions for improvements or additions.



POLLING PLACE ACCESSIBILITY TOOLKIT

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POLLING PLACE SET-UP GUIDE

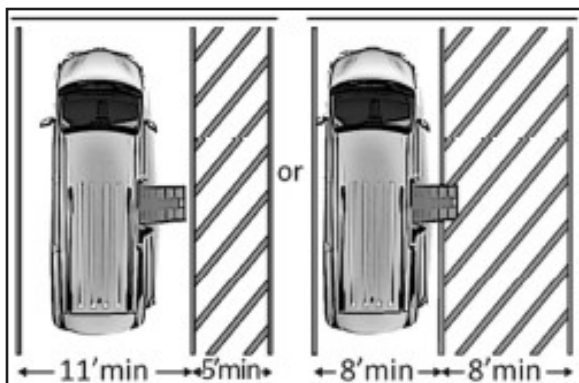
All eligible voters in the State of Wisconsin to cast their ballot both privately and independently on Election Day. This guide provides basic information for setting up a polling place to allow voters with disabilities to participate in the election process with minimal assistance. Polling place accessibility begins in the parking area and continues along any route a voter with a disability would have to travel to gain access to the voting area. The voting area should be organized with accessibility concerns in mind and any barriers to voting should be eliminated or minimized.

CURBSIDE VOTING

Wisconsin State Statute requires each polling place to provide curbside voting for voters who are unable to enter the polling place due to disability. There are many ways to set up curbside voting. If off street parking is available, a parking space can be designated with a curbside voting sign that lists a phone number to call to let a poll worker know when a voter is there. When designating a parking space for curbside voting, it is important to leave the required number of accessible parking spaces available closest to the accessible entrance for voting. Other methods include posting a wireless doorbell on a curbside voting sign in the parking area or at the entrance. Some polling places will station a greeter at the door to watch for curbside voters.

PARKING

The Americans with Disabilities Act (ADA) requires each polling location to have at least one van-accessible parking space available. A van-accessible parking space is defined as being at least 8 feet wide with an 8 foot wide marked accessible aisle or loading area. An acceptable van accessible space can also be 11 feet wide with a 5 foot wide accessible aisle. Each van accessible space should also be marked with proper signage posted at least 60 inches above the ground stating it is “Van Accessible” and bearing the universal sign of accessibility.

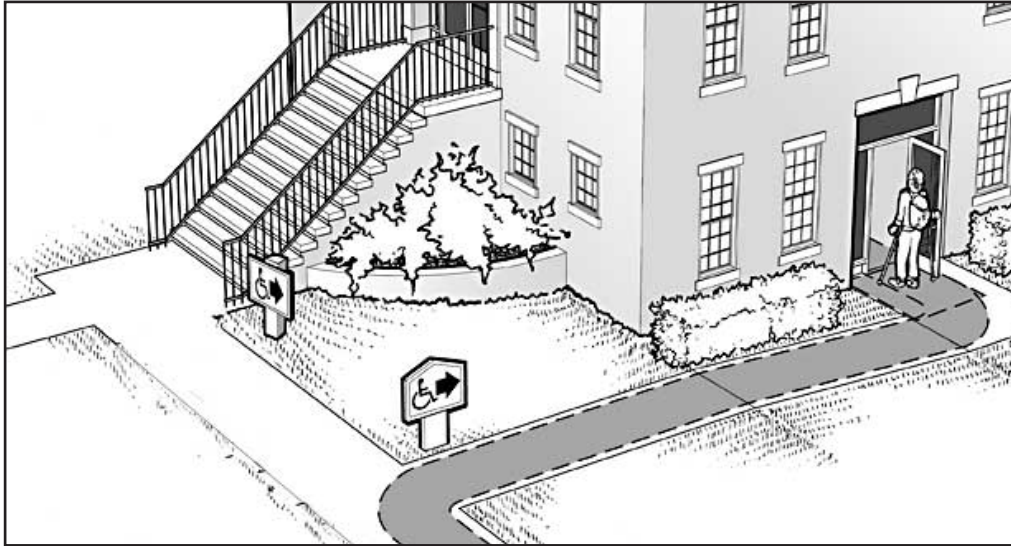


In addition to the van-accessible parking space, a facility where a polling place is located may be required to have additional regular accessible parking spaces. The number of required accessible spaces is determined by the number of total parking spaces in the parking area.

Total Parking Spaces	Van Accessible Spaces
1-25	1
26-50	2
51-75	3
76-100	4

EXTERIOR ROUTE

The accessible pathway is the route a voter with a disability would use to travel from the accessible parking area to the accessible entrance. In many cases, the accessible entrance will also be the main entrance to the facility and all voters will use the same pathway to reach that entrance. However, if the accessible entrance is not the same as the main entrance, large print signs must be used to direct voters with disabilities to pathway for the accessible entrance.

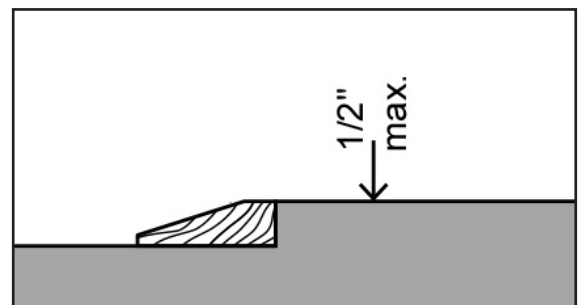
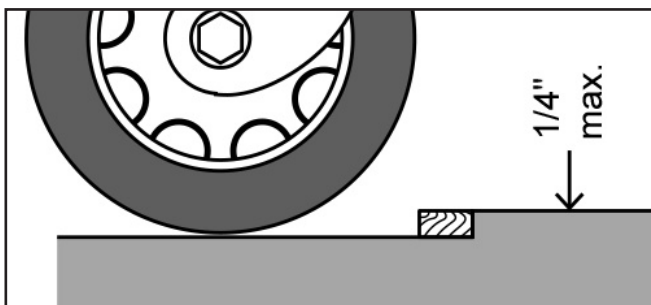


ENTRANCE

The accessible entrance is the entrance a voter with a disability would use to gain access to a polling place on Election Day and should be marked with the universal symbol of accessibility. Accessible entrances should be at least 32 inches wide to accommodate a voter in a wheelchair and have door hardware that is no higher than 48 inches high.

Door hardware should be operable with one hand and should not require tight grasping, twisting, or pinching of the wrist. Levers, handles, and push operated hardware are good examples of accessible hardware while a twistoperated door knob is not. If a polling location does not have proper hardware on the accessible entrance an electronic feature, such as a wireless doorbell, can be used on Election Day to ensure voters with disabilities have proper access to the facility.

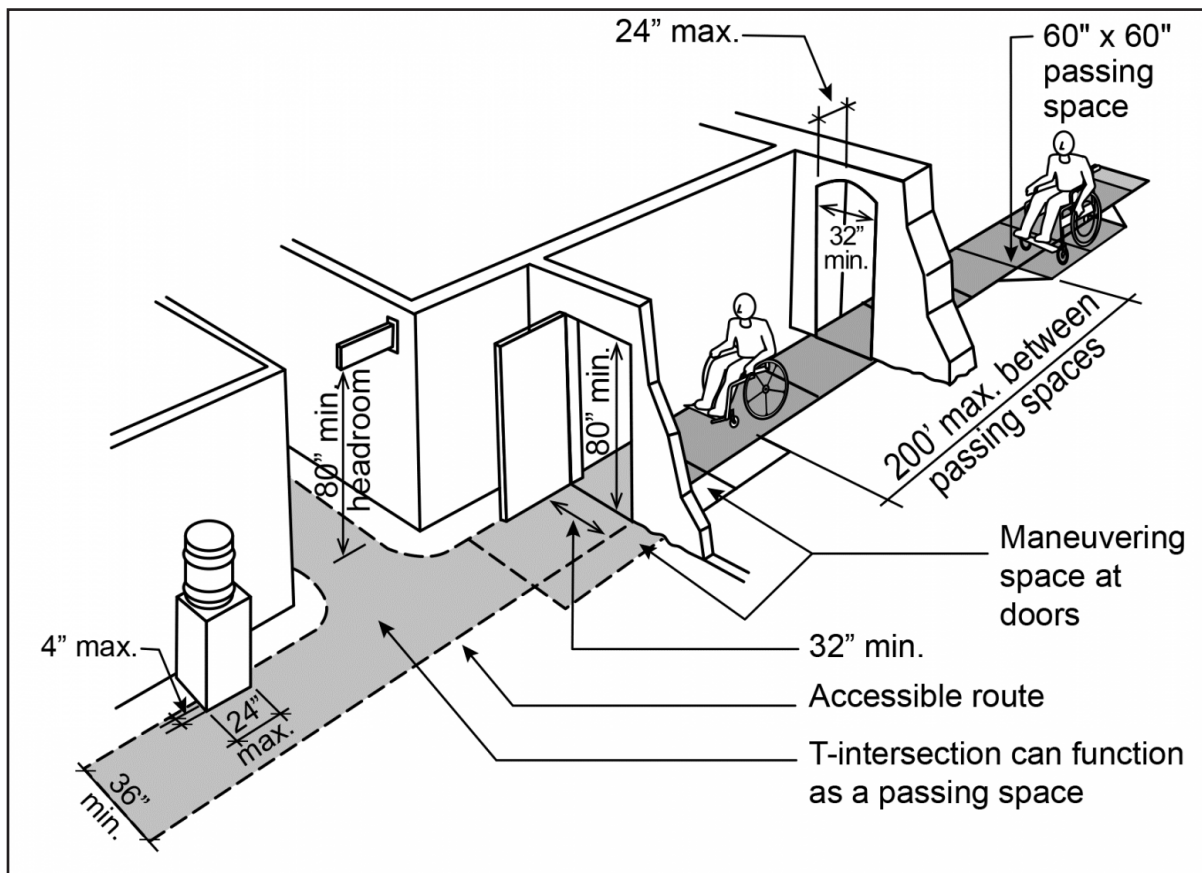
In addition, the threshold of the accessible entrance should have a height of 1/4 inch or less or 1/2 inch if the threshold is beveled. If the threshold is higher than 1/2 inch and not beveled a threshold ramp should be used for Election Day.



INTERIOR ROUTE

Many voting areas are located directly inside the accessible entrance of the polling place. If a voter would have to navigate a hallway to reach the voting area from the accessible entrance, the path of travel should be marked with large print signs. In addition, those hallways should be at least 36 inches wide. If the voting area is not on the main floor of the building, an elevator or wheelchair lift should be available and operational on Election Day.

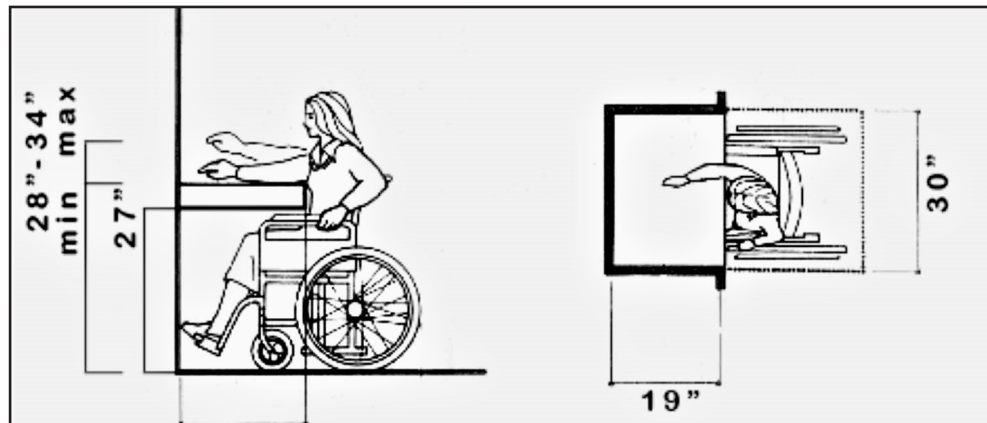
Hallways should also be free from hazards that protrude more than 4 inches into the path and are between 27 and 80 inches above the ground. Permanent obstacles, such as drinking fountains and display cases, should be marked with a cane-detectable warning object, such as a traffic cone, so a voter with blindness or low vision can safely navigate the hall.



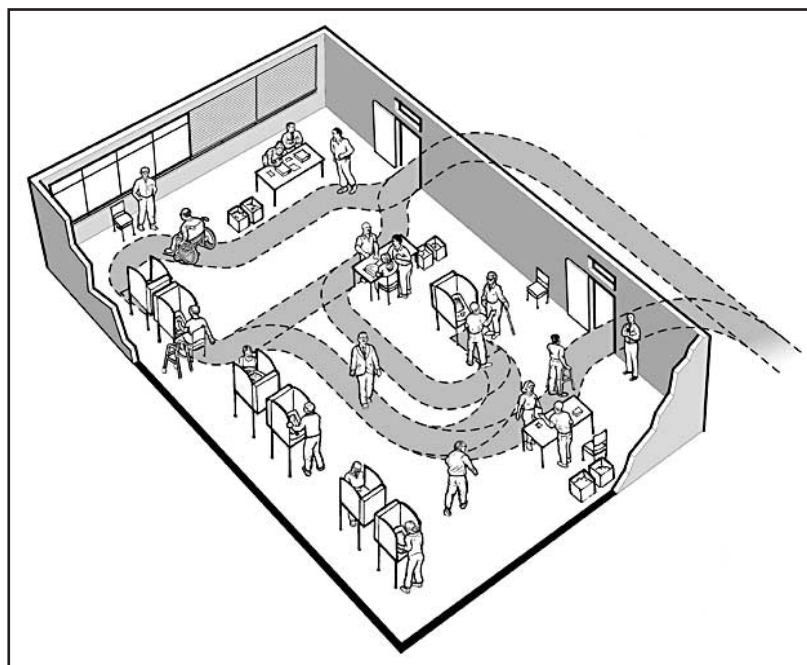
VOTING AREA

The voting area of a polling place should be set up so a person with a disability can navigate the space without assistance and vote a ballot privately and independently. This means all pathways within the voting area should be at least 36 inches wide and there should be, at minimum, a 5 foot x 5 foot clear space so an individual using a wheelchair can turn around with ease. In addition, all required forms and notices should be posted in 18 point font.

Each polling place is required to have a booth or table present where a voter with a disability can cast a paper ballot. The booth or table should meet minimum ADA requirements, meaning the entrance should be at least 30 inches wide and the knee/toe clearance from the front to the back of the booth or table is at least 19 inches. In addition, the height from the underside of the booth or table to the floor should be at least 27 inches. The booth or table should be positioned to ensure privacy and a privacy screen is commonly used for this purpose.



The Help America Vote Act of 2002 mandates each polling place have accessible voting equipment available for voters. Accessible voting equipment must be set up, powered on and functioning properly for each Election Day. The accessible voting equipment should be set up on a table or stand that meets the same ADA requirements as the booth or table where a voter can cast a paper ballot. The machine should also be positioned to ensure voter privacy. Voting areas should be set up with 30 x 48 inches of clear floor space in front of the voting machine so a voter in wheelchair can access the machine without assistance.



This guide is intended to provide an overview of how accessibility concerns interact with how a polling place is organized. Polling places throughout Wisconsin are located in a variety of municipal and private buildings and many voting areas present unique accessibility challenges. If a polling place is located in a building that is not owned by your municipality, a temporary solution on Election Day may be the best option for fixing an accessibility concern. If you are unsure of how to incorporate these standards

POLLING PLACE ACCESSIBILITY QUICK FIX GUIDE

The Quick Fix Guide highlights common accessibility issues and easy and/or low-cost ways to eliminate barriers. This is a great tool to use to supplement the polling place set-up guide and the election day accessibility checklist.

ZONE 1: PARKING

PROBLEM	QUICK FIX
No marked standard accessible parking spaces.	Make a temporary standard accessible space by blocking an adjacent parking space with traffic cones to create an access aisle and post a sign with the universal symbol of accessibility at least 60" above the ground. <i>See Figure 1.</i>
No marked van accessible parking spaces.	Make a temporary van accessible space by blocking an adjacent parking space with traffic cones to create an access aisle and post a sign with the universal symbol of accessibility and the words "van accessible" at least 60" above the ground. Van accessible spaces also need to have 8'2" of vertical clearance. <i>See Figure 1.</i>
Accessible parking space is missing an access aisle.	Block off a space adjacent to the accessible space with traffic cones to mark it as a temporary access aisle. <i>See Figure 1.</i>
Accessible spaces not clearly labeled with the symbol of accessibility.	Put up temporary accessible parking signs with the universal symbol of accessibility in front of each accessible space making sure the bottom of the sign is at least 60" above the ground. <i>See Figure 1.</i>

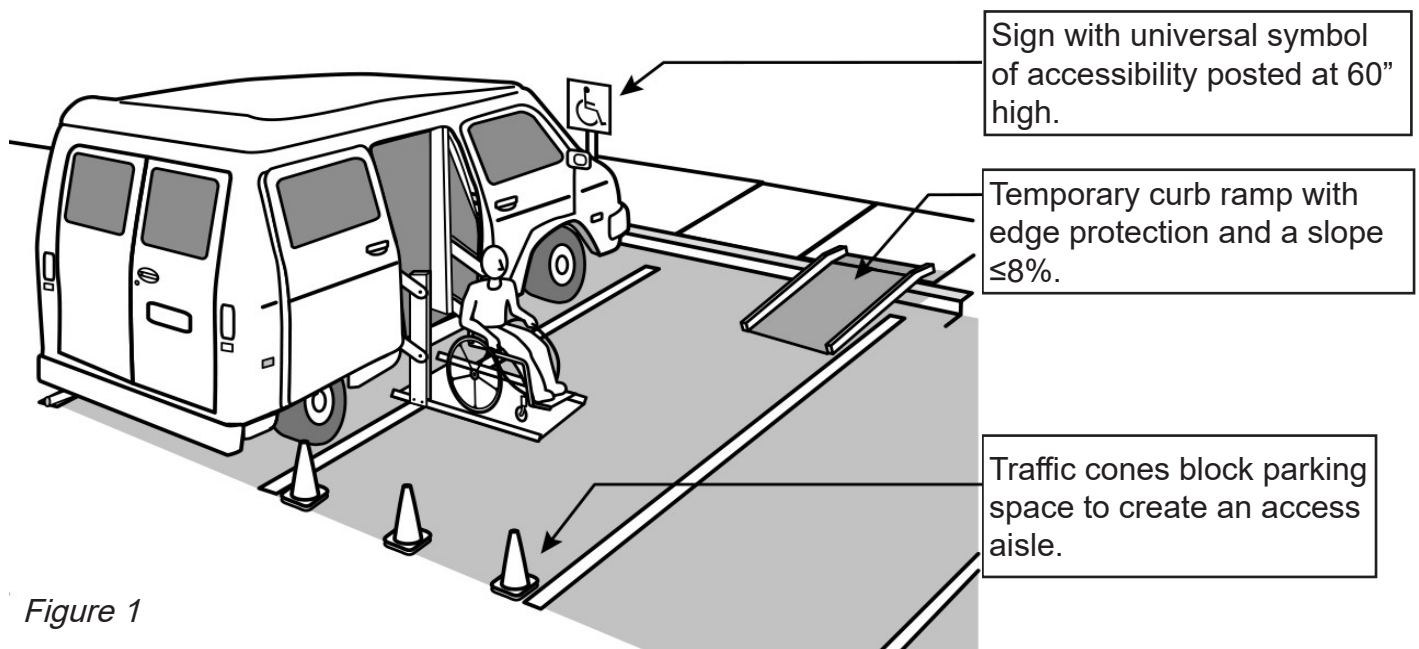
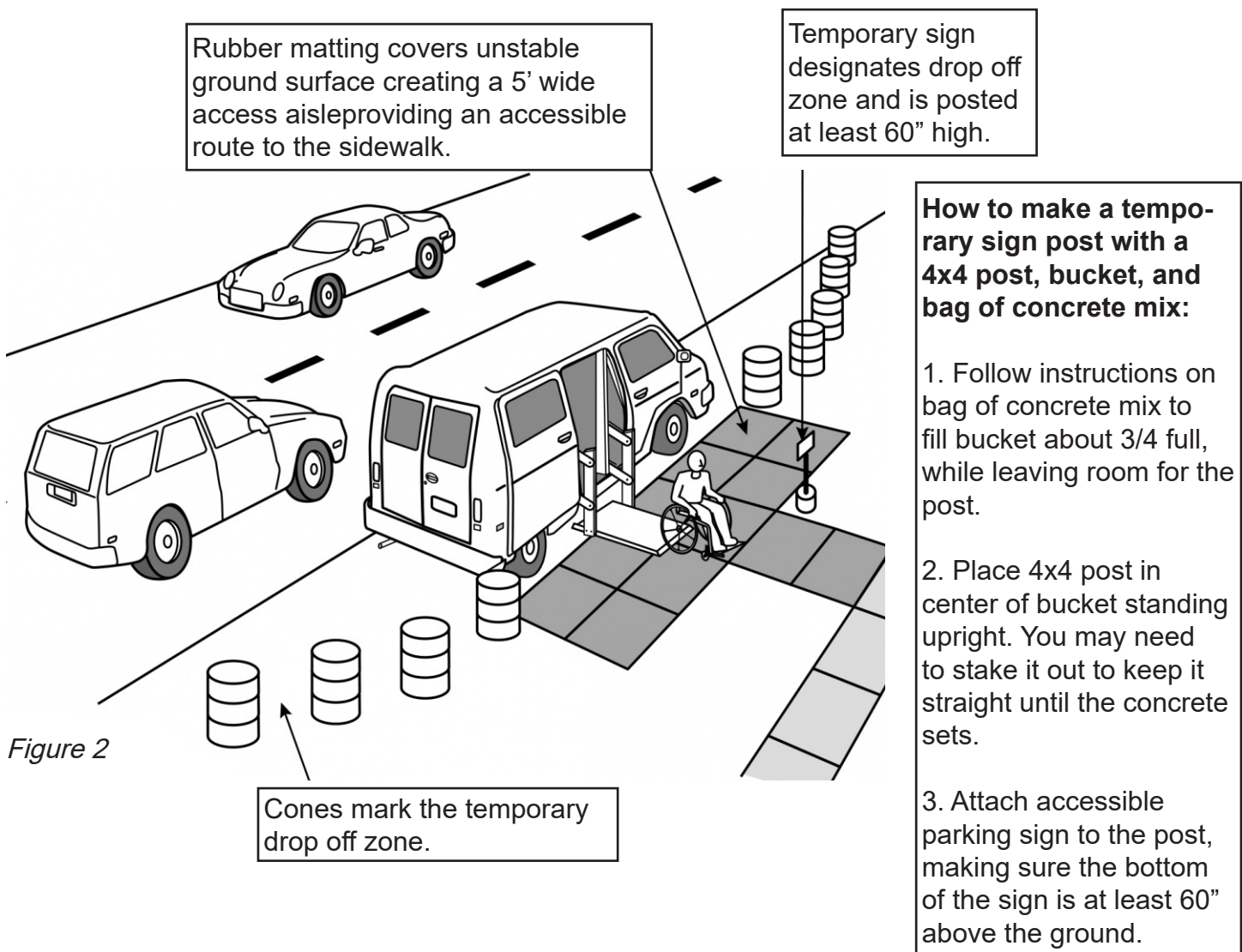


Figure 1

Van accessible parking signs, standard accessible parking signs, and traffic cones are available through the Supply Program individually and in the Temporary Accessible Parking Kits.

PROBLEM	QUICK FIX
There is a curb but no curb cut, or there is a non-compliant curb cut at the accessible parking.	Install a temporary ramp over the curb with edge protection and a slope no greater than 8%. <i>See Figure 1.</i> OR Find a different location and make temporary accessible parking.
Accessible spaces are not on firm, stable and slip-resistant ground.	Make temporary accessible spaces in a more level location. <i>See Figure 1.</i> OR Use rubber matting to cover unstable ground surface. <i>See Figure 2.</i>
Accessible spaces are not located on the shortest accessible route to the accessible entrance.	Temporarily relocate spaces so they are on the shortest accessible route to the accessible entrance. For on-street parking, safety of the individual must also be considered. <i>See Figure 1.</i>
Accessible off-street parking is unavailable, and there is no drop-off area.	Use an on-street parking space to provide a temporary passenger loading area/drop-off zone that is at least 20' long and 8' wide with a 5' wide access aisle. A drop off zone also needs at least 9'6" of vertical clearance. Mark with temporary signage and cones as appropriate. <i>See Figure 2.</i>



ZONE 2: PATHWAYS

PROBLEM	QUICK FIX
There is a curb but no curb cut, or there is a non-compliant curb cut in the accessible pathway.	Make an alternate accessible pathway to the accessible entrance. OR Install a temporary ramp over the curb with edge protection and a slope no greater than 8%. <i>See Figure 1.</i>
The pathway to the building is less than 36" wide and narrows to less than 32" for more than 24".	Make an alternate accessible pathway to the accessible entrance. <i>See Figure 3.</i> OR Install a portable ADA-approved mat to widen the pathway.
The pathway is obstructed by objects that hang lower than 80" from the ground.	Prune branches or remove items that hang lower than 80". Objects can be tied back or removed on Election Day to provide clearance.
The accessible pathway to the building is different from the primary pathway, and there are no signs directing voters.	Put up temporary signs along the entire pathway to the accessible entrance. <i>See Figure 3.</i>
On Election Day, the pathway is covered with hazards such as ice, snow, leaves or other debris.	Make a plan and document who will check pathways and when, so the pathway can be kept clear of hazards. <i>See Figure 3.</i>

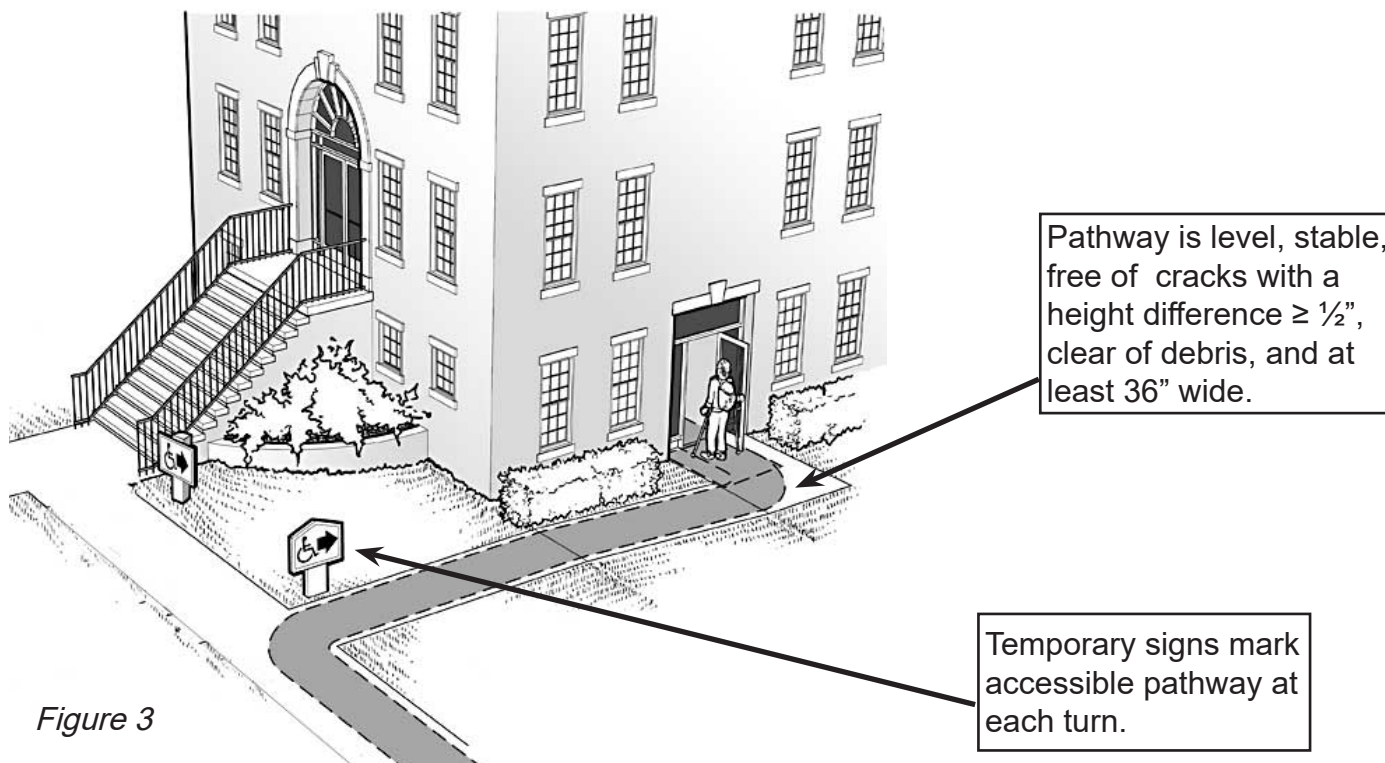
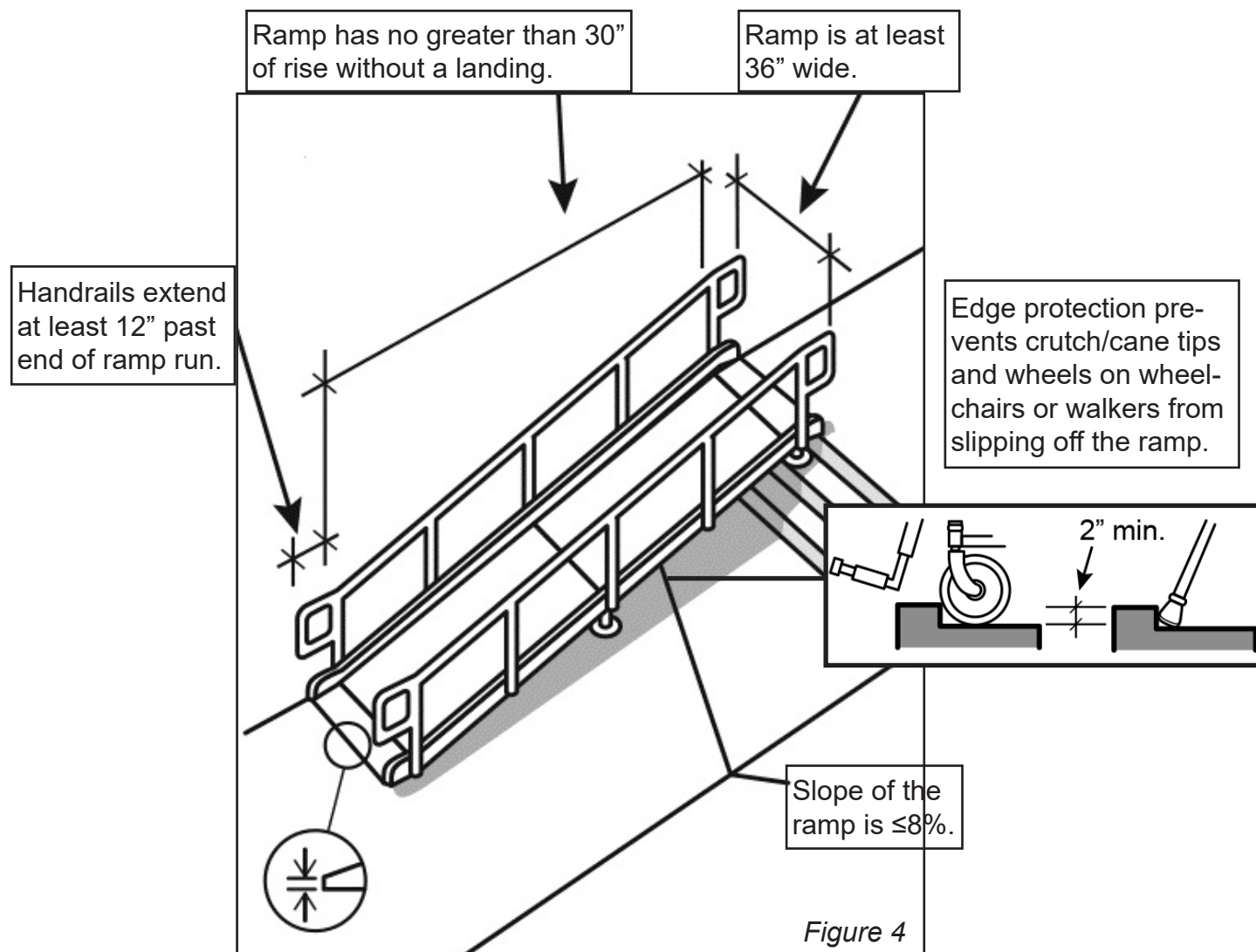


Figure 3

Accessible entrance signs are available through the Supply Program.

PROBLEM	QUICK FIX
There are un-ramped stairs along the pathway to the accessible entrance.	Make an alternate accessible pathway to the accessible entrance. OR Install a temporary ramp with edge protection, a slope no greater than 8%, and handrails if the rise is greater than 6". <i>See Figure 4.</i>
The surface of the pathway has breaks or edges with a height difference of greater than ½".	Fill in areas with concrete or tar to provide a break-free pathway. OR Replace grates on the pathway with smaller openings.
There is a ramp on the pathway, that is higher than six inches from the ground to the top of the ramp and there are no handrails.	Purchase handrails for the current ramp. <i>See Figure 4.</i> OR Install a portable ADA-approved ramp with handrails. <i>See Figure 4.</i>
The pathway from the accessible parking to the building is not on firm, stable and slip-resistant ground.	Install a firm mat over the path to make the pathway stable and slip-resistant. OR Make an alternate accessible pathway to the accessible entrance.
Walkways are not well-lit.	Install walkway lighting along the pathway to the building.



ZONE 3: ENTRANCES

PROBLEM	QUICK FIX
The accessible entrance is not marked with a sign bearing the universal symbol of accessibility.	Hang a sign bearing the universal symbol of accessibility on the accessible entrance. Even if there is only one entrance, it must be marked as an accessible entrance. <i>See Figure 5.</i>
The immediate entrance of the building has steps to enter.	Install a portable ramp with with edge protection, a slope no greater than 8%, and handrails if the rise is greater than 6". OR Determine an alternate accessible entrance.
Door threshold has a change in level greater than 1/4" and is not beveled.	If threshold is between 1/4" and 1/2" bevel the edge with a slope no greater than 50%. <i>See Figure 5.</i> OR If threshold is greater than 1/2" install threshold ramp with a slope no greater than 8% and edge protection or flared sides. <i>See Figures 7.</i>

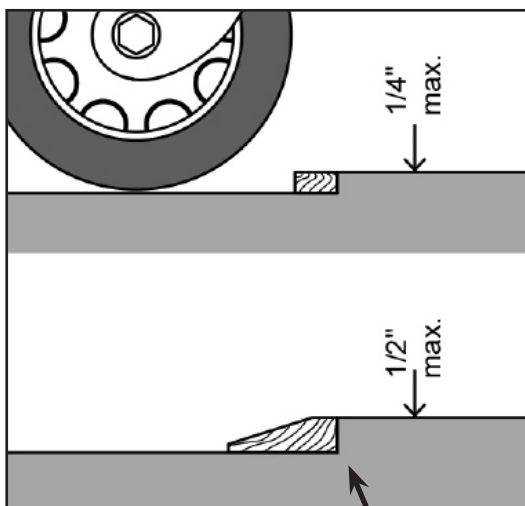


Figure 6

Changes in level between 1/4" and 1/2" must be beveled with slope ≤50%.

Changes in level > 1/2" must be ramped with a slope ≤8% and edge protection or flared sides.



Figure 5



Figure 7

Accessible entrance signs are available through the Supply Program.

PROBLEM	QUICK FIX
When the accessible entrance door is opened to a 90° angle, the opening of the door from the frame to the door itself is not at least 32" wide.	Install a swing clear hinge that allows the door to open wider and reach the 32" requirement. <i>See Figures 8, 9.</i> OR Determine an alternate accessible entrance.
Exterior doors have hardware that is not useable without tight grasping, pinching, or twisting of the wrist (cannot be opened with a closed fist).	Hang an accessible entrance sign and install an automatic door opener or pull-assist, or a doorbell to call for assistance. OR Station a greeter to assist voters at the entrance. OR During nice weather, prop the door open. OR Replace the door hardware. <i>See Figure 10.</i> OR Install door knob adapter. <i>See Figure 11.</i>

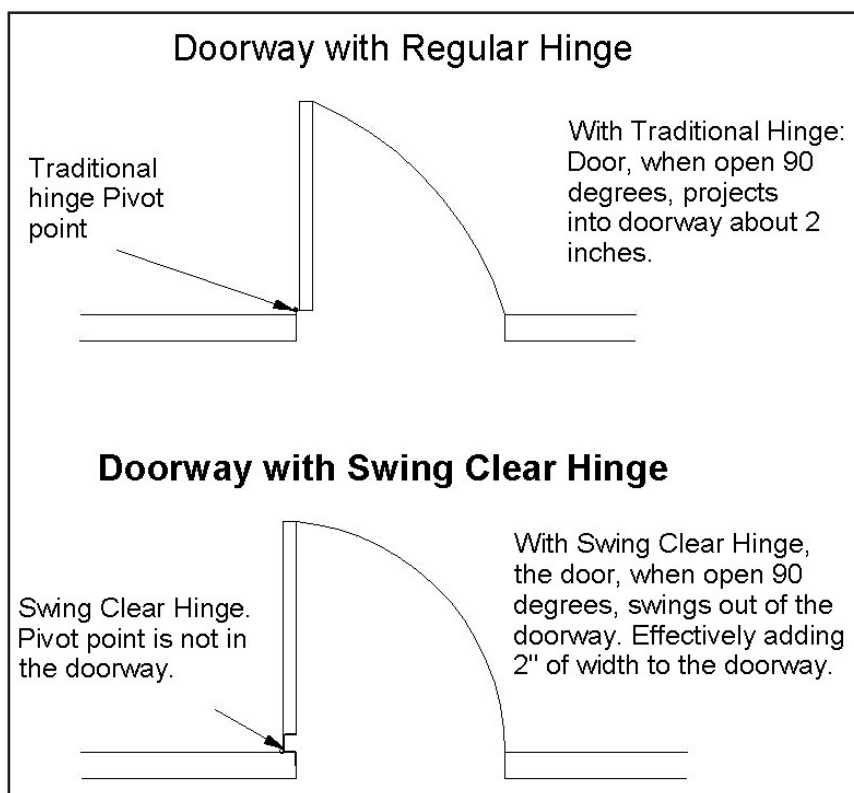


Figure 8



Figure 9



Figure 11

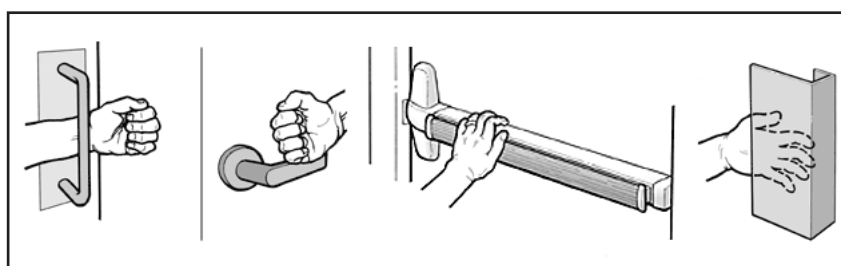


Figure 10

Door hardware can be used with a closed fist or open palm.

Test automatic door openers and doorbells before Election Day. Doors with automatic openers and pull assist must stay open for at least 5 seconds.

Wireless doorbells are available through the Supply Program.

ZONE 4: INTERIOR ROUTES

PROBLEM	QUICK FIX
The voting area is not directly inside the entrance, and the route to the voting area is not clearly marked.	Put up signs to the voting area along the accessible route.
Interior doors along the accessible route are locked on Election Day.	Unlock all doors along the accessible route.
Door threshold has a change in level greater than ¼" and is not beveled.	If threshold is between ¼" and ½" install a bevel. <i>See Figure 6.</i> OR If threshold is greater than ½" install threshold ramp with a slope no greater than 8% and edge protection or flared sides. <i>See Figure 7.</i>
Doors along the interior route to the voting area require more than 5 pounds of force to open and there are no accessible features or a provision for election inspector/greeter assistance.	Install a wireless doorbell to call for assistance. OR Adjust the tension on the door to less than 5 pounds, if practical. OR Prop the door open.
Interior doors have hardware that is not useable without tight grasping, pinching, or twisting of the wrist (cannot be opened with a closed fist).	Install a wireless doorbell to call for assistance. OR Prop the door open. <i>See Figure 10.</i> OR Replace the door hardware.
Hallways along the accessible route are not at least 36" wide, they narrow to 32" wide for a distance greater than 24", or they narrow to less than 32" wide.	Remove any obstacles that narrow the pathway to less than 36" for more than a short distance. <i>See Figure 12.</i> OR Determine an alternate accessible route to the voting area. OR Relocate the polling place.

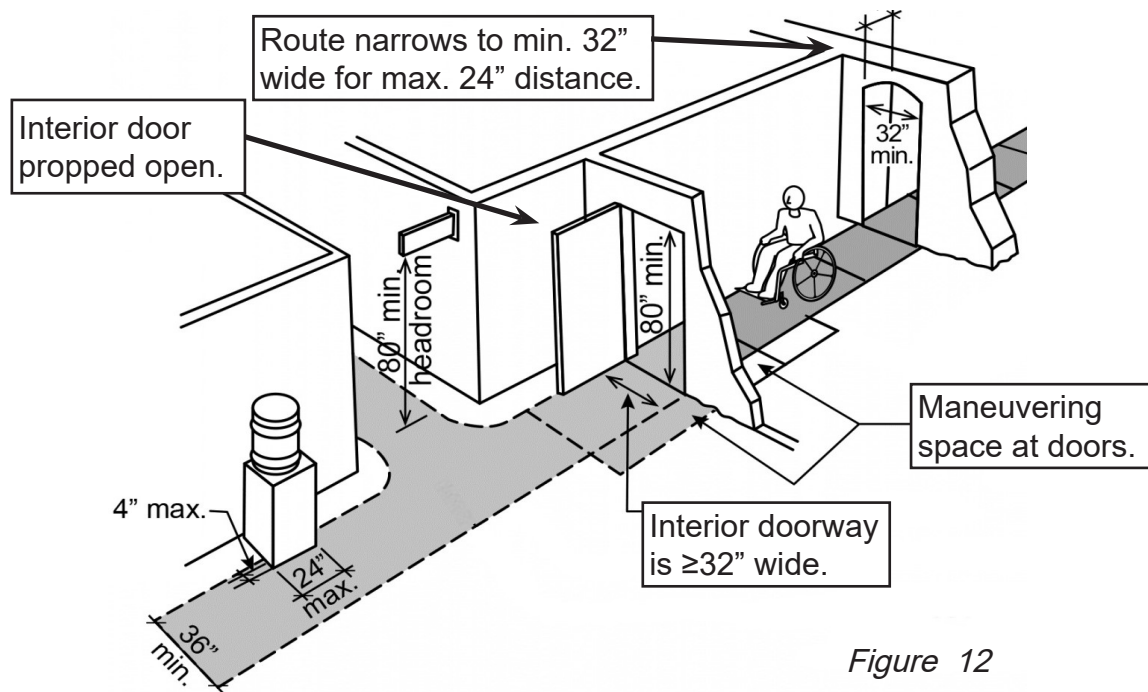


Figure 12

PROBLEM	QUICK FIX
There are obstacles or protrusions along the interior route that are between 27" and 80" from the floor that protrude more than 4" from the wall or hang down into the path of travel.	Obstacles can be removed, tied back, or covered for Election Day. OR Place a cane-detectable barrier, like a cone, slightly ahead of the protruding object so a person with a visual impairment will know to move around the object. <i>See Figure 13.</i>
The path of travel to the voting area includes steps or changes in level and there is not a ramp.	Determine an alternate accessible route to the voting area. OR Install a temporary ramp with edge protection, a slope no greater than 8%, and handrails if the rise is greater than 6". <i>See Figure 4.</i>
Rugs, mats and/or carpet on the accessible route are not securely fastened or have a pile greater than ½ inches.	Fasten all mats on Election Day with duct tape. OR Replace with lower pile mats. OR Remove rugs or mats. Place vinyl runner over carpeting with pile greater than ½ inches.

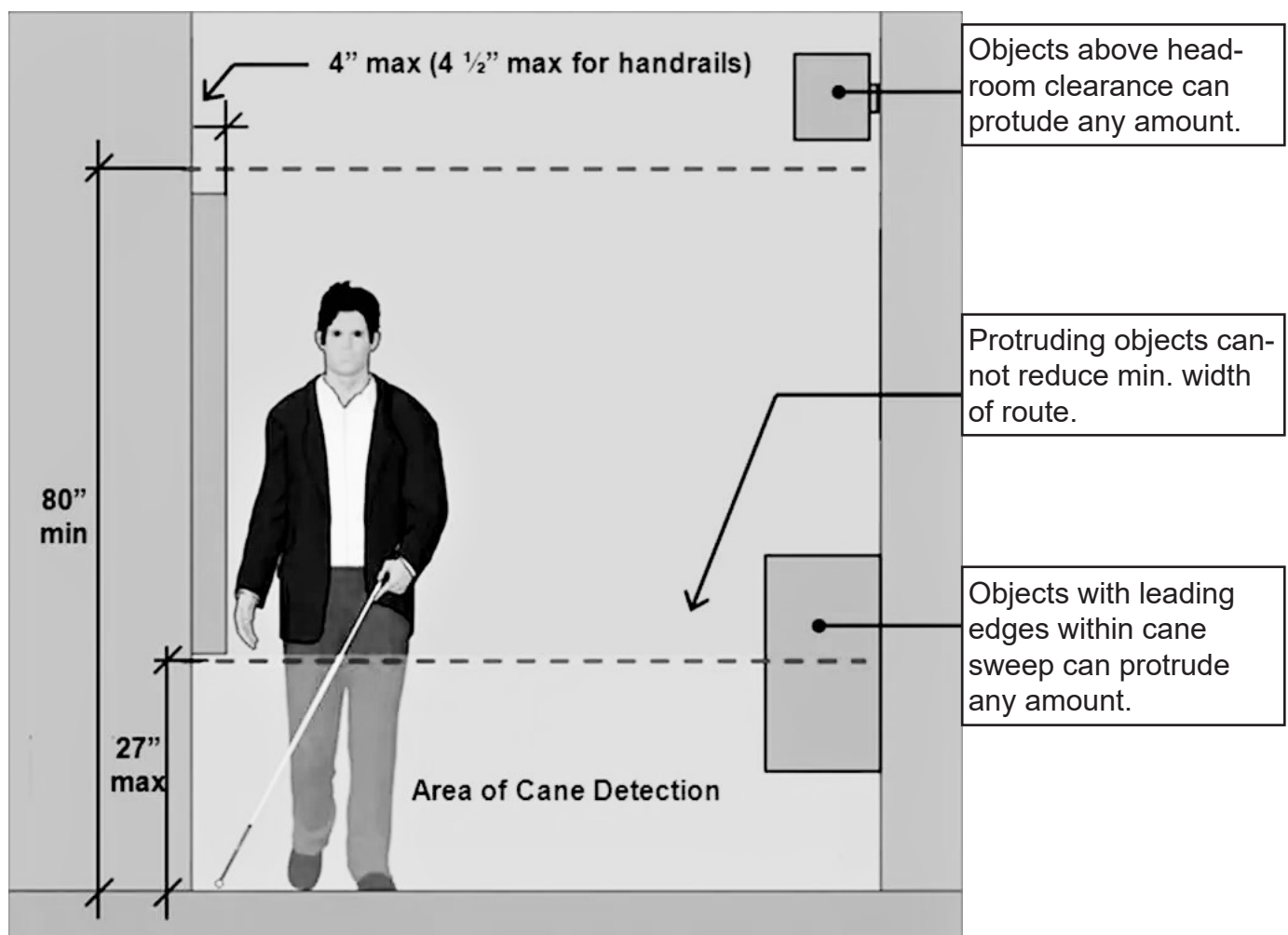


Figure 13

Cones, which can be used to mark protrusions, are available through the Supply Program.

ZONE 5: VOTING AREA

PROBLEM	QUICK FIX
The accessible voting equipment is not setup, turned on, and functioning properly.	Locate, set up, and turn on equipment. Contact municipal clerk WEC, and equipment vendor immediately if the equipment is broken or malfunctioning.
The table or stand that holds the accessible voting equipment does not meet ADA standards.	Set up a table/stand with an entrance that is at least 30" wide, toe clearance that is at least 19" deep, knee clearance that is at least 11" deep, and a table top that rests between 28"-34" above the ground. <i>See Figure 14.</i>
The table or stand the accessible voting equipment does not meet ADA standards.	Move the equipment to table or stand with an entrance that is at least 30" wide, toe clearance that is at least 19" deep, knee clearance that is at least 11" deep, a table top that rests between 28"-34" above the ground, and an unobstructed turning space that is at least 60" in diameter in front of the accessible voting equipment.
The accessible booth/table for a voter to mark a paper ballot is not setup or it.	Set up a booth or table with an entrance that is at least 30" wide, toe clearance that is at least 19" deep, knee clearance that is at least 11" deep, a table top that rests between 28"-34" above the ground, and an unobstructed turning space that is at least 60" in diameter in front of the accessible voting equipment. <i>See Figure 14.</i>
The accessible booth or accessible voting equipment is not set up to ensure voter privacy.	Rearrange the voting area to ensure someone else is not able to know how the voter is marking their ballot. <i>See Figure 14.</i>

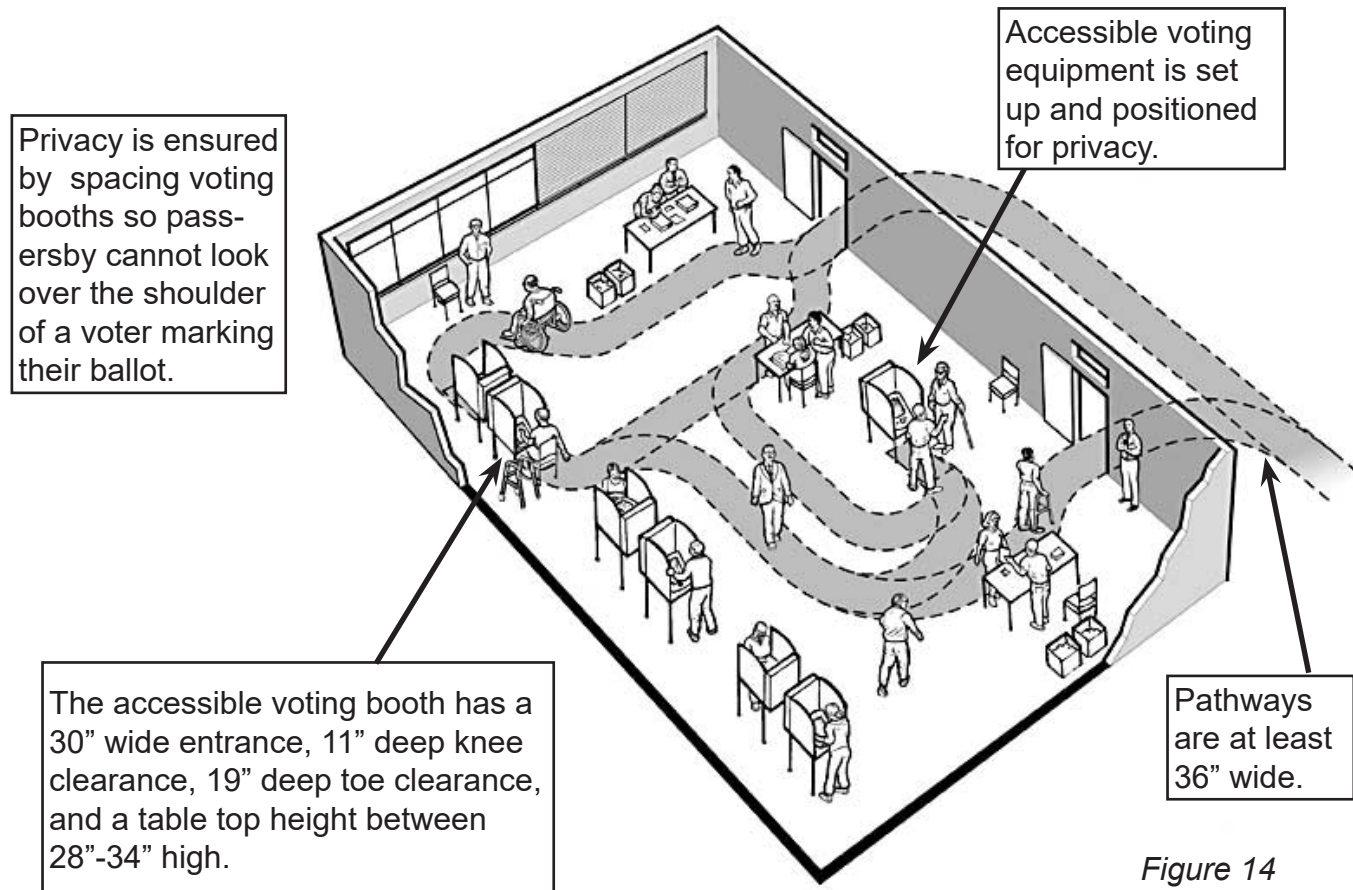


Figure 14

✓ Election Day Accessibility Checklist ✓

The purpose of this checklist is to allow you, the poll worker, to quickly assess whether your polling place has barriers for people with disabilities on Election Day. If you identify barriers, you should inform the municipal clerk and/or your supervisor so the barrier can be addressed as soon as possible. Many barriers can be easily addressed on Election Day.*

Parking

For polling locations that have parking lots:

- ☐ The accessible space(s) are clearly marked with the standard accessible parking sign.
- ☐ The accessible space(s) are located nearest to the accessible entrance.
- ☐ There is at least one van-accessible space.
- ☐ There is an accessible way to get from the parking lot to the sidewalk.
- ☐ The parking lot is paved.

For polling locations that do NOT have parking lots:

- ☐ There is an accessible passenger drop-off area, or temporary on- or off-street accessible parking that could be designated on Election Day.

Accessible parking must be kept clear of snow, piles of leaves or other obstacles to persons with disabilities in order to be accessible.

Pathways to the Building

- ☐ The path to the accessible entrance is clearly marked with large print signs if it is different from the primary route to the building.

*This checklist does not identify all barriers that a person may face at the polls. Answering positively to the checklist does not mean a polling site is in compliance with such laws as the Americans with Disabilities Act (ADA).

Pathways to the Building, continued

- ☐ The path of travel is free of breaks and edges and is clear of debris such as snow, ice and leaves, and low-hanging objects such as tree branches.
- ☐ The path of travel has the necessary curb cuts and ramps so that a person using a mobility device could access the building with ease.
- ☐ All ramps have handrails (and edge protection), if necessary.
- ☐ The path of travel is well-lit when necessary.

Entrance to the Building

- ☐ The entrance to the building is free of steps or has a ramp or elevator.
- ☐ The accessible entrance to the building is unlocked.
- ☐ The accessible entrance to the building has an automatic door opener or a call button, or there is someone stationed at the door to open it.
- ☐ There is signage or a greeter stationed at the entrance with information on requesting curbside voting.

Travel Within the Building

- ☐ The accessible route to the voting area is clearly marked with large print signs if it is different from the main route and/or if it is not immediately inside the accessible entrance.
- ☐ Interior doors along the accessible route are unlocked and either have automatic doors or are propped open.
- ☐ If there are stairs to get to the voting area, there is an accessible elevator available.
- ☐ Hallways are well-lit and free of low-hanging objects and items protruding from the wall or sitting on the floor.
- ☐ All rugs and mats along the accessible route have low pile and are securely fastened (or removed).

Voting Area

- ☐ Instructions for voting are printed in Large Print (18-point font or larger) and displayed in a convenient and obvious location.
- ☐ The path of travel in the voting area is wide enough for an individual using a mobility device to navigate and turn around with ease (minimum of 5x5 feet).
- ☐ There is a table, counter or voting booth that is extra wide at the bottom (at least 36 inches), and at good height (between 28 and 34 inches) to allow someone who uses a mobility device to use it comfortably and reach all parts of the equipment.
- ☐ Polling booths that hold the accessible equipment are:
 - Housed in the same area of the room as all the other polling booths.
 - Strategically placed to ensure the privacy of the voter using the machine **AND** contain a privacy screen.
- ☐ Electronic Accessible voting equipment is turned on, tested, and in proper working order for electors to use when the polls open on Election Day.
 - All accessible features are set up and working, including tactile devices and headphones.
- ☐ The polling site has the following:
 - Signature guide or ruler to assist someone to sign their name in a straight line.
 - Signature guide or ruler to assist someone to sign their name in a straight line.
 - Communication cards or pen/paper to communicate with someone who is deaf or hard of hearing.
 - Magnifying glass to be used by someone with a sight impairment.
 - Extra seating and a policy to allow voters who have trouble standing or walking to wait to vote and maintain their place in line.
 - Task lighting at every space in the voting area.

Interactions with Voters

- ☐ Poll workers are aware of the special needs of voters with disabilities and are willing to provide reasonable accommodations when requested.
- ☐ Poll workers are aware of the assistant process:
 - Any elector may have an assistant. The assistant can be anyone, except the elector's union representative or employer, and the assistant does not have to be a qualified elector.
 - Electors may have an assistant state their name and address for them if they are unable.
 - An elector can direct an assistant to mark their ballot and insert the ballot into the ballot box or tabulator. The assistant must sign the ballot in the designated location and must also sign and provide their address in the poll book.
- ☐ Election inspectors have reviewed the Poll Worker Common Courtesy Checklist.
- ☐ There is a feasible plan in place to identify when a voter wants to vote curbside, such as having signage, a phone number, or a greeter stationed outside, and poll workers are aware of the curbside voting policy.

Your municipal or county clerk will have more detailed information about accessibility rules and laws. Additional information that may be helpful includes:

Wisconsin Elections Commission
<https://elections.wi.gov/voters/disability>

Disability Vote Coalition
<https://disabilityvote.org/>

U.S. Department of Justice ADA Checklist for Polling Places:
<https://www.ada.gov/votingck.htm>

This checklist was created by Disability Rights Wisconsin (DRW) and reproduced by the Wisconsin Elections Commission and Accessibility Advisory Committee with permission of DRW. If you have questions about this checklist or about accessibility, contact the Wisconsin Elections Commission at (608)261-2028 or DRW's Voter Hotline at 844-DIS-VOTE / 844-347-8683.

COMMON SENSE AND COMMON COURTESY





Many election inspectors have had little interaction with people with disabilities; here are a few courtesies and guidelines:












- Remember that all voters deserve courteous attention in exercising their right as citizens to vote.
- Remember not all disabilities are visible. Each individual knows their own abilities best. If an individual requests assistance, trust that it is necessary.
- Be considerate of the extra time it might take for a person with a disability or an elderly person to get things done.
- Animals that assist people with disabilities must be admitted into all buildings. Such animals are highly trained and need no special care other than that provided by the owner.
- Greet a person who is visually impaired by letting the person know who and where you are.
- When offering walking assistance, allow the person to take your arm and tell them if you are approaching steps or inclines or are turning right or left.
- If someone uses a mobility aid like a wheelchair, ask if they would like assistance. If they would like assistance, ask how you can assist them. Do not push their chair without their consent.
- Speak directly to the person who has a disability rather than just to a companion who may be accompanying them.
- Speak calmly, slowly, and directly to a person who is hard of hearing. Your facial expressions, gestures, and body movements help in understanding. Don't shout or speak in the person's ear. If full understanding is doubtful, try writing a note to the person.
- Pre-printed signs or a notepad should be available to assist communication with deaf or hard-of-hearing electors.
- Give unhurried attention to a person who has difficulty speaking.
- Provide a guiding device such as a ruler or a signature guide for signing forms.
- You can assist a voter with filling out the registration form, but you cannot sign the form on their behalf.
- State and federal law permits voters with disabilities to be accompanied and to receive assistance by another person in the voting booth.

Polling Place Accessibility Supplies Wisconsin Elections Commission All supplies are free of charge to municipalities.			
County:			
Municipality:	City/Town/Village of (Circle one)		
Clerk/Recipient Name:			
Phone Number:		Email Address:	
Shipping address (Please no P.O. Boxes)			
Address is a:	<input type="checkbox"/> Business/Municipal Building Building Name: _____ <input type="checkbox"/> Private Residence		

Please send the completed form to the WEC Help Desk at elections@wi.gov or with your completed New Polling Place Accessibility Self-Assessment (EL-501).

Indicate the Quantity Needed in the Table Below

Example	Item Name	# Needed
Signs		
	Accessible Parking Sign (12" x 18")	
	Van Accessible Sign (12" x 18")	
	Curbside Voting Sign (No phone number) (12" x 18")	
	Curbside Voting Please Call: (Fill in blank with phone number using hardware numbers, Sharpie, etc.) (12" x 18")	

	Accessible Entrance Sticker (6"x6")	
	Accessible Entrance Right Arrow Sign (12" x 18")	
	Accessible Entrance Left Arrow Sign (12" x 18")	
	Accessible Entrance at Rear (12" x 18")	
	Ring Bell for Assistance Sign (12" x 18")	
Other Supplies		
	Signature Guide (5" x 8" total, Typoscope cutout 5/8" x 6", Signature cutout 1/2" x 2 1/2")	
	Signature Guide, Credit Card sized (2.12"x3.37" total)	
	Page Magnifier (7" x 10")	
	Wireless Doorbell (Up to 500' Range, 433 MHz)	
	Cone (12")	
	Door Pressure Gauge* (8")	

Kits

Temporary Standard Accessible Parking Space Kit	Includes: 1 Accessible Parking Sign, 4 Cones Follow instructions in the Quick Fix Guide to set up a temporary standard accessible parking space.	
Temporary Van-Accessible Parking Space Kit	Includes: 1 Van Accessible Parking Sign, 4 Cones Follow instructions in the Quick Fix Guide to set up a temporary van accessible parking space.	
Accessible Entrance Kit	Includes: 1 Accessible Entrance Sticker, 1 Ring Doorbell for Assistance Sign, 1 Wireless Doorbell Follow instructions in the Quick Fix Guide to set up an accessible entrance.	

Notice of General Election and Sample Ballots

November (date), (year)

Office of the (insert name of county) County Clerk

To the voters of (insert name of county) County

Notice is hereby given of a general election to be held in the several wards in (insert name of county or municipality), ON (insert full date of election), at which the officers named below shall be chosen. The names of the candidates for each office to be voted for, whose nominations have been certified to or filed in this office, are listed under the title of the office and under the appropriate party or other designation, together with any referendum questions submitted to a vote, in the sample ballot below.

INFORMATION TO VOTERS

Upon entering the polling place and before being permitted to vote, a voter shall:

- state their name and address
- show an acceptable form of photo identification*
- sign the poll book**

***If a voter does not have acceptable photo identification, the voter may obtain a free photo ID for voting from the Division of Motor Vehicles.**

****If the voter is unable to sign the poll book due to disability, a poll worker may write the word "exempt."**

If a voter is not registered to vote, they may register to vote at the polling place serving their residence if the voter provides proof of residence.

Where ballots are distributed to voters, the initials of two inspectors must appear on the ballot.

Upon being permitted to vote, the voter shall enter a voting booth or go to a machine and cast their ballot. The vote should not be cast in any manner other than specified here. Sample ballots or other materials to assist the voter in marking their ballot may be taken into the booth and copied. The sample ballot shall not be shown to anyone so as to reveal how the ballot is marked.

A voter who is a parent or guardian may be accompanied by the voter's minor child or minor ward.

An election official may inform the voter of the proper manner for casting a vote but the official may not advise or indicate a particular voting choice.

Assistance for Voting

A voter may select an individual to assist in casting their vote if the voter declares to the presiding official that they are unable to read, have difficulty reading, writing, or understanding English, or that due to disability are unable to cast their ballot. The selected individual rendering assistance may not be the voter's employer or an agent of that employer or an officer or agent of a labor organization which represents the voter. If a voter is unable to state their name and

address, an assistant may also do so for the voter.

Voting for President and Vice President

A vote for candidates for President and Vice President is a vote for the presidential electors of those candidates. A write-in vote for President and Vice President must designate the name of a presidential candidate. A write-in vote for a candidate for President only will be counted. A write-in vote for a candidate for Vice President only will not be counted.

Where Paper Ballots are Used

The voter shall make an “X” or other mark in the square next to the name of the candidate of their choice for each office for which they intend to vote. To vote for a person whose name does not appear on the ballot, the voter shall write in the name of the person of their choice in the space provided for a write-in vote. When voting for President and Vice President, the voter shall make an “X” or other mark next to the set of candidates (ticket) for president and vice president for whom they intend to vote. To vote for a Presidential ticket that does not appear on the ballot, the voter shall write in the names of persons of their choice in the spaces provided. On referendum questions, the voter shall make an “X” in the square next to “yes” if in favor of the question, or the voter shall make an “X” in the square next to “no” if opposed to the question.

Where Optical Scan Voting is Used

The voter shall fill in the oval or connect the arrow next to the name of the candidate of their choice for each office for which they intend to vote. To vote for a person whose name does not appear on the ballot, the voter shall write in the name of the person of their choice in the space provided for a write-in vote and fill in the oval or connect the arrow next to the write-in line. When voting for President and Vice President, the voter shall fill in the oval or connect the arrow next to the set of candidates (ticket) for president and vice president for whom they intend to vote. To vote for a Presidential ticket that does not appear on the ballot, the voter shall write in the names of persons of their choice in the spaces provided and fill in the oval or connect the arrow next the write-in lines. On referendum questions, the voter shall fill in the oval or connect the arrow next to “yes” if in favor of the question, or the voter shall fill in the oval or connect the arrow next to “no” if opposed to the question.

When using an *electronic ballot marking device* (“Automark,” “Express Vote,” “Clear Access” or “ImageCast Evolution-ICE”) to mark an **optical scan** ballot, the voter shall touch the screen or use the tactile pad to select the name of the candidate of their choice for each office for which they intend to vote. To vote for a person whose name does not appear on the ballot, the voter shall touch the screen next to “write-in” and type in the name of the person of their choice. When voting for President and Vice President, the voter shall touch the screen at the set of candidates (ticket) for president and vice president for whom they intend to vote. To vote for a Presidential ticket that does not appear on the ballot, the voter shall touch the screen next to “write-in” and type in the names of persons of their choice. On referendum questions, the voter shall touch the screen at “yes” if in favor of the question, or the voter shall touch the screen at “no” if opposed to the question.

Where Touch Screen Voting is Used

The voter shall touch the screen or use the tactile pad to select the name of the candidate of their choice for each office for which they intend to vote. To vote for a person whose name does not appear on the ballot, the voter shall type in the name of the person of their choice in the space provided for a write-in vote. When voting for President and Vice President, the voter shall touch the screen at the set of candidates (ticket) for president and vice president for whom they intend

to vote. To vote for a Presidential ticket that does not appear on the ballot, the voter shall touch the screen next to "write-in" and type in the names of persons of their choice. On referendum questions, the voter shall touch the screen at "yes" if in favor of the question or the voter shall touch the screen next to "no" if opposed to the question.

Spoiling Ballots

If a voter spoils a **paper or optical scan** ballot, they shall return it to an election official who shall issue another ballot in its place, but not more than three ballots shall be issued to any one voter. If the ballot has not been initialed by two inspectors or is defective in any other way, the voter shall return it to the election official who shall issue a proper ballot in its place.

The voter may spoil a **touch screen** ballot at the voting station before the ballot is cast.

After Voting the Ballot

After an official **paper** ballot is marked, it shall be folded so that the inside marks do not show, but so the printed endorsements and inspectors' initials on the outside do show. The voter shall then deposit their folded ballot in the proper ballot box or deliver the ballot to an inspector for deposit and leave the polling place promptly.

After an official **optical scan** ballot is marked, it may be inserted in a security sleeve so the marks do not show. The voter shall then insert the ballot in the voting device or deliver the ballot to an inspector for deposit. If a central count system is used, the voter shall insert the ballot in the ballot box or deliver the ballot to an inspector for deposit. The voter shall leave the polling place promptly.

After an official **touch screen** ballot is cast, the voter shall leave the polling place promptly.

The following is a sample of the official ballot:

(Insert official General Election Ballot)

(Insert name and title of Clerk making this notice)

(Notes: Use with paper ballots, optical scan and touch screen voting systems. Includes Vote-PAD, Automark, Clear Access, Express Vote or ImageCast Evolution-ICE instructions. Delete any language or paragraphs that do not apply to your election or type of voting system.

Clerks publish the Type B Notice the Monday before an election. When voting is equipment used, the notice shall include all offices and questions to be voted on at the election. The cost of this notice shall be shared §10.06(3)(e).)

NOTICE OF REFERENDUM

(insert proper jurisdiction)

(insert date of referendum election)

Referendum Election Details

At an election to be held in the (For a statewide referendum insert: "several towns, villages, wards, and election districts of the State of Wisconsin". For a county, town, village, city, or school district referendum insert the title and name of the jurisdiction) on (insert date of election), the following proposed (insert amendment to the Constitution of the State of Wisconsin, or Resolution of the County Board, Town Board, Village Board, City Council, or School District Board of Education), will be submitted to a vote of the people:

(insert entire text of resolution directing the referendum)

Ballot Text

The question will appear on the ballot as follows:

(insert question as it will appear on the official referendum ballot)

Explanation

(insert statement here explaining the effect of both a "yes" and a "no" vote)

Done in the (insert municipality where signed), on (insert date of signing here).

(Signature of clerk giving notice)
(Title of clerk)

(Note: The Type C Notice of Referendum is published by the clerk responsible for the referendum on the day preceding the referendum election. If a weekly paper is used for publication, the notice is published in the closest preceding issue to the day before the referendum election. If a jurisdiction chooses to post this notice in lieu of publication, the notice must be posted no later than one week before the election.)



Wisconsin Elections Commission

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DATE: September 7, 2023

TO: Members, Wisconsin Elections Commission

FROM: Meagan Wolfe
Administrator

Prepared and Presented by:
WEC Staff

SUBJECT: Badger Book Update

1. Purpose

This is an informational report continuing the analysis presented at the June 1, 2023, meeting of the Wisconsin Elections Commission. The June update detailed Badger Book program development for the remainder of 2023, and introduced some of issues that may require further examination in the future. This report provides additional analysis by Commission staff, introduces potential decision points for the Commission to consider in the future, and asks the Commission to authorize limited program changes for testing purposes.

2. Background

This background section is a reprint from the June 1, 2023, meeting materials and is provided again here for the Commission's convenience. Commission staff developed the Badger Book electronic poll book software in 2017 with input from agency leadership, clerks, and chief inspectors. During the 2018 Spring Election, the agency introduced the electronic poll book pilot program starting with just eight jurisdictions. Since its inception, Commission staff has sought and received valuable feedback from clerks, election inspectors and voters. These suggestions have led to continuous improvements to software, hardware, training, security, and best practices. Commission staff will continue to use this model to collect feedback that will be used to support and improve the program.

The Badger Book is primarily used to check in voters, process Election Day Registrations (EDRs), and record absentee ballots. The Badger Book maintains the voter number and count independent of poll worker input. After Election Day, a data file generated from the Badger Book is used to upload election participation and Election Day registration information into WisVote, the statewide election management and voter registration system. The Badger Book is the only electronic poll book

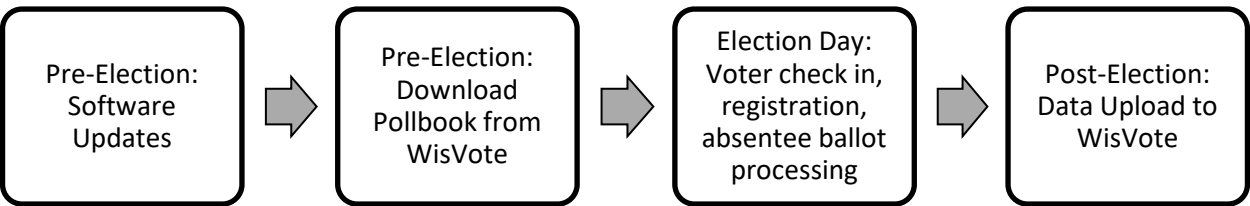
Wisconsin Elections Commissioners

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Administrator
Meagan Wolfe

software with direct WisVote integration, and it does not require an internet connection. Information exchanges between WisVote and Badger Book, depicted below, are all performed locally.

Table 1 (Badger Book Data Flow)



While Badger Books moderately speed up the voter check-in process, two features stand out as most desirable to clerks. First, the Badger Books accelerate and simplify the election day registration (EDR) process. Badger Books prompt users through each step of the EDR process, ensuring that all requirements are met, and no information is omitted. The Badger Books record all registration information for later upload to WisVote, eliminating difficulties with hand-written forms that must be manually re-typed into the system. Second, Badger Books greatly accelerate post-election data collection and reconciliation, condensing processes that take hours into minutes. While this post-election benefit doesn’t directly affect voters, it saves municipalities considerable time and money.

These advantages are nearly transparent to the individual voter but stand out to municipal clerks and their staff. In a recent survey, nearly 96% of Badger Book users reported a positive experience. Almost two-thirds of users selected “You couldn’t pay me to go back,” as best characterizing their feelings about the program. There were zero responses for “I have concerns.”

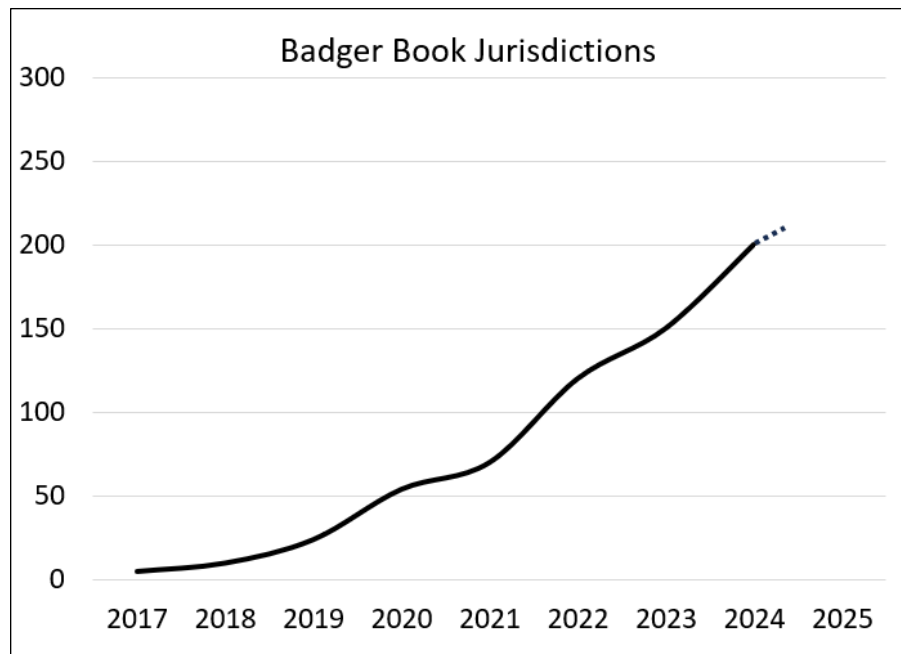
Clerk enthusiasm for the program directly leads to increased demand for Badger Books. The rapidly increasing demand strains both the hardware supply chain and the agency’s ability to provide quality training and technical support for users. Furthermore, the growing number of users introduces technical challenges to ensure users maintain up-to-date hardware and software.

3. Recent Analysis

Following the June 1st meeting, Commission staff further examined the challenges to future program growth. This work included analysis of software, hardware, and training programs other states, and study of vendor systems, to assess how these other programs scale. Based on research to date, staff believe that there are at least three areas that may require Commission decisions in the future: (1) connectivity; (2) training; and (3) hardware. This report therefore discusses these three areas in further detail.

Badger Book communities represent over one million voters in the State of Wisconsin, and the number continues to rapidly grow. It is this rapid growth that creates challenges for the program, as a small subset of agency staff support an increasing number of jurisdictions. Program growth, to include projected growth over the next four months, is depicted in Table 2 on the following page.

Table 2 (Number of Badger Book Jurisdictions)



A. Connectivity.

Commission staff recommend conducting further research to assess how limited and regulated connectivity could improve the security of Badger Books. The rapidly growing number of users compounds difficulties ensuring that all devices have the latest software. This challenge goes beyond simply the Badger Book software itself. Every other state, and all vendor systems, mitigate this risk by allowing at least some limited connectivity over a virtual private network or other secure internet connection. Future iterations of the program could also more closely integrate with WisVote to simplify the user experience and improve integration.

Badger Books, and indeed all modern computers, run a huge amount of software. This includes operating systems, the Badger Book application itself, drivers to interface with peripherals like a printer, and security applications like endpoint protection. All the software must work together to provide the user a functional and secure experience.

Device manufacturers and application developers, to include WEC information technology staff, regularly develop software updates to introduce new features, fix bugs, and make performance improvements. Even more importantly, software updates often contain security patches and new security features. Security patches fix known flaws in products that attackers can use to compromise a device, while new security features make it harder for an attacker to compromise a device.

Almost without exception, device manufacturers and developers now provide software updates online. This is the practice for all commercial E-Poll Books, and a connection to external networks is employed in every other state using E-Poll Books (more than 30 states). Wisconsin is the only state that does not connect its E-Poll Books to any external network, ever.

The absence of an external network connection is a noteworthy security feature and a policy that certainly gives many Wisconsin voters peace of mind. However, as the Badger Book program grows, the policy also presents a growing challenge. Because Badger Books are never “online,” that is, connected to an external network, they cannot receive software updates through traditional means. Thus, all Badger Book software updates currently provided on physical media, sent through the mail and/or delivered by hand to each device.

The hand delivery of physical media presented no problems when only five jurisdictions used the devices. Program growth, however, has introduced many challenges with this practice. These include:

- 1) **Inconsistent Application.** Jurisdictions do not promptly apply the software updates, or do not apply the updates at all. This creates an environment where different communities are running different versions of the software. In addition to security risks, this situation also causes technical issues that could prevent use of the devices or cause serious device errors. These problems are compounded if errors are not detected until election day. Commission staff have no way to independently determine if software updates have been applied.
- 2) **Slow Distribution.** The physical delivery of software updates is a slow process, meaning that even attentive jurisdictions may have to wait to receive and apply their updates. This again creates a situation where different communities are running different versions of the software.
- 3) **Quality and Version Control.** Because devices rely on many types of software, there are a great many potential updates available at any one time. The sheer volume of changes, compounded with delays applying changes, further complicates the operating environment.
- 4) **Software Security.** The use of physical media to apply updates introduces the risk that media may be lost or misplaced, and that media containing sensitive data is compromised.

The National Institute of Standards and Technology (NIST) patch management guidelines¹ are intended to help organizations define strategies for software deployment that minimize cybersecurity risks. NIST defines patch management as “the systematic notification, identification, deployment, installation, and verification of operating system and application software code revisions.” Best practices identified by NIST include developing patch management practices that are proactive, simple, and automated. These traits are intended to ensure that software updates occur promptly, uniformly, and with minimum difficulty.

Commission staff therefore recommend exploring connectivity to address the challenges described above. Staff seek the Commission’s authorization to develop and assess several connectivity options for presentation to the Commission at the end of this year or early in 2024. These options will explore

¹ <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-40r4.pdf>

different ways to regulate or otherwise limit connectivity, and also evaluate the benefits and risks associated with each option.

B. Training.

Training presents one of the larger challenges for future program growth, due to the limited number of staff (none of whom are dedicated full time to Badger Books) and the growing number of municipalities. Since 2021, the introduction of a train-the-trainer program has helped to support increasing needs. But this program is not a cure-all, as local trainers have their own responsibilities and their ability to travel may be limited. Further complicating the challenge, some jurisdictions do not observe WEC guidance or complete necessary preparations with their poll workers.

The current environment is thus one where jurisdictions must maximize limited opportunities for in-person training and work with their poll workers to develop proficiency with Badger Books *before* election day. The overwhelming majority of Badger Book jurisdictions do this well. Unfortunately, a handful of jurisdictions do not.

In the most egregious cases, there were instances where poll workers attending Badger Book training *refused to touch the equipment*. This naturally renders the training almost meaningless, and invariably results in many calls for help on election day. Unsurprisingly, the very small number of jurisdictions who fail to adhere to program recommendations invariably require the most staff assistance on election day. This substantially hinders the agency's ability to support other users.

To address this small but growing challenge, Commission staff recommend implementing minimum training criteria that must be met before first use of Badger Books in an election. These standards will include multiple opportunities for remedial training if required. Naturally, standards are intended to ensure successful first use and not to create a barrier to use.

With Commission approval, staff will develop simple and objective standards to demonstrate proficiency with Badger Books before first use.

C. Hardware.

The current program requires single source hardware selected to ensure consistency during the pilot program. Future program development could expand the hardware options to include less expensive or more powerful options to improve user choices. In some other states, for example, the pollbook software is made available to jurisdictions that select their own hardware based on defined specifications.

Although existing Badger Book users report very favorable experiences, some non-users have expressed interest in alternatives, including commercial alternatives. Clerks interested in alternatives have asked staff to evaluate available alternatives in order to accurately assess if it may be possible to lower the cost of entry or benefit from other support models. If alternative choices were available to clerks, they argue, then jurisdictions could choose the solution they believe is best for them.

Hardware alternatives could come in two forms: either (1) allowing municipalities to use Badger Book software on other [authorized] hardware; or (2) allowing municipalities to evaluate and purchase vendor systems.

At least one municipal IT Department has approached Commission staff seeking permission to install Badger Book software on a different hardware configuration. The jurisdiction's IT director assessed that there are alternative hardware options that could offer improved performance at lower cost to the municipality. This particular jurisdiction is very experienced with Badger Books and has the support of a full-time professional IT department. As a result, Commission staff believe the jurisdiction could – if authorized – successfully implement their proposed plan with little difficulty.

Jurisdictions without robust IT support might experience greater difficulty deploying alternative hardware configurations. Without adequate support and direction, this could result in security vulnerabilities, performance issues, or even complete failure of the Badger Book software. Thus, any program authorizing the use of alternative hardware would require clear standards and close supervision.

A handful of jurisdictions (non-Badger Book users) have asked Commission Staff about the possibility of authorizing commercial E-Poll Books that would provide an alternative to Badger Books. There is precedent for multi-system model elsewhere, with many other states permitting vendors who meet eligibility criteria to freely compete for local business. One advantage to vendor-based systems is the option to lease hardware, which permits a jurisdiction to change equipment if they find their initial choice unsuitable. A disadvantage to this model is that each vendor must create custom software tailored to state laws and systems. This customization process may take up to two years to complete.

Table 3 (Commercial E-Poll Books)



To support future growth of E-Poll Books in Wisconsin, staff therefore propose deliberate study of alternative hardware configurations, to include commercial E-Poll Book systems. If authorized, staff will assess the technical compatibility, security, costs, training, and technical support models offered elsewhere. This research could identify pathways for vendor-based systems in Wisconsin or may simply further inform the future evolution of Badger Books.

4. Suggested Motions

A. Connectivity. The Commission directs staff to develop and assess several options to permit limited, secure, and regulated connection of Badger Books to external networks for the purpose of receiving software updates or other data necessary to improve their functionality and security. Staff shall report their findings to the Commission no later than March 31, 2024.

B. Training. The Commission directs staff to develop recommended minimum training standards that must be attained for new Badger Book jurisdictions before first use in an election. Staff shall provide their recommended standards to the Commission no later than December 31, 2023.

C. Hardware. The Commission directs staff to evaluate alternative hardware models, to include commercial E-Poll Book systems, for possible future use in Wisconsin. This analysis should include assessments of technical compatibility, security, costs, training, and technical support. Staff shall report their findings to the Commission no later than June 30, 2024.



Wisconsin Elections Commission

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DATE: For the September 7, 2023 Commission Meeting

TO: Commissioners, Wisconsin Elections Commission

FROM: Meagan Wolfe, Administrator
Wisconsin Elections Commission

Prepared by Elections Commission Staff

SUBJECT: Voter Felon Audit

The Voter Felon Audit is a required post-election comparison of voters who cast a ballot at an election with the list of persons who were under Department of Corrections (DOC) supervision for a felony conviction at the time the vote was cast. Wis. Stat. §6.56(3m). The audit is conducted for any election that has a state or federal office position on the ballot.

The Voter Felon Audit occurs in several stages. First the matches are reviewed by DOC; the next stage is a review from municipal clerks, who also provide any pertinent documentation, and staff perform the final review and provide consolidated notes on each record prior to making referrals to county district attorneys, who then conduct their own investigations. The process provides the Commission the ability to identify any potential voter/felon matches and it also allows the Commission to identify any discrepancies with the matches. It is the final check in identifying potential felon participation in an election, should such activity not be caught earlier through other statutory required processes such as the felon list check by election officials at the polls. The process also ensures that election officials at all levels have performed their due diligence before cases are referred to a district attorney.

If a district attorney does not provide an update within six years of the election date, staff is to consider the referral closed and discontinue providing updates to the Commission - the Commission unanimously approved this motion at the September 21, 2022, meeting. You will find these on the closed audits portion of your materials.

The material for this meeting includes new updates on the 2022 General Election, as well as the 2023 Spring Primary, and the 2023 Spring Election. Voter Felon Audits have been performed for all previous elections through the July 18, 2023, Special Election for State Assembly District 24. The special election had no potential matches. If no potential matches are identified for a statewide or federal election, it will not appear on the open voter felon audits table provided in the material.

Staff is also providing its bi-yearly update on the status of the past Voter Felon Audits and District Attorney response information. Attachment M.1 contains statistics regarding the number of initial matches between records of voters and records of felons, as well as the disposition of the cases referred to district attorneys

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that the Commission has been made aware of. Additional details regarding specific cases are included in the Commission's supplemental materials folder.

*Yellow highlights denote an update to the record since materials were last presented.

DA Tracker - 2018 SPRING ELECTION				
County	Stage	Date Notice Sent	DA REPORT	Status
WAUKESHA	5 - Referred to DA	7/18/2018		
DA Tracker - 2018 PARTISAN PRIMARY				
County	Stage	Date Notice Sent	DA REPORT	Status
ASHLAND	5 - Referred to DA	2/15/2019		
BROWN	5 - Referred to DA	2/18/2019		
CRAWFORD	6 - Closed	2/18/2019		Closed by WEC 8/10/2023-individual deceased.
DANE	5 - Referred to DA	2/15/2019	3/5/2019	Under Investigation.
MENOMINEE	6 - Closed	2/18/2019	2/18/2019	Potential violation occurred on Menominee Indian Reservation, which is a sovereign nation, Menominee County DA has no jurisdiction to prosecute. Closed.
DA Tracker - 2018 GENERAL ELECTION				
County	Stage	Date Notice Sent	DA REPORT	Status
BROWN	5 - Referred to DA	6/3/2019		
BROWN	5 - Referred to DA	8/27/2019		
BROWN	5 - Referred to DA	6/3/2019		
DANE	5 - Referred to DA	6/3/2019	1/27/2022	Under Investigation.
DANE	5 - Referred to DA	6/3/2019		
DANE	5 - Referred to DA	6/3/2019		
DANE	5 - Referred to DA	9/9/2019	6/10/2022	Under Investigation.
MILWAUKEE	5 - Referred to DA	6/4/2019	5/11/2023	Charges Filed.
MILWAUKEE	6 - Closed	6/4/2019	5/22/2023	Declined Charges. Closed.
PORTAGE	5 - Referred to DA	8/27/2019	5/12/2022	Under Investigation.
PORTAGE	5 - Referred to DA	8/27/2019	5/12/2022	Under Investigation.
RACINE	5 - Referred to DA	8/27/2019		
ST. CROIX	5 - Referred to DA	8/27/2019		
SAUK	5 - Referred to DA	6/6/2019		
SHEBOYGAN	5 - Referred to DA	8/27/2019		
WAUSHARA	5 - Referred to DA	8/27/2019		
DA Tracker - 2019 SPRING PRIMARY				
County	Stage	Date Notice Sent	DA REPORT	Status
BROWN	5 - Assigned to DA	9/9/2019		

DA Tracker - 2020 SPRING PRIMARY

County	Stage	Date Notice Sent	DA REPORT	Status
DANE	5 - Referred to DA	4/12/22021		
CLARK	5 - Referred to DA	4/22/2022		

DA Tracker - 2020 SPRING ELECTION &

County	Stage	Date Notice Sent	DA REPORT	Status
DANE	5 - Referred to DA	5/6/2021		
MILWAUKEE	5 - Referred to DA	4/15/2022	2/3/2023	Under Investigation.

DA Tracker - 2020 PARTISAN PRIMARY

County	Stage	Date Notice Sent	DA REPORT	Status
DOOR	5 - Referred to DA	10/1/2021		

DA Tracker - 2020 GENERAL ELECTION

County	Stage	Date Notice Sent	DA REPORT	Status
ASHLAND	5 – Referred to DA	8/23/2021		
BROWN	5 – Referred to DA	9/17/2021		
BROWN	5 – Referred to DA	9/17/2021	11/18/2021	Charges Filed.
CLARK	5 – Referred to DA	4/19/2022		
COLUMBIA	5 – Referred to DA	8/26/2021		
COLUMBIA	5 – Referred to DA	8/20/2021		
COLUMBIA	5 – Referred to DA	8/25/2021		
DANE	5 – Referred to DA	8/20/2021	1/27/2022	Under Investigation.
DANE	5 – Referred to DA	9/16/2021	1/27/2022	Under Investigation.
DANE	5 – Referred to DA	8/20/2021	1/27/2022	Under Investigation.
DANE	5 – Referred to DA	8/20/2021	1/27/2022	Under Investigation.
DANE	5 – Referred to DA	8/23/2021	1/27/2022	Under Investigation.
DANE	5 – Referred to DA	8/23/2021	1/27/2022	Under Investigation.
DODGE	5 – Referred to DA	6/9/2022		
FLORENCE	5 – Referred to DA	8/20/2021		
FOND DU LAC	5 – Referred to DA	9/21/2021	1/27/2022	Charges Filed.
KENOSHA	5 – Referred to DA	4/22/2022		
MARATHON	5 – Referred to DA	8/19/2021		
MILWAUKEE	5 – Referred to DA	2/24/2022	5/11/2023	Under Investigation.
MILWAUKEE	5 – Referred to DA	8/23/2021	5/11/2023	Under Investigation.
MILWAUKEE	6 - Closed	9/15/2021	10/27/2021	Charges Filed. Individual is now identified as deceased. Closed.
MILWAUKEE	6 - Closed	9/15/2021	5/11/2023	Declined Charges. Closed.
MILWAUKEE	6 - Closed	9/23/2021	5/11/2023	Declined Charges. Closed.

OUTAGAMIE	6 - Closed	11/5/2021	2/6/2023	Found guilty.
PIERCE	5 – Referred to DA	8/30/2021		
POLK	5 – Referred to DA	9/20/2021	3/16/2023	Charges Filed.
RACINE	5 – Referred to DA	8/20/2021		
RUSK	5 – Referred to DA	8/23/2021	8/17/2022	Charges Filed.
SAUK	5 – Referred to DA	8/20/2021	1/28/2022	Charges Filed.
SHEBOYGAN	5 – Referred to DA	8/23/2021		
VERNON	6 - Closed	10/1/2021	1/25/2022	Found guilty.
WALWORTH	5 - Referred to DA	3/1/2022		
WALWORTH	5 – Referred to DA	9/16/2021		
WALWORTH	5 – Referred to DA	8/20/2021		
WAUKESHA	5 – Referred to DA	8/19/2021		
WAUKESHA	5 – Referred to DA	8/20/2021	8/17/2022	Under Investigation.
WAUKESHA	5 – Referred to DA	8/27/2021		
WAUKESHA	5 – Referred to DA	9/8/2021		
WAUKESHA	5 – Referred to DA	8/23/2021		
WAUKESHA	5 – Referred to DA	8/20/2021		
WAUKESHA	5 – Referred to DA	9/16/2021		
WAUKESHA	5 – Referred to DA	8/20/2021	7/19/2023	Charges Filed.
WAUPACA	5 – Referred to DA	8/23/2021	11/17/2022	Charges Filed.
WAUPACA	5 – Referred to DA	8/20/2021		
WAUPACA	5 – Referred to DA	9/17/2021		
WINNEBAGO	5 – Referred to DA	8/20/2021	6/22/2022	Under Investigation.
WINNEBAGO	5 – Referred to DA	8/20/2021	6/22/2022	Under Investigation.
WINNEBAGO	5 – Referred to DA	8/20/2021	6/22/2022	Under Investigation.

DA Tracker - 2021 SPRING PRIMARY

County	Stage	Date Notice Sent	DA REPORT	Status
MILWAUKEE	5 – Referred to DA	5/12/2022	2/3/2023	Under Investigation

DA Tracker - 2021 SPRING ELECTION

County	Stage	Date Notice Sent	DA REPORT	Status
OUTAGAMIE	5 – Referred to DA	11/9/2021	2/6/2023	Charges Filed.
MILWAUKEE	5 – Referred to DA	3/4/2022	5/11/2023	Under Investigation.

DA TRACKER - 2022 SPRING PRIMARY

County	Stage	Date Notice Sent	DA REPORT	Status
ASHLAND	5 - Referred to DA	6/15/2022		
MILWAUKEE	5 - Referred to DA	3/4/2022	5/11/2023	Under Investigation.
MILWAUKEE	6 - Closed	6/15/2022	5/11/2023	Declined Charges. Closed.
ROCK	6 - Closed	4/10/2023	4/21/2023	Declined Charges. Closed.

DA TRACKER - 2022 SPRING ELECTION

Date Notice				
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Case No.	Case Name	Date Notice	Amount	Due Date
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RACINE	5 - Referred to DA	8/3/2023		
ROCK	5 - Referred to DA	8/3/2023		
WAUKESHA	5 - Referred to DA	8/3/2023		
WINNEBAGO	3 - Clerk Review	5/30/2023		

DA TRACKER - 2023 SPRING PRIMARY

County	Stage	Date Notice Sent	DA REPORT	Status
DANE	3 - Clerk Review	8/15/2023		
IRON	3 - Clerk Review	8/15/2023		
MONROE	3 - Clerk Review	8/15/2023		
SAUK	3 - Clerk Review	8/15/2023		

DA TRACKER - 2023 SPRING ELECTION

County	Stage	Date Notice Sent	DA REPORT	Status
DODGE	1 - DOC Review	8/7/2023		
EAU CLAIRE	1 - DOC Review	8/7/2023		
MILWAUKEE	1 - DOC Review	8/7/2023		
MILWAUKEE	1 - DOC Review	8/7/2023		
MILWAUKEE	1 - DOC Review	8/7/2023		
MILWAUKEE	1 - DOC Review	8/7/2023		
MILWAUKEE	1 - DOC Review	8/7/2023		
MILWAUKEE	1 - DOC Review	8/7/2023		
MILWAUKEE	3 - DOC Review	8/16/2023		
MILWAUKEE	1 - DOC Review	8/7/2023		
WALWORTH	1 - DOC Review	8/7/2023		
WINNEBAGO	1 - DOC Review	8/7/2023		
WINNEBAGO	1 - DOC Review	8/7/2023		

OPEN VOTER FELON AUDITS

ELECTION	Number of voters matched with felons per Election	Number of matches referred to district attorneys	Number of referrals closed by DA without charges	Number of referrals resulting in a conviction	Number of remaining referrals with current charges filed status	Number of matches or cases referred remaining open or under investigation	Number of matches closed	Total number of voters	Referrals as a percentage of total number of voters
2023 Spring Election	24	0 This # will change after potential matches move through process	0	0	0	21	3	1,857,786	cannot calculate yet
2023 Spring Primary	8	1 This # may change after 3 remaining records in stage 3 progress	0	0	0	4	4	969,454	cannot calculate yet
2022 General Election	50	23 This # may change after 5 remaining records in stage 3 progress	0	0	0	28	22	2,668,891	cannot calculate yet
2022 Partisan Primary	10	3 This # may change after 1 remaining record in stage 3 progress	0	0	0	4	6	1,229,501	cannot calculate yet
2022 Spring Election	12	8	2	0	0	6	6	982,884	0.000814%
2022 Spring Primary	6	3	1	0	0	2	4	241,450	0.001242%
2021 Spring Election	8	4	2	0	1	1	6	953,414	0.00042%
2021 Spring Primary	2	2	1	0	0	1	1	339,805	0.00059%
2020 General Election	147	107	37	18	7	45	102	3,297,524	0.00324%
2020 Partisan Primary	11	4	2	1	0	1	10	959,348	0.00042%

2020 Spring Election/Pres. Pref.	32	8	5	1	0	2	30	1,605,912	0.00050%
2020 Spring Primary	15	6	3	1	0	2	13	729,307	0.00082%
2019 Spring Primary	2	2	1	0	0	1	1	8,295	0.024111%
2018 General Election	79	52	32	4	1	15	63	2,688,879	0.001934%
2018 Partisan Primary	15	9	5	1	0	3	12	1,043,074	0.000863%
2018 Spring Election	8	2	0	1	0	1	7	1,017,513	0.000197%

ELECTION	Number of voters matched with felons per Election	Number of matches referred to district attorneys	Number of referrals closed by DA without charges
5/12/2020 2020 May 12 Special Election	3	1	1
11/8/2016 General Election	111	79	57
8/9/2016 Partisan Primary	4	2	2
4/5/2016 Spring Election & Presidential Pref.	33	24	12
2/16/2016 Spring Primary	7	3	3
4/7/2015 Spring Election	9	6	3
11/4/2014 General Election	229	43	25
11/6/2012 General Election	89	36	24
6/5/2012 June 5 Recall Election	53	22	17
4/5/2011 Spring Election	16	7	6
11/2/2010 General Election	60	21	16

ED VOTER FELON AUDITS

Number of referrals resulting in a conviction	Number of remaining referrals with current charges filed status	Number of matches or cases referred remaining open or under investigation	Number of matches closed	Total number of voters
0	0	0	3	191,720
16	1	5	105	3,004,051
0	0	1	3	645,619
5	0	7	26	2,130,221
0	0	0	7	578,083
0	0	3	6	858,683
7	0	11	218	2,420,811
7	0	5	84	3,085,450
5	0	0	53	2,516,371
1	0	0	16	1,524,528
5	0	0	60	2,185,017

Referrals as a percentage of total number of voters
0.00052%
0.002630%
0.000310%
0.001127%
0.000519%
0.000699%
0.001776%
0.001167%
0.000874%
0.000459%
0.000961%



Wisconsin Elections Commission

201 West Washington Avenue | Second Floor | P.O. Box 7984 | Madison, WI 53707-7984

September __, 2023

Edward Blazel
State Assembly Chief Clerk
17 W. Main St., Room 401
Madison, WI 53703
Ted.Blazel@legis.wisconsin.gov

Michael Queensland
State Senate Chief Clerk
P.O. Box 7882
Madison, WI 53707
Michael.Queensland@legis.wisconsin.gov

Re: Submission of Report to Legislature – Report of Suspected Election Fraud, Irregularities or Violations pursuant to Wis. Stat. § 7.15(1)(g)

Chief Clerks Blazel and Queensland:

Attached to the email transmitting this letter, please find the Wisconsin Election Commission's report to the Legislature of suspected election fraud, irregularities or violations as reported to the Commission by municipal clerks pursuant to Wis. Stat. § 7.15(1)(g). This report is submitted to your offices pursuant to Wis. Stat. § 13.172(2) and notice of this report is to be included in the journals of each respective house, with distribution of the report to members of the Legislature upon request.

Report Notes

The report provides the Legislature with four key pieces of information: date on which the Commission received information from the municipal clerk about the referral, the county in which the referral was made, a brief description of the suspected election fraud, irregularity or violation, and the election during which the event occurred. Additional details concerning the type of activity reported or multiple instances of the same type of activity are noted in parentheses. In some cases, the activity did not pertain to a particular election or pertained to multiple elections.

This report includes notices of referrals received from municipal clerks between June 25, 2022 and June 30, 2023. The report is limited to information sent to the Commission by Wisconsin's municipal clerks, and it is possible that other suspected election frauds, irregularities or violations were referred by municipal clerks who did not also notify the Commission. It is also possible that citizens or organizations have filed complaints directly with a District Attorney, which the Commission has no way of knowing or tracking. For most types of

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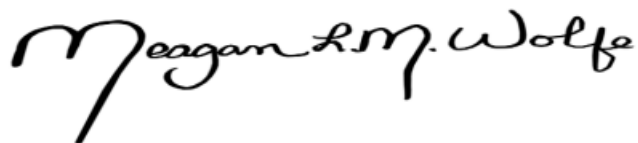
Administrator
Meagan Wolfe

referrals, the Commission has no information about whether the District Attorney found enough evidence to file charges or whether any charges resulted in a conviction.

If you have any questions regarding this report, please contact the Elections Helpdesk at 608-261-2028 or elections@wi.gov.

Sincerely,

WISCONSIN ELECTIONS COMMISSION

A handwritten signature in black ink that reads "Megan Wolfe". The signature is written in a cursive, flowing style.

Meagan Wolfe
Administrator

Cc: Wisconsin Elections Commission

Enclosure



Wisconsin Elections Commission

201 West Washington Avenue | Second Floor | P.O. Box 7984 | Madison, WI 53707-7984

Report of Suspected Election Fraud, Irregularities or Violations

Pursuant to Wis. Stat. § 7.15(1)(g), the Wisconsin Elections Commission (WEC) submits to the Wisconsin Legislature the following report of “suspected election fraud, irregularities or violations” based on information submitted to the WEC by municipal clerks. This report is submitted to the chief clerks of each house of the Legislature per Wis. Stat. § 13.172(2).

The WEC received the information in this report between June 25, 2022 and June 30, 2023. Please see the transmittal letter to the chief clerks which accompanies this report that describes the contents and limitations of this report.

Date	County	Suspected Election Fraud, Irregularity or Violation	Related Election
8/19/22	Dane	Voting twice in same election (in-person and in-person absentee)	2022 Partisan Primary
8/29/22	Dane	Voting twice in same election (in-person and in-person absentee)	2022 Partisan Primary
9/1/22	Sheboygan	Voting twice in same election (in-person and in-person absentee) (2 instances)	2022 Partisan Primary
9/8/22	Dane	Improper residential address on voter registration	2022 Partisan Primary
9/18/22	Ozaukee	Improper residential address on voter registration (6 instances)	Multiple Elections
11/17/22	Waukesha	Voting twice in same election (in-person in different municipalities)	2022 General Election
11/17/22	Waukesha	Voting twice in same election (in-person and absentee by mail)	2022 General Election
11/17/22	Eau Claire	Voting twice in same election (in-person and absentee by mail)	2022 General Election
11/18/22	Dunn	Voting twice in same election (in-person and absentee by mail in different municipalities)	2022 General Election
11/22/22	Ozaukee	Registration while adjudicated incompetent	2022 General Election
11/28/22	Wood	Voting twice in same election (in-person and in-person absentee)	2022 General Election
12/5/22	Marathon	Voting twice in same election (in-person and in-person absentee)	2022 General Election
12/12/22	Winnebago	Voting twice in same election (in-person and absentee by mail)	2022 General Election
12/12/22	La Crosse	Voting twice in same election (in-person and absentee by mail) (2 instances)	2022 General Election

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12/13/22	Milwaukee	Voting twice in same election (in-person and absentee by mail) (3 instances)	2022 General Election
12/14/22	Winnebago	Voting twice in same election (in-person and absentee by mail)	2022 General Election
12/19/22	Sheboygan	Felon registration	2022 General Election
12/20/22	Door	Voting twice in same election (in-person and absentee by mail)	2022 General Election
1/4/23	Portage	Registration while adjudicated incompetent	2022 General Election
1/5/23	Dane	Voting twice in same election (in-person and absentee by mail) (4 instances)	2022 General Election
1/5/23	Dane	Voting twice in same election (in-person in different municipalities)	2022 General Election
1/12/23	Sheboygan	Voting twice in same election (in-person and in-person absentee)	2022 General Election
3/1/23	Dane	Felon registration	2023 Spring Primary
3/22/23	Kenosha	Voting twice in same election (in-person in different municipalities)	2022 General Election
4/19/23	Winnebago	Voting twice in same election (in-person and absentee by mail)	2023 Spring Election
4/20/23	Eau Claire	Voting twice in same election (in-person and absentee by mail)	2023 Spring Primary
4/24/23	Sheboygan	Voting twice in same election (in-person and absentee by mail)	2023 Spring Election
4/26/23	Ozaukee	Non-citizen registration (2 instances)	2023 Spring Election
5/2/23	Waupaca	Solicitation of election assistance	2023 Spring Election
5/12/23	Columbia	Voting twice in same election (in-person and absentee by mail)	2023 Spring Election
5/30/23	Eau Claire	Voting twice in same election (in-person and in-person absentee)	2023 Spring Election



Wisconsin Elections Commission

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DATE: For the September 7, 2023 Commission Meeting

TO: Commissioners, Wisconsin Elections Commission

FROM: Meagan Wolfe, Administrator
Wisconsin Elections Commission

Prepared by Elections Commission Staff

SUBJECT: 2023 Four Year Voter Record Maintenance Process

The 2023 Four Year Record Maintenance Process, as described in Wis. Stat. § 6.50, is now complete. On June 15, 2023, the Commission mailed Voter Registration Suspension Notices to 116,051 registered voters who had not voted in any election after December 31, 2018. The voters had 30 days to contact their municipal clerks to request continuation of their registration. Voters who either did not respond to the postcard, or whose postcard was returned to the municipal clerk as undeliverable, had their status changed to inactive. Wis. Stat. § 6.50(2).

Following the completion of the process the Commission published the 2023 voter record maintenance statistics on the agency website, as required by Wis. Stat. § 6.50(2r).

Table 1: 2023 Voter Maintenance Statistics Statewide

Voter Maintenance Summary Statistics	Total
Total number of notices mailed	116,051
Requests for continuation of registration	7,469
Notices returned undeliverable	30,856
Requests for cancellation of registration	11
Number of voters mailed a notice determined to be deceased	387
Number of voters mailed a notice deactivated for reasons other than death	296
Number of duplicate voter records identified and merged (voter re-registered)	235
Number of voters who did not respond to the notice	77,726
Total number of voters mailed a notice changed from eligible to ineligible	108,378

A breakdown of the summary statistics by county and municipality are available on the agency website at: elections.wi.gov/resources/statistics/2023-four-year-voter-record-maintenance-statistics

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Since 2009 the state has performed eight statewide list maintenance processes. Table 2 is a comparison of the summary statistics for each of the years and a comparison of the response rate of voters who returned a request to remain registered.

Table 2: Summary Statistics by year

Year	2023	2021	2019	2017	2015	2013	2011
Total Notices Mailed	116,051	186,982	113,314	381,495	97,981	299,748	240,505
Requested Continuation	7,469	12,121	15,974	28,169	9,610	16,652	14,636
Returned Undeliverable	30,856	62,853	30,342	153,416	25,179	105,667	52,418
Requested Deactivation	11	38	23	250	26	7	N/A
Deceased	387	736	600	799	342	278	N/A
Deactivated for Other Reason	296	121	187	7,692	N/A	N/A	N/A
Duplicates Merged	235	385	271	532	N/A	560	N/A
No Response	77,726	112,008	66,998	189,702	63,186	177,420	173,451
Total Deactivated	108,378	174,307	95,939	351,733	83,070	N/A	N/A



Wisconsin Elections Commission

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DATE: For the September 7, 2023, Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: John Adam, WEC Legal Intern
Jim Witecha, Chief Legal Counsel

SUBJECT: Revisions to Wis. Admin. Code EL Chapter 12 Following Scope Statement 008-22

Closed Session Memorandum

Introduction:

This memo discusses potential changes to EL 12 in accordance with Scope Statement 008–22. There are proposed changes to three sections, and § 12.01(5) has several different options for the Commission to consider. Each section with proposed changes is listed below, with the first paragraph in plain text showing the current rule and the following paragraph or paragraphs in *italics* containing the suggested changes.

The first section is straightforward, and it changes the definition of election cycle in § EL 12.01(2) to conform with the scope statement’s goal to comply with Wis. Stat. § 7.15(1m) and “redefine Wis. Adm. Code § EL 12.01(2) to reflect a training cycle from January 1 of even-numbered years through December 31 of odd-numbered years.”

The second section covering § EL 12.01(5) lists several options to conform to the Commission’s motion “to seek an amendment to Chapter EL 12 of the Wisconsin Administrative Code noting that the statewide voter registration system is named ‘WisVote,’ and that the name of the system may change in the future.” The first two suggestions insert the change as a new rule EL 12.01(5m). The first option simply notes the name of the system, and the second also notes that the name “may change in the future” as stated in the scope statement. The third and fourth suggestions are edits to the existing EL 12.01(5). The third suggestion mentions that the name “WisVote” started to be used in 2016 but the fourth suggestion does not mention this fact.

The third section lists a suggested change to EL 12.02(7) to meet the scope statement’s goal to “clarify the processes by which a municipality’s governing body is contacted by Commission staff to notify the body that local officials have not met the required training standards for the applicable election cycle. The modification to code will require staff to solicit the official municipal mailing addresses to which notices will be sent. The update will also require staff to send notice of training deficiencies to the top elected official in a particular municipality by first class mail within thirty days of the election cycle’s end.”

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Potential Changes to §§ EL 12.01(2), 12.01(5), and 12.02(7):

EL 12.01(2) “Election cycle” begins on January 1 of an odd-numbered year and continues through December 31 of the following even-numbered year.

Suggested change: *EL 12.01(2) “Election cycle” begins on January 1 of an ~~odd-numbered~~ even-numbered year and continues through December 31 of the following ~~even-numbered~~ odd-numbered year.*

EL 12.01(5) “Statewide Voter Registration System” is the election administration software application provided by the commission to enable local election officials to register voters, track absentee voting, and administer elections.

Option 1: *EL 12.01(5m) The statewide voter registration system is called “WisVote.”*

Option 2: *EL 12.01(5m) The statewide voter registration system is called “WisVote.” The name of the system may change in the future.*

Option 3: *EL 12.01(5) “Statewide Voter Registration System” is the election administration software application provided by the commission to enable local election officials to register voters, track absentee voting, and administer elections. Since 2016, the statewide voter registration system has been called “WisVote,” and the name may change in the future.*

Option 4: *EL 12.01(5) “Statewide Voter Registration System” is the election administration software application provided by the commission to enable local election officials to register voters, track absentee voting, and administer elections. The statewide voter registration system is called “WisVote,” and that name may change in the future.*

EL 12.02(7) The governing body of any municipality whose municipal clerk fails to meet the training standards set out in this chapter shall be notified of that fact by the commission.

Suggested change: *EL 12.02(7) The governing body of any municipality whose municipal clerk fails to meet the training standards set out in this chapter shall be notified of that fact by the commission. Staff shall request the official municipal mailing addresses to which notices of training deficiencies will be sent and notify the top elected official in a particular municipality by first class mail within thirty days of the election cycle’s end. Municipalities shall provide the requested information to the Commission within 7 days of the request.*

Recommended Motion:

The Commission directs staff to proceed with the suggested changes to sections 12.01(2) and 12.02(7), and option __ concerning section 12.01(5), and to carry out all remaining rulemaking steps and providing updates to the Commission after each major step.



Wisconsin Elections Commission

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DATE: For the September 7, 2023, Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Angela O'Brien, Staff Attorney

SUBJECT: Statements of Scope for Emergency and Permanent Rulemaking regarding the Use of Uniform Instructions and Ballot Access Challenges

Introduction:

At its August 30, 2023, meeting, the Commission voted to authorize staff to begin the emergency and permanent rulemaking process for rules to require municipalities to use the Commission's Uniform Instructions for absentee voting and to update and implement a discrete administrative process for ballot access challenges.

The Commission directed staff to draft statements of scope for three distinct rulemaking processes. The first would propose the mandatory use of the Commission's instructions by municipal clerks to all absentee voters. The second and third would each relate to ballot access challenge processes, with one seeking to amend existing rules to clarify the procedural components of nomination paper challenges, and the other seeking to create a new provision of code specifically detailing the procedures for Declaration of Candidacy challenges.

Commission staff accordingly prepared six statements of scope pertaining to the rule topics identified above. Since the rulemaking authorization is for both emergency and permanent rulemaking, each process requires a separate statement of scope pursuant to § 227.24(1)(e)1d. and § 227.135(1). While the process for promulgating an emergency rule is significantly streamlined, the scope statement phase is almost identical. The only difference between the statements of scope is that the emergency rulemaking statements must contain a finding of emergency, meaning that the preservation of public peace, health, safety, or welfare necessitates putting the rule into effect prior to the time it would take effect under the permanent rulemaking process. Wis. Stat. §§ 227.135(1); 227.24(1)(a) and (e)1d.

The six statements of scope are attached to this memo for Commission review.

Recommended Motion #1: The Wisconsin Elections Commission directs staff to submit the statements of scope for both the emergency and permanent rulemaking relating to the mandatory use of the Commission's Uniform Instructions to absentee voters to the Department of Administration pursuant to § 227.24(1)(e)1d. and § 227.135(2).

Recommended Motion #2: The Wisconsin Elections Commission directs staff to submit the statements of scope for both the emergency and permanent rulemaking relating to amendments to existing rules to clarify the

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Administrator
Meagan Wolfe

procedural components of nomination paper challenges to the Department of Administration pursuant to § 227.24(1)(e)1d. and § 227.135(2).

Recommended Motion #3: The Wisconsin Elections Commission directs staff to submit the statements of scope for both the emergency and permanent rulemaking relating to the creation of a new administrative rule provision detailing the procedures for Declaration of Candidacy challenges to the Department of Administration pursuant to § 227.24(1)(e)1d. and § 227.135(2).

**STATEMENT OF SCOPE
PURSUANT TO WIS. STAT. § 227.24
WISCONSIN ELECTIONS COMMISSION**

Rule No.: Wis. Adm. Code EL Chapter 6

Relating to: Mandatory Use of Uniform Instructions for Absentee Voting

Rule Type: Emergency Rule pursuant to Wis. Stat. § 227.24(1)(a)

FINDING OF EMERGENCY:

This Statement of Scope pertains to the promulgation of an emergency rule under Wis. Stat. § 227.24(1)(a). The preservation of the public peace, safety, and welfare necessitates putting the rule into effect prior to the time it would take effect of the agency complied with the procedures. Wis. Stat. § 227.24(1)(a).

The preservation of peace, safety, and welfare of Wisconsin elections necessitates putting this rule into effect prior to the time it would take to promulgate it normally under chapter 227. In only six months, February 2024 will kick off the election cycle for a major presidential election year, which is expected to produce high voter turnout and high levels of scrutiny on Wisconsin's election procedures. Emergency rulemaking will provide the Commission an opportunity to address election administration needs ahead of the elections in 2024. There simply is not enough time to promulgate permanent rules on these topics and fully implement them before major elections in 2024, unless the Commission promulgates them as emergency rules under § 227.24(1)(a), although the Commission has directed staff to simultaneously pursue permanent rules to ensure long-term compliance.

RULE ANALYSIS

Pursuant to §§ 227.24(1)(e)1d. & 227.135(1):

a) A description of the objective of the proposed rule.

The Commission is statutorily charged with prescribing Uniform Instructions for municipalities to provide to absent electors. Wis. Stat. § 6.869. The Uniform Instructions provide voters with detailed information on how to properly complete and return their absentee ballots. Copies of the Uniform Instructions are printed by municipal clerks and included with all absentee ballots that are sent to voters in Wisconsin. The proposed administrative rule would remove an ambiguity and require municipalities to use the Commission-approved version of the Uniform Instructions, without changes, when mailing out absentee ballots for the upcoming election cycles. This would ensure that all absentee voters receive consistent information regarding the process of completing and returning absentee ballots and would eliminate the possibility of different voters receiving conflicting information.

b) Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives.

Currently, there is no statute or administrative rule in place that clearly requires municipalities to include the Commission-approved version of the Uniform Instructions in absentee ballot mailings to voters. Existing statutory language in chapter 6 of the statutes contains inconsistent references to instructions

prescribed by the Commission and does not clearly instruct clerks to use only the version approved by the Commission.

The Commission expects continued scrutiny of Wisconsin's election administration in 2024, and requiring municipalities to use the same version of the Uniform Instructions will ensure that all absentee electors, regardless of voter type or municipality, are receiving instructions which are compliant with recent changes in the law. This rule would bring the added benefit of reducing confusion that is sometimes caused by differences in election administration and legal interpretations in different municipalities. This requirement would not impact a clerk's ability to provide other instructions that do not conflict with the Uniform Instructions or otherwise violate state law. For example, clerks may wish to add additional instructions regarding their hours of operation and clerk staffing for voting functions, and would be permitted to do so under the new proposed rule.

The main alternative would be to not promulgate the rule, which would leave clerks with the Commission's prescribed instructions, but ambiguity concerning whether clerks can alter the instructions and send out their own versions. The Commission could issue guidance to all clerks to advise that they use only the Commission's instructions. However, in the absence of an administrative rule, clerks would not be required to follow Commission guidance unless directed to do so in the context of an individual administrative complaint. If clerks issue their own instructions, the Commission could only review differing versions one-by-one in the context of a complaint submitted to the Commission.

c) Detailed explanation of statutory authority for the rule (including the statutory citation and language).

General Authority pursuant to Wis. Stat. § 5.05(1): "General authority. The elections commission shall have the responsibility for the administration of chs. 5 to 10 and 12 and other laws relating to elections and election campaigns, other than laws relating to campaign financing. Pursuant to such responsibility, the commission may:

- (f) Promulgate rules under ch. 227 applicable to all jurisdictions for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns, other than laws regulating campaign financing, or ensuring their proper administration."

Specific Authority pursuant to Wis. Stat. § 6.869: "Uniform instructions. The commission shall prescribe uniform instructions for municipalities to provide to absentee electors. The instructions shall include the specific means of electronic communication that an absentee elector may use to file an application for an absentee ballot and, if the absentee elector is required to register, to request a registration form or change his or her registration. The instructions shall include information concerning whether proof of identification is required to be presented or enclosed. The instructions shall also include information concerning the procedure for correcting errors in marking a ballot and obtaining a replacement for a spoiled ballot. The procedure shall, to the extent possible, respect the privacy of each elector and preserve the confidentiality of each elector's vote."

Agency rulemaking authority pursuant to Wis. Stats. § 227.11(2)(a): "Agency rulemaking authority. Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation."

d) An estimate of the amount of time agency employees will spend developing the proposed rule and of other resources needed to develop the rule.

WEC staff estimates that it would take approximately 60 staff hours to draft a scope statement and carry out the subsequent steps to promulgate an administrative rule.

e) A description of all of the entities that may be affected by the proposed rule.

This would primarily affect clerks and election officials, and it would be likely to provide necessary clarity, authority, and streamline the inclusion of the Commission-approved Uniform Instructions in absentee ballot mailings to voters. The proposed rule would do so by codifying existing practices and would require minimal compliance outreach and training to clerks because of their familiarity with including Uniform Instructions as part of absentee ballot materials. The effect of the proposed rule, and subsequent processes, would not impact small businesses because all of the requirements would fall on municipal clerks. These processes have voter implications as well, but the proposed rule should minimize the risk that the ballot would be invalidated based on absentee voting or return deficiencies.

f) A summary and preliminary comparison of any existing or proposed federal regulation that addresses or is intended to address the activities to be regulated by the proposed rule.

N/A

Agency Contact Person:

Angela O'Brien, Staff Attorney
(608)264.6764, angela.obrien@wisconsin.gov



Megan Wolfe
Administrator, Wisconsin Elections Commission
DATE
Date Submitted

**STATEMENT OF SCOPE
PURSUANT TO WIS. STAT. § 227.24
WISCONSIN ELECTIONS COMMISSION**

Rule No.: Wis. Adm. Code EL Chapter 6

Relating to: Mandatory Use of Uniform Instructions for Absentee Voting

Rule Type: Permanent Rule pursuant to Wis. Stat. § 227.11

**RULE ANALYSIS
Pursuant to § 227.135(1):**

a) A description of the objective of the proposed rule.

The Commission is statutorily charged with prescribing Uniform Instructions for municipalities to provide to absent electors. Wis. Stat. § 6.869. The Uniform Instructions provide voters with detailed information on how to properly complete and return their absentee ballots. Copies of the Uniform Instructions are printed by municipal clerks and included with all absentee ballots that are sent to voters in Wisconsin. The proposed administrative rule would remove an ambiguity and require municipalities to use the Commission-approved version of the Uniform Instructions, without changes, when mailing out absentee ballots for the upcoming election cycles. This would ensure that all absentee voters receive consistent information regarding the process of completing and returning absentee ballots and would eliminate the possibility of different voters receiving conflicting information.

b) Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives.

Currently, there is no statute or administrative rule in place that clearly requires municipalities to include the Commission-approved version of the Uniform Instructions in absentee ballot mailings to voters. Existing statutory language in chapter 6 of the statutes contains inconsistent references to instructions prescribed by the Commission and does not clearly instruct clerks to use only the version approved by the Commission.

The Commission expects continued scrutiny of Wisconsin's election administration in 2024, and requiring municipalities to use the same version of the Uniform Instructions will ensure that all absentee electors, regardless of voter type or municipality, are receiving instructions which are compliant with recent changes in the law. This rule would bring the added benefit of reducing confusion that is sometimes caused by differences in election administration and legal interpretations in different municipalities. This requirement would not impact a clerk's ability to provide other instructions that do not conflict with the Uniform Instructions or otherwise violate state law. For example, clerks may wish to add additional instructions regarding their hours of operation and clerk staffing for voting functions, and would be permitted to do so under the new proposed rule.

The main alternative would be to not promulgate the rule, which would leave clerks with the Commission's prescribed instructions, but ambiguity concerning whether clerks can alter the instructions and send out their own versions. The Commission could issue guidance to all clerks to advise that they use only the Commission's instructions. However, in the absence of an administrative rule, clerks would not be required to follow Commission guidance unless directed to do so in the context of an individual administrative

complaint. If clerks issue their own instructions, the Commission could only review differing versions one-by-one in the context of a complaint submitted to the Commission.

c) Detailed explanation of statutory authority for the rule (including the statutory citation and language).

General Authority pursuant to Wis. Stat. § 5.05(1): “General authority. The elections commission shall have the responsibility for the administration of chs. 5 to 10 and 12 and other laws relating to elections and election campaigns, other than laws relating to campaign financing. Pursuant to such responsibility, the commission may:

- (f) Promulgate rules under ch. 227 applicable to all jurisdictions for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns, other than laws regulating campaign financing, or ensuring their proper administration.”

Specific Authority pursuant to Wis. Stat. § 6.869: “Uniform instructions. The commission shall prescribe uniform instructions for municipalities to provide to absentee electors. The instructions shall include the specific means of electronic communication that an absentee elector may use to file an application for an absentee ballot and, if the absentee elector is required to register, to request a registration form or change his or her registration. The instructions shall include information concerning whether proof of identification is required to be presented or enclosed. The instructions shall also include information concerning the procedure for correcting errors in marking a ballot and obtaining a replacement for a spoiled ballot. The procedure shall, to the extent possible, respect the privacy of each elector and preserve the confidentiality of each elector's vote.”

Agency rulemaking authority pursuant to Wis. Stats. § 227.11(2)(a): “Agency rulemaking authority. Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.”

d) An estimate of the amount of time agency employees will spend developing the proposed rule and of other resources needed to develop the rule.

WEC staff estimates that it would take approximately 60 staff hours to draft a scope statement and carry out the subsequent steps to promulgate an administrative rule.

e) A description of all of the entities that may be affected by the proposed rule.

This would primarily affect clerks and election officials, and it would be likely to provide necessary clarity, authority, and streamline the inclusion of the Commission-approved Uniform Instructions in absentee ballot mailings to voters. The proposed rule would do so by codifying existing practices and would require minimal compliance outreach and training to clerks because of their familiarity with including Uniform Instructions as part of absentee ballot materials. The effect of the proposed rule, and subsequent processes, would not impact small businesses because all of the requirements would fall on municipal clerks. These processes have voter implications as well, but the proposed rule should minimize the risk that the ballot would be invalidated based on absentee voting or return deficiencies.

f) A summary and preliminary comparison of any existing or proposed federal regulation that addresses or is intended to address the activities to be regulated by the proposed rule.

N/A

Agency Contact Person:

Angela O'Brien, Staff Attorney
(608)264.6764, angela.obrien@wisconsin.gov



Meagan Wolfe
Administrator, Wisconsin Elections Commission
DATE
Date Submitted

**STATEMENT OF SCOPE
PURSUANT TO WIS. STAT. § 227.24
WISCONSIN ELECTIONS COMMISSION**

Rule No.: Wis. Adm. Code EL Chapter §§ 2.05; 2.07; 2.09; 2.11

Relating to: Ballot Access and Election Petition Challenge Procedure

Rule Type: Emergency Rule pursuant to Wis. Stat. § 227.24(1)(a)

FINDING OF EMERGENCY:

This Statement of Scope pertains to the promulgation of an emergency rule under Wis. Stat. § 227.24(1)(a). The preservation of the public peace, safety, and welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures. Wis. Stat. § 227.24(1)(a).

The preservation of peace, safety, and welfare of Wisconsin elections necessitates putting this rule into effect prior to the time it would take to promulgate it normally under chapter 227. In only six months, February 2024 will kick off the election cycle for a major presidential election year, which is expected to produce high voter turnout and high levels of scrutiny on Wisconsin's election procedures. Emergency rulemaking will provide the Commission an opportunity to address election administration needs ahead of the elections in 2024. There simply is not enough time to promulgate permanent rules on these topics and fully implement them before major elections in 2024, unless the Commission promulgates them as emergency rules under § 227.24(1)(a).

The Commission has already begun to receive public comments regarding candidates likely to seek ballot access for elections in 2024.

**RULE ANALYSIS
Pursuant to §§ 227.24(1)(e)1d. & 227.135(1):**

a) A description of the objective of the proposed rule.

Ballot access challenges have historically been more prevalent during general election cycles, and there is no reason to believe that 2024 will be an exception. Recent challenge periods have highlighted the need to modernize, more explicitly detail, and more carefully craft administrative rule language pertaining to ballot access so that all candidates and potential challengers, as well as the general public, have a clear understanding of the rules and procedures applicable to ballot access challenges.

b) Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives.

Sections 8.04, 8.10, 8.15, 8.20, and 8.50 of Wisconsin state statutes lay out some basic grounds for nomination paper sufficiency. Rule EL 2.05 addresses the treatment and sufficiency of nomination papers, and rule EL 2.07 lays out the process for challenges to nomination papers. However, the current rule 2.07 includes cross-references to other types of complaint processes that are not relevant or applicable to ballot access. The current rule also includes ambiguous language regarding the grounds for challenges to nomination papers. The proposed administrative rule would amend § 2.07 to remove cross-references to

other complaint procedures, and would supplement the existing procedures for challenges to nomination papers. The proposed rule would also clarify ambiguous language throughout § 2.07, and would also update the relevant provisions of §§ 2.05, 2.09, and 2.11 so that they are consistent with the new amended rule § 2.07. Finally, the proposed rule would also incorporate existing Commission guidance and address common issues relating to the sufficiency of nomination papers.

The alternative would be to not promulgate this rule, leaving several issues in place that could complicate the very short timelines available for candidates seeking office and challengers raising concerns.

c) Detailed explanation of statutory authority for the rule (including the statutory citation and language).

General Authority pursuant to Wis. Stat. § 5.05(1): “General authority. The elections commission shall have the responsibility for the administration of chs. 5 to 10 and 12 and other laws relating to elections and election campaigns, other than laws relating to campaign financing. Pursuant to such responsibility, the commission may:

- (f) Promulgate rules under ch. 227 applicable to all jurisdictions for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns, other than laws regulating campaign financing, or ensuring their proper administration.”

Specific Authority pursuant to Wis. Stat. § 8.07 – “Validity of nomination papers. The commission shall promulgate rules under this chapter for use by election officials in determining the validity of nomination papers and signatures thereon.”

Agency Rulemaking Authority pursuant to Wis. Stats. § 227.11(2)(a): “Agency rulemaking authority. Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.”

d) An estimate of the amount of time agency employees will spend developing the proposed rule and of other resources needed to develop the rule.

WEC staff estimates that it would take approximately 80 staff hours to draft a scope statement and carry out the subsequent steps to promulgate an administrative rule.

e) A description of all of the entities that may be affected by the proposed rule.

This would affect clerks, election officials, candidates, and individuals challenging the ballot access of candidates, and it is likely to provide the necessary clarity and authority to streamline the ballot access challenge processes. The proposed rule would do so mainly by codifying existing practices and would require minimal compliance outreach and training to clerks because of their familiarity with ballot access challenges as local filing officers. The effect of the proposed rule, and subsequent processes, would have little to no impact on small businesses. The proposed rule should minimize the risk that a candidate is improperly granted, or denied, ballot access by providing clear procedures for how the Commission and local filing officers would hear and decide nomination paper challenges.

f) A summary and preliminary comparison of any existing or proposed federal regulation that addresses or is intended to address the activities to be regulated by the proposed rule.

N/A

Agency Contact Person:

Angela O'Brien, Staff Attorney
(608)264.6764, angela.obrien@wisconsin.gov

A handwritten signature in black ink that reads "Megan Wolfe". The signature is written in a cursive, flowing style.

Megan Wolfe
Administrator, Wisconsin Elections Commission
DATE
Date Submitted

**STATEMENT OF SCOPE
PURSUANT TO WIS. STAT. § 227.24
WISCONSIN ELECTIONS COMMISSION**

Rule No.: Wis. Adm. Code EL Chapter §§ 2.05; 2.07; 2.09; 2.11

Relating to: Ballot Access and Election Petition Challenge Procedure

Rule Type: Permanent Rule pursuant to Wis. Stat. § 227.11(2)

**RULE ANALYSIS
Pursuant to § 227.135(1):**

a) A description of the objective of the proposed rule.

Ballot access challenges have historically been more prevalent during general election cycles, and there is no reason to believe that 2024 will be an exception. Recent challenge periods have highlighted the need to modernize, more explicitly detail, and more carefully craft administrative rule language pertaining to ballot access so that all candidates and potential challengers, as well as the general public, have a clear understanding of the rules and procedures applicable to ballot access challenges.

b) Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives.

Sections 8.04, 8.10, 8.15, 8.20, and 8.50 of Wisconsin state statutes lay out some basic grounds for nomination paper sufficiency. Rule EL 2.05 addresses the treatment and sufficiency of nomination papers, and rule EL 2.07 lays out the process for challenges to nomination papers. However, the current rule 2.07 includes cross-references to other types of complaint processes that are not relevant or applicable to ballot access. The current rule also includes ambiguous language regarding the grounds for challenges to nomination papers. The proposed administrative rule would amend § 2.07 to remove cross-references to other complaint procedures, and would supplement the existing procedures for challenges to nomination papers. The proposed rule would also clarify ambiguous language throughout § 2.07, and would also update the relevant provisions of §§ 2.05, 2.09, and 2.11 so that they are consistent with the new amended rule § 2.07. Finally, the proposed rule would also incorporate existing Commission guidance and address common issues relating to the sufficiency of nomination papers.

The alternative would be to not promulgate this rule, leaving several issues in place that could complicate the very short timelines available for candidates seeking office and challengers raising concerns.

c) Detailed explanation of statutory authority for the rule (including the statutory citation and language).

General Authority pursuant to Wis. Stat. § 5.05(1): “General authority. The elections commission shall have the responsibility for the administration of chs. 5 to 10 and 12 and other laws relating to elections and election campaigns, other than laws relating to campaign financing. Pursuant to such responsibility, the commission may:

- (f) Promulgate rules under ch. 227 applicable to all jurisdictions for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns, other than laws regulating campaign financing, or ensuring their proper administration.”

Specific Authority pursuant to Wis. Stat. § 8.07 – “Validity of nomination papers. The commission shall promulgate rules under this chapter for use by election officials in determining the validity of nomination papers and signatures thereon.”

Agency Rulemaking Authority pursuant to Wis. Stats. § 227.11(2)(a): “Agency rulemaking authority. Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.”

d) An estimate of the amount of time agency employees will spend developing the proposed rule and of other resources needed to develop the rule.

WEC staff estimates that it would take approximately 80 staff hours to draft a scope statement and carry out the subsequent steps to promulgate an administrative rule.

e) A description of all of the entities that may be affected by the proposed rule.

This would affect clerks, election officials, candidates, and individuals challenging the ballot access of candidates, and it is likely to provide the necessary clarity and authority to streamline the ballot access challenge processes. The proposed rule would do so mainly by codifying existing practices and would require minimal compliance outreach and training to clerks because of their familiarity with ballot access challenges as local filing officers. The effect of the proposed rule, and subsequent processes, would have little to no impact on small businesses. The proposed rule should minimize the risk that a candidate is improperly granted, or denied, ballot access by providing clear procedures for how the Commission and local filing officers would hear and decide nomination paper challenges.

f) A summary and preliminary comparison of any existing or proposed federal regulation that addresses or is intended to address the activities to be regulated by the proposed rule.

N/A

Agency Contact Person:

Angela O’Brien, Staff Attorney
(608)264.6764, angela.obrien@wisconsin.gov



Megan Wolfe
Administrator, Wisconsin Elections Commission
DATE
Date Submitted

**STATEMENT OF SCOPE
PURSUANT TO WIS. STAT. § 227.24
WISCONSIN ELECTIONS COMMISSION**

Rule No.: Wis. Adm. Code EL Chapter §§ 2.05; 2.07; 2.09; 2.11

Relating to: Ballot Access and Election Petition Challenge Procedure

Rule Type: Emergency Rule pursuant to Wis. Stat. § 227.24(1)(a)

FINDING OF EMERGENCY:

This Statement of Scope pertains to the promulgation of an emergency rule under Wis. Stat. § 227.24(1)(a). The preservation of the public peace, safety, and welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures. Wis. Stat. § 227.24(1)(a).

The preservation of peace, safety, and welfare of Wisconsin elections necessitates putting this rule into effect prior to the time it would take to promulgate it normally under chapter 227. In only six months, February 2024 will kick off the election cycle for a major presidential election year, which is expected to produce high voter turnout and high levels of scrutiny on Wisconsin's election procedures. Emergency rulemaking will provide the Commission an opportunity to address election administration needs ahead of the elections in 2024. There simply is not enough time to promulgate permanent rules on these topics and fully implement them before major elections in 2024, unless the Commission promulgates them as emergency rules under § 227.24(1)(a).

The Commission has already begun to receive public comments regarding candidates likely to seek ballot access for elections in 2024.

**RULE ANALYSIS
Pursuant to §§ 227.24(1)(e)1d. & 227.135(1):**

a) A description of the objective of the proposed rule.

Ballot access challenges have historically been more prevalent during general election cycles, and there is no reason to believe that 2024 will be an exception. Recent challenge periods have highlighted the need to modernize, more explicitly detail, and more carefully craft administrative rule language pertaining to ballot access. The proposed rule would create an administrative process for individuals to bring challenges against the Declarations of Candidacy that are filed by all candidates for local, state, and federal office in Wisconsin so that all candidates and potential challengers, as well as the general public, have a clear understanding of the rules and procedures applicable to ballot access challenges.

b) Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives.

All candidates for local, state, and federal office in Wisconsin, except presidential electors, are required to file a Declaration of Candidacy with the appropriate filing officer. Wis. Stat. § 8.21(1). The Declaration of Candidacy must be sworn before a notary or other officer authorized to administer oaths. Wis. Stat. § 8.21(2). In the Declaration of Candidacy, each candidate states that he or she either meets, or will at the

time he or she assumes office meet, any applicable requirements for holding office. Wis. Stat. § 8.21(2). Section 8.30 is the companion statute to § 8.21. The Commission and local filing officers have statutory authority to refuse to place a candidate's name on the ballot if any of the specified situations in § 8.30(1)(a), (b), or (c) apply, or if the Declaration of Candidacy is not timely filed. Wis. Stat. § 8.30(4).

There is currently no clear administrative or statutory process for an individual to challenge the validity or sufficiency of a candidate's Declaration of Candidacy, which includes challenges to the candidate's sworn certification that he or she meets or will meet the applicable requirements for holding office. In the administrative code, Rule EL 2.07 only explicitly applies to challenges to nomination papers. Not all candidates for office in Wisconsin are required to file nomination papers. *See, e.g.*, Wis. Stat. § 8.12.

The proposed rule would create a clear administrative process for an individual to challenge any aspect of a candidate's sworn Declaration of Candidacy, but not their nomination papers. The challenge to the Declaration of Candidacy would be brought to the Commission, or to the local filing officer. The proposed rule would identify the legal grounds for bringing these types of challenges by incorporating or cross-referencing the appropriate provisions in § 8.21, § 8.30, or both. The proposed rule would also describe the procedures by which the Commission or filing officer hear and decide these complaints, as well as the ability of an individual to seek review of the Commission's or filing officer's decision on their complaint.

The alternative would be to not promulgate this rule, leaving the Commission and local filing officers in the difficult position of using the current Chapter EL 2 to administer challenges that concern the requirements of the declaration of candidacy far more directly than the nomination papers. It also would leave the Commission specifically with cross references that do not clearly relate to the time-limited requirements of ballot access challenges.

c) Detailed explanation of statutory authority for the rule (including the statutory citation and language).

General Authority pursuant to Wis. Stat. § 5.05(1): "General authority. The elections commission shall have the responsibility for the administration of chs. 5 to 10 and 12 and other laws relating to elections and election campaigns, other than laws relating to campaign financing. Pursuant to such responsibility, the commission may:

- (f) Promulgate rules under ch. 227 applicable to all jurisdictions for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns, other than laws regulating campaign financing, or ensuring their proper administration."

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d) An estimate of the amount of time agency employees will spend developing the proposed rule and of other resources needed to develop the rule.

WEC staff estimates that it would take approximately 100 staff hours to draft a scope statement and carry out the subsequent steps to promulgate an administrative rule.

e) A description of all of the entities that may be affected by the proposed rule.

This would affect clerks, election officials, candidates, and individuals challenging the ballot access of candidates, and it is likely to provide the necessary clarity and authority to and streamline the ballot access

challenge processes. The proposed rule would do so by codifying existing practices and would require minimal compliance outreach and training to clerks because of their familiarity with ballot access challenges as local filing officers. The effect of the proposed rule, and subsequent processes, would have little to no impact on small businesses. The proposed rule should minimize the risk that a candidate is improperly granted, or denied, ballot access by providing clear procedures for how the Commission, or local filing officers, would hear and decide challenges outside of the sufficiency of nomination papers.

f) A summary and preliminary comparison of any existing or proposed federal regulation that addresses or is intended to address the activities to be regulated by the proposed rule.

N/A

Agency Contact Person:

Angela O'Brien, Staff Attorney
(608)264.6764, angela.obrien@wisconsin.gov



Megan Wolfe
Administrator, Wisconsin Elections Commission

DATE

Date Submitted

STATEMENT OF SCOPE
PURSUANT TO WIS. STAT. § 227.24
WISCONSIN ELECTIONS COMMISSION

Rule No.: Wis. Adm. Code EL Chapter §§ 2.05; 2.07; 2.09; 2.11

Relating to: Ballot Access and Election Petition Challenge Procedure

Rule Type: Permanent Rule pursuant to Wis. Stat. § 227.11(2)

RULE ANALYSIS
Pursuant to § 227.135(1):

a) A description of the objective of the proposed rule.

Ballot access challenges have historically been more prevalent during general election cycles, and there is no reason to believe that 2024 will be an exception. Recent challenge periods have highlighted the need to modernize, more explicitly detail, and more carefully craft administrative rule language pertaining to ballot access. The proposed rule would create an administrative process for individuals to bring challenges against the Declarations of Candidacy that are filed by all candidates for local, state, and federal office in Wisconsin so that all candidates and potential challengers, as well as the general public, have a clear understanding of the rules and procedures applicable to ballot access challenges.

b) Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives.

All candidates for local, state, and federal office in Wisconsin, except presidential electors, are required to file a Declaration of Candidacy with the appropriate filing officer. Wis. Stat. § 8.21(1). The Declaration of Candidacy must be sworn before a notary or other officer authorized to administer oaths. Wis. Stat. § 8.21(2). In the Declaration of Candidacy, each candidate states that he or she either meets, or will at the time he or she assumes office meet, any applicable requirements for holding office. Wis. Stat. § 8.21(2). Section 8.30 is the companion statute to § 8.21. The Commission and local filing officers have statutory authority to refuse to place a candidate's name on the ballot if any of the specified situations in § 8.30(1)(a), (b), or (c) apply, or if the Declaration of Candidacy is not timely filed. Wis. Stat. § 8.30(4).

There is currently no clear administrative or statutory process for an individual to challenge the validity or sufficiency of a candidate's Declaration of Candidacy, which includes challenges to the candidate's sworn certification that he or she meets or will meet the applicable requirements for holding office. In the administrative code, Rule EL 2.07 only explicitly applies to challenges to nomination papers. Not all candidates for office in Wisconsin are required to file nomination papers. *See, e.g.*, Wis. Stat. § 8.12.

The proposed rule would create a clear administrative process for an individual to challenge any aspect of a candidate's sworn Declaration of Candidacy, but not their nomination papers. The challenge to the Declaration of Candidacy would be brought to the Commission, or to the local filing officer. The proposed rule would identify the legal grounds for bringing these types of challenges by incorporating or cross-referencing the appropriate provisions in § 8.21, § 8.30, or both. The proposed rule would also describe the procedures by which the Commission or filing officer hear and decide these complaints, as well as the ability of an individual to seek review of the Commission's or filing officer's decision on their complaint.

The alternative would be to not promulgate this rule, leaving the Commission and local filing officers in the difficult position of using the current Chapter EL 2 to administer challenges that concern the

requirements of the declaration of candidacy far more directly than the nomination papers. It also would leave the Commission specifically with cross references that do not clearly relate to the time-limited requirements of ballot access challenges.

c) Detailed explanation of statutory authority for the rule (including the statutory citation and language).

General Authority pursuant to Wis. Stat. § 5.05(1): “General authority. The elections commission shall have the responsibility for the administration of chs. 5 to 10 and 12 and other laws relating to elections and election campaigns, other than laws relating to campaign financing. Pursuant to such responsibility, the commission may:

- (f) Promulgate rules under ch. 227 applicable to all jurisdictions for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns, other than laws regulating campaign financing, or ensuring their proper administration.”

Agency Rulemaking Authority pursuant to Wis. Stats. § 227.11(2)(a): “Agency rulemaking authority. Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.”

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WEC staff estimates that it would take approximately 100 staff hours to draft a scope statement and carry out the subsequent steps to promulgate an administrative rule.

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This would affect clerks, election officials, candidates, and individuals challenging the ballot access of candidates, and it is likely to provide the necessary clarity and authority to and streamline the ballot access challenge processes. The proposed rule would do so by codifying existing practices and would require minimal compliance outreach and training to clerks because of their familiarity with ballot access challenges as local filing officers. The effect of the proposed rule, and subsequent processes, would have little to no impact on small businesses. The proposed rule should minimize the risk that a candidate is improperly granted, or denied, ballot access by providing clear procedures for how the Commission, or local filing officers, would hear and decide challenges outside of the sufficiency of nomination papers.

f) A summary and preliminary comparison of any existing or proposed federal regulation that addresses or is intended to address the activities to be regulated by the proposed rule.

N/A

Agency Contact Person:

Angela O’Brien, Staff Attorney
(608)264.6764, angela.obrien@wisconsin.gov

Meagan R.M. Wolfe

Meagan Wolfe
Administrator, Wisconsin Elections Commission
DATE
Date Submitted

Observer Written Comments Appendix 4

TO: Members of the Wisconsin Elections Commission and Staff

FROM: Jay Heck, Executive Director of Common Cause in Wisconsin

DATE: July 14, 2023

RE: CCWI followup comments re: June 29th Election Observation Advisory Committee meeting

Dear Chair Millis, Members of the Commission, and staff,

Following the June 29, 2023 Wisconsin Elections Commission (WEC) Election Observation Advisory Committee meeting, Common Cause Wisconsin would like to submit these additional comments for consideration by the WEC Commissioners and staff:

Common Cause Wisconsin (CCWI) would like to reemphasize, as a priority, the importance of creating rules for election observers that start with the premise that the primary function of the polling place is to provide a space for voters to cast their ballot. While the role of the observer is an important part of the Election Day process, it is not the primary purpose, nor the reason that polling sites exist. The central function and focus of election observation should be to observe the process, follow proper procedures and channels in order to raise awareness of situations that require closer attention, and help to continually improve the election administration process in election cycle after cycle. Election observation should not burden and needlessly prolong the election system and process, nor intimidate voters, distract poll workers, or disrupt the legitimate and necessary activities that occur at polling sites. There should be clearly spelled-out methods, procedures, and rules for election observation that help foster more positive relationships with clerks and election officials that will in turn better provide the best voting experience for voters at each polling site. CCWI requests that the WEC Commissioners keep in mind that the fundamental purpose of the polling site is to provide Wisconsin voters with a clear, efficient, safe, and secure way in which to legally cast their ballot. It is the role of the election observer to make sure these criteria are being met and it is important that the rules for election observation reflect that the priority of the polling site is to serve voters casting their ballots in a free and fair election.

Additionally, a voter's privacy should be a top priority when considering the rules for election observation. Because voting takes place in many different venues throughout Wisconsin: for example, in a person's home, a public polling location, a clerk's office, or a care facility, each venue should be examined and reviewed for how the voter is able to cast a ballot privately and not be subjected to intimidation nor have their confidential information revealed regardless of how their ballot is cast. Additionally, the marking of a ballot is a private and confidential exercise, and any voter may legally ask for assistance. No election observer needs to nor should have access to the private residence of a voter, especially a bedroom. The Special Voting Deputies (SVD) process for access and entry into these private care spaces should be regularly reviewed by the WEC, the election clerk, and by election observers to be sure SVDs are performing their duties in compliance with state law. However, election observers should not be permitted into the private living spaces of voters and should follow all requirements of a care facility when in common areas for the benefit of the care and health of the residents.

The following are our comments to specific sections in the draft document provided to the committee members from the June 29th meeting:

4.03 (4) and the question about how to measure three feet "from each table" ought to be left to each individual clerk, as this measurement changes depending on the polling place and the way the polling place is laid out. Ideally, observers will be positioned so they can listen and hear the process at each table. If a polling place cannot accommodate observers, then the WEC should work with the clerks to help identify and select alternate polling layouts or locations. This concern should be something an observer can alert both WEC and the clerk about in advance of an election date but changes cannot be expected to be made on Election Day and should therefore be taken under advisement and consideration for the next election.

4.03 (5): We suggest removing the words "behind the inspectors" because it is not always possible to have observers "behind" the table depending on the layout of the polling location.

4.05 (1): We support the language used in (a) rather than (b). Logistically, polling places are often set up a day or more ahead of time and there is no public schedule. Functionally, the role of the observer is to witness the casting and processing of ballots. The setting up of a polling place seems to be beyond the function of an observer, and perhaps a different set of guidelines or statute would clarify the process of watching the polling place set-up. Currently, the election officials witness the process of zeroing the voting machines. (Wis. Stat. 5.84 (2))

Section 4.05 (2): We prefer the clarification of the language in (b) rather than (a).

Section 4.05 (3): We prefer (b) rather than (a) for similar logistical and functional reasons stated above in our comments on 4.05 (1). And prefer (d) rather than (e). (More on this below in the comments about capturing images at a polling location. However, since the marking of a ballot by a voter does not take place at central count locations, we are less insistent that photographs and video not be permitted to occur at central count.)

Finally, at the meeting on June 29, 2023, there was disagreement concerning taking video or photographs in the polling sites and what could or could not be captured in a video recording or photographic image. CCWI opposes photography or video recordings in polling places unless this is undertaken by approved and credentialed media. Voters expect that their ballots are being marked privately and that their confidential information remains confidential. The act of voting and of marking a ballot, should be private even though the voting process is public and can be observable. Confidential information or a marked ballot could be intentionally or inadvertently captured if anyone or everyone is permitted to take photographs or video recordings within a polling site. We also have concerns that taking video and photos can be intimidating and/or disruptive to the purpose of the polling place and the actual voting process. In addition, these voters have not given their permission for their image or likeness to be captured and shared by observers.

CCWI recognizes the challenging task the commissioners have in determining the proper language of the rules for election observation. We encourage the commissioners to consider “worst case” scenarios and how rules could be misused to disrupt or delay the voting process, particularly on the draft points provided concerning the taking of photographs or video of spaces with voters or having an election official repeating the name and address of the name and voter (For example, 4.03(4) states that “If observers are unable to hear an elector or election official stating a name or address, an election official shall repeat the name or address.” This seems sensible and proper, but we are concerned that someone could misuse this to ask for clarification to needlessly delay or even bring voting operations to a halt if this request is made to the election official for every single voter.)

CCWI would like to once again thank the commission for inviting us to participate in these advisory committee meetings on election observation. We would also like to recognize and commend the WEC staff for their organization and facilitation of these discussions. Additionally, we wish the commissioners our very best in creating the fair and nonpartisan rules that will guide election observation going forward and for carefully considering the input of the advisory committee and of Common Cause Wisconsin.

Date: July 14, 2023

Re: DRW comments on Election Observer Draft Rule Following
Second Advisory Committee Meeting

To: Members of the Wisconsin Election Commission and Staff

From: Barbara Beckert, Disability Rights Wisconsin - barbarab@drwi.org

Thank you for the opportunity to share written comments on the Wisconsin Elections Commission Draft Election Observer Rule. I have appreciated the opportunity to represent Disability Rights Wisconsin (DRW) on the advisory committee. I regret that I was not able to participate in the second advisory committee meeting due to being at Mount Rainier with limited connectivity.

Comments are organized in alignment with the order of topics in the draft rule and include the corresponding page number from the draft document. Italicized text is from the draft rule.

These comments are provided on behalf of Disability Rights Wisconsin and the Wisconsin Disability Vote Coalition.

DRW Comments on the Election Observer Draft Rule

Page 1 - Notes section:

The Advisory Committee asked the Commission to produce information and training on the rules that can be provided to observers.

DRW affirms the value of providing observers with training and information including about disability rights and accommodations. We endorse the recommendation to have brochures at each polling place, and online, with basic guidance for observers. This should include information about the rights of voters with disabilities to receive assistance with any part of the voting process and other accommodations. In addition, we recommend that WEC develop online modules for observers to provide training on the new rule. would be available. In addition, clerks and election inspectors should also be trained on the role of observers and on the rule.

Page 1 - EL 4.01 Definitions

"Accessibility reviewer" means an individual authorized by Commission who monitors compliance with s. 5.25(4)(a). Accessibility reviewers are not observers under this chapter.

DRW endorses this language; this is an important distinction. Accessibility reviewers have a different role than observers. Accessibility reviewers must be able to move around the polling place, speak with election workers, and take photographs. Reviewers would not be able to do their job if they had to comply with the restrictions that are in the rule for observers.

Page 4 EL. 4.03 Conduct of Election Officials

(4)If observers are unable to hear an elector or election official stating a name or address, an election official shall repeat the name or address.

Wisconsin's requirement for the voter to state their name and address is challenging for some voters with disabilities including individuals who are deaf, non-verbal, or have a disability that affects their speech. We question whether the process suggested in the rule is realistic. The voting process is moving forward – there may be a long line. Is it feasible for the line to halt while the observer requests that name and address be repeated? If the observer is to direct requests to the chief, they may not be available. Voters should be treated with respect and dignity including those who are unable to speak their name or cannot speak clearly.

(5) If any electronic poll lists are used when voters announce their names and addresses, the observation area shall be positioned to allow observes to observe the screen, but observers shall not be permitted to see the screen of an electronic poll list used to register voters.

DRW supports the recommendation that observers shall not be permitted to see the screen of an electronic poll list used to register voters, to ensure voter privacy.

Page 5

(10) All observation areas shall be accessible to observers with disabilities and shall include sufficient space for mobility equipment, chairs, or other disability aids brought by the observer.

DRW supports the proposed language for observation areas to be accessible to voters with observers with disabilities, and to include space for mobility equipment, chairs, etc. We are disturbed by reports that some that some

polling places have denied observers the use of a chair and access to restrooms. We recommend that the rule include a process for observers who need an accommodation (such as a chair) to make that request in advance through the Municipal Clerk.

(11) The designated election official shall permit observers access to any unused chairs available within the observable location and with unrestricted access to restrooms if available at the observable location.

DRW supports the proposed language. The rule should clearly state that observers may have access to restrooms and to unused chairs.

EL 4.04 Conduct of observers

Page 8 (7) (8) (9) Re: Electioneering

We support 4.04 sub 7, 8 and 9 as written. It is reasonable for observers to have these anti-electioneering restrictions. Observers engaging in the kind of conduct prohibited by sub 7, 8 and 9 could be intimidating for voters.

Page 9

(11) No observer may initiate a conversation with a voter.

This is a sensitive issue. DRW respects the need to ensure voters do not receive undesired contact from observers and are not intimidated or coerced by observers. However, the rule should also acknowledge the right of the voter to ask for assistance from a person of their choice. As worded, this implies that if a voter asks an observer for help, the observer is not allowed to give assistance other than directing them to the election official. This should be modified to reflect that voters have the right to assistance from a person of their choice.

EL 4.05 Location specific requirements

(4) ABSENTEE VOTING IN RESIDENTIAL CARE FACILITIES AND RETIREMENT HOMES.

Recommendation regarding rules for observers of absentee voting in care facilities

In addition to Disability Rights Wisconsin, our recommendations regarding the use of observers in care facilities are endorsed by the following:

- AARP
- CIL Western Wisconsin
- Greater Wisconsin Agency on Aging Resources, Inc.
- Independence First
- Wisconsin Board for People with Developmental Disabilities
- Wisconsin Coalition of Independent Living Centers
- Wisconsin Disability Vote Coalition

Many people with disabilities live in residential settings such as nursing homes and group homes that participate in absentee voting conducted by Special Voting Deputies. Residents includes adults with disabilities across the age span from age 18 to frail elders.

Residents of care facilities have the same right to vote as any other citizen. Under state law, a person cannot be denied the right to vote by alleging they do not understand the objective of the elective process, unless they have been adjudicated incompetent by a court.(Wis. Stat. § 6.03(3))

Voting is a very important resident rights issue, as affirmed by the [US Centers for Medicare & Medicaid Services \(CMS\)](#):

- §483.10(b) Exercise of Rights: The resident has the right to exercise his or her rights as a resident of the facility and **as a citizen or resident of the United States.**
- §483.10(b)(1) The facility must ensure that the resident **can exercise his or her rights without interference, coercion, discrimination, or reprisal from the facility.**
- §483.10(b)(2) The resident has the right to be free of interference, coercion, discrimination, and reprisal from the facility in exercising his or her rights and to **be supported by the facility in the exercise of his or her rights as required under this subpart.**

It is essential that the rules for those observing absentee voting in residential care facilities and retirement homes protect the voting rights of residents including their rights to privacy. The act of voting and of marking a ballot, should be private even though the voting process is public and can be observable.

Page 12

c. Observers shall comply with any requirements imposed on visitors by a facility served by special voting deputies.

DRW and our partners strongly support this language. Resident safety must come first. Some facilities have reported that some observers or SVDs have been unwilling to comply with facility requirements that are in place to protect the health of vulnerable residents. That is unacceptable.

d. Observers shall be permitted to observe the process of absentee ballot distribution in the common areas of the home or facility. Observers shall not be permitted to observe a voter or the special voting deputies providing assistance to a voter, filling out a ballot or expressing which candidates or referenda the voter selects.

DRW and our partners are in agreement with the proposed language. We are in agreement with the distinction between observing the “check in process” which is permitted and observing the actual ballot completion which is not allowed due to voter privacy.

e. If voting occurs outside of the common areas of a facility served by special voting deputies, observers shall not be permitted to enter a voter’s private room, however, the observers shall be permitted to observe such voting from a common area in accordance with sub. (4)(d).

DRW and our partners strongly support the proposed language and the prohibition on observers entering the voter’s private room (this is a significant privacy issue) and clarifying that observation must take place from a common area, such as a hallway. Observers should not be allowed to enter a resident’s private room, but should observe the “check in process” voting from a common area such as a hallway; observers should not view the actual ballot completion process which is private. This is an important resident rights and privacy concern. While the common areas are considered a polling place, a resident room specifically is not a polling place.

No election observer needs to nor should have access to the private residence of a voter, especially a bedroom.

This is an area where there was disagreement among members of the WEC Advisory Committee with some members asserting the right of observers to enter a resident's private room. We ask Commissioners to consider the united position of aging and disability groups in support of the proposed rule language which provides observers with access from a common area, while maintaining the rights and privacy of residents, and prohibiting entry into the resident's private room.

f. Observers shall not create or transmit photographs, videos, or audio recordings of the observable location.

DRW and our partners are in agreement with the proposed language.

Other comments:

We would like to see this language from the 2014 Draft Rule included in the current draft rule:

GAB 4.02 (2) "The chief inspector shall make available to each inspector a summary of the rules governing election observers"

We thank Commissioners and staff for the opportunity to serve and for consideration of our comments. Please contact me if I can be of assistance in any way. I can be reached at 414-292-2724 or barbara.beckert@drwi.org.



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Office of the City Clerk

July 14, 2023

Wisconsin Election Commission Board,

Thank you for the opportunity to serve on the Observer Advisory Committee. I hope my 20+ years of election experience and involvement with Observers on election day, during recounts, SVD voting and during in-person absentee voting gives a unique perspective to the benefits and challenges of managing Observers. I would like to highlight three main points to consider when attempting to create rules regarding Observers: Observers are there to observe and not take part in election administration; Observers should be limited in number in order to minimize disruption; Observers should have a dedicated area to observe and they should not be allowed to roam/wander in the polling site.

1. Injecting observers into the election process

In our discussions on the Committee there were several instances when it was suggested that Observers should play a part in the administration of elections instead of observing the process. Namely, getting polling site plans approved by an Observer in advance of election day, being able to view confidential documentation such as proof of residence and driver licenses when registering to vote or checking in, announcing to Observers that an absentee ballot is to be remade and the reason for it, and assisting voters in voting their ballot. These are all duties assigned to sworn election officials who have mandatory election training in these areas and who take an oath to uphold the law and election integrity. There is currently no requirement for Observers to be trained and they do not take an oath to keep voter information confidential. Most of the Observers I work with I see them once and never again. If Observers want to take part in these duties, I respectfully suggest they become poll workers.

2. Limiting the number of Observers

During the course of an election day, the Chief Inspector who is the supervisor of the polling site is tasked with managing thousands of voters/ballots and up to a dozen poll workers do their jobs in checking in voters, registering voters, processing absentee ballots, re-making ballots, assisting voters to vote their ballot, monitoring voters for proper behavior, staggering meal breaks, ensuring all the needed postings are displayed, curbside voting, electioneering and on and on. One more duty is to supervise Observers.

Please keep in mind that an Observer has one task for the day for example watching the absentee process. Chiefs are extremely busy multitasking throughout the day, and limiting the total number of Observers is essential. Options for limiting Observers could include:

- a. Limit the number to one for every party on the last partisan primary ballot, and one additional non-party Observer. We do a similar type of limiting for SVD voting.
- b. Cap the total number to 3 at any given time. First come first served.
- c. Do not allow an Observer to change their affiliation. In other words, if a Democratic representative is Observing, they cannot come back later in the day and seeing another Democratic representative is present, then say they are unaffiliated. Or create a rule that once an Observer leaves their observing, they cannot return to that polling location.

- d. Allow each Municipal Clerk the option to set a total allowed at any given time with a minimum of three.
- e. However it is limited, please create one rule for all types of Observing (except potentially SVD voting)

Remember every minute an Observer takes from the Chief is a minute the Chief cannot spend on the actual election administration.

3. Create a designated observation area(s)

In restricting the movement of Observers, it is not my goal to decrease the areas in which they can observe. I am happy to set up multiple areas for observation and am happy to have them in all of my polling sites because we administer transparent and trustworthy elections. My goal is to create an area in which they will stay so the Chief can monitor their activities and ensure they are following the rules.

In summary, Observers are there to ensure a fair election. Limiting their activities, numbers and location does not hamper their ability to watch election day procedures but it does help the Chief Inspector manage the polling site in a manner that is controlled and organized. Thank you for your time and consideration.

Sincerely,



Caroline Fochs
City Clerk

Hunzicker, Brandon L - ELECTIONS

From: Eileen Newcomer <enewcomer@lwvwi.org>
Sent: Monday, July 10, 2023 10:35 AM
To: Hunzicker, Brandon L - ELECTIONS
Cc: Witecha, James - ELECTIONS; O'Brien, Angela B - ELECTIONS; Jeidy, Caitlin M - ELECTIONS; Willman, Riley P - ELECTIONS
Subject: Re: Written Comments on Election Observers Following Second Advisory Committee Meeting

Follow Up Flag: Follow up
Flag Status: Flagged

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Hi Brandon,

Thank you for the opportunity to share additional written comments with you. I was unfortunately unable to attend the last hour and a half of the second advisory committee meeting. There was lively discussion, and I wanted to offer a few comments pertaining to the discussion and comments made by my fellow committee members. I have attempted to give approximate time stamps to help identify what these comments are in response to.

5:00:00 - Re: Hotline for Election Observers Discussion

The League's experience has been that WEC staff have been very responsive when we have brought issues occurring on Election Day to their attention. We have seen them successfully reach out to the relevant clerks and election officials to rectify issues at polling places or central count locations in real time. The extended hours staff devote to making themselves available for calls on Election Day is sincerely appreciated and they have been an extremely helpful resource.

5:05:53 - Re: Requirement for observers to mark the time spent and/or sign out of a polling place

I'm not sure how this would be completed in practice. Is the expectation that observers check in with the Chief Inspectors again when leaving the polling place to sign out? Or would it be expected that observers give an estimate of how long they plan to observe at the time of sign in?

Generally observers have a rough idea of how much time they plan to spend at an observable location, however this can change on the fly depending on the situation at the location and if further observation is deemed necessary or unnecessary. Similarly, unexpected things can come up in the personal lives of observers that pull them away from the site. Those situations would make it hard for observers to give a super reliable estimate when initially signing in.

If the intent is for observers to sign out when they leave, I worry about this being an extra administrative burden for Chief Inspectors. It may put both Chief Inspectors and observers in a bad spot if the Chief is very busy at the time an observer decides to leave. The Chief may not be available to assist the observer with signing out at any given time.

5:08:08 - Re: Photo ID Options for Observers

If the requirement for observers to show a photo ID when checking in at an observable location remains, a broad range of photo IDs should be allowed including but not limited to: out of state IDs and driver's licenses, employment IDs, student IDs, credit cards with a photo, etc.

Related to the idea that the Chief would need to check the ID to make sure it conforms with what the observer puts on the observer log - The requirement should be clarified to ensure that the person's address on their ID does not need to be current. I think it is more important for the election officials to have the observers current contact information rather than their address as reflected on their ID. We know people often don't have their current address on their ID. We have experienced issues in the past with observers trying to check in with the Chief and not having their current address on their ID causing tension between the Chief and Observer. We would like to remove this point of confusion going forward.

It would be reasonable to require that the name and photo on the ID need to reasonably conform.

5:11:24 - Re: Electioneering

We support 4.04 sub 8 and 9 as written. As observers are at the polling place for long stretches of time and play a different role than voters, it is reasonable for them to have these anti-electioneering restrictions. Observers engaging in the kind of conduct prohibited by sub 8 and 9 could be intimidating for voters.

5:19:13 - Re: Election Observer assistance to voters

(11) No observer may initiate a conversation with a voter. If a voter initiates a conversation with an observer, the observer shall refer the voter to an election official for any election related questions, and briefly explain to the voter that the observer is observing the election and cannot communicate with voters. A brief wave or greeting to an individual shall not constitute a violation of this section.

I'm concerned that this violates a voter's right to have assistance from someone of their choosing. This implies that if a voter asks an observer for help, the observer is not allowed to give assistance other than directing them to the election official. This should be modified to reflect the fact that voters have the right to assistance from a person of their choice.

In addition, I strongly believe that observers should be allowed to help voters if asked and still be allowed to be observers after giving that assistance.

I also wanted to offer preferences on some of the lines in the draft rule that Brandon asked the committee to pick one line option over another.

Re: 4.05 (1) Polling Place - prefer option b.

Re: 4.05 (2) Municipal Clerk Office or Alternate Site - prefer option b.

Re: 4.05 (3) Absentee Ballot Canvass - prefer option b. And would like to see option e modified to allow the creation and transmission of photographs, videos, or audio recordings of the observable location *if there are no voters present*. I believe the absentee ballot canvass occurs at the polling place when the community does not utilize central count and if that's the case, it would not be appropriate for there to be videos taken. I would also not like to have voters who are dropping off their ballot or attempting to correct an issue on their absentee ballot certificate envelope be harassed by observers looking to record their activities.

Some additional comments:

We support the drafted language for SVD observers as written. It is important to recognize that people should have privacy in their home, and residents should have privacy in their room in a residential care facility.

It would be good to have language for whether and how observers can monitor the curbside voting process.

4.05 (5) Recount - If this is included in the rule, we would like to see it made clear that nonpartisan observers fall into the category of "interested persons" and be allowed to observe at recounts. In previous election recounts, LWV observers experienced barriers to observing as election officials claimed only partisan observers were allowed to observe. The role of nonpartisan observers and other interested persons should be clarified in the rule.

4.05 (6) Central Count - I think there needs to be clarification about what central count is in this context. Many people think of [central count](#) as the location where all absentee ballots are pooled into one location in a municipality for processing and counting. Because of many people using that term for those locations, this could cause confusion for when this section of rules apply. I am afraid it will cause unnecessary confusion for election inspectors and observers.

Language from the 2014 Draft Rule that we would like to see added back into the current draft rule: GAB 4.02 (2) "The chief inspector shall make available to each inspector a summary of the rules governing election observers"

If you have any questions about any of these comments, please don't hesitate to ask.

Best,
Eileen

On Fri, Jun 30, 2023 at 1:56 PM Hunzicker, Brandon L - ELECTIONS <brandon.hunzicker@wisconsin.gov> wrote:

Advisory Committee members,

Thank you for participating in yesterday's productive second meeting. The Wisconsin Elections Commission appreciates your willingness to take the time to offer your expertise as the Commission works to promulgate a final rule on Election Observers.

I want to offer all members the chance to submit any additional written comments for the Commissioners following yesterday's meeting. Please submit any written comments to me by **Friday, July 14**. In particular, I would encourage members who were not able to attend the meeting yesterday to submit written comments, as that will allow me to incorporate them into the staff memo that I will present to the Commission on August 4.

Sincerely,

Brandon Hunzicker

Staff Attorney

Wisconsin Elections Commission

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Eileen Newcomer

(she, her, hers)

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[You can use calendly to set up a meeting with me!](#)

TO: Wisconsin Elections Commission
FROM: Michelle Nelson, Republican Party of Wisconsin Appointee, Advisory
Committee on Election Observers
Written Comments on Draft Rule EL Chapter 4
August 3, 2023

I join in support of the Written Comments on Draft Rule EL Chapter 4 offered by my fellow Republican Party of Wisconsin appointees, with the additional comment below.

- The opening of the board of absentee ballot canvassers should be considered a “public aspect of the voting process” under Wis. Stat. 7.41(2) & Wis. Stat. 7.52(1)(a). Final tally sheets and results tapes are open to public inspection under Wis. Stats. 7.52(7) & 19.35, and photos of them should be permitted. Additionally, I would like to allow the board of absentee ballot canvassers flexibility on the placement of observers within the confined spaces of central count rooms. We support the language in EL 4.05(3), as amended below:

(3) ABSENTEE BALLOT CANVASS.

- Observers shall be permitted to observe the setup of the absentee ballot canvassing location, including the zeroing of election equipment, on election day and during all hours when a board of absentee ballot canvassers is meeting to canvass absentee ballots.
- ~~Observers shall be permitted to observe during all hours when a board of absentee ballot canvassers is meeting to canvass absentee ballots.~~
- (renumbered to EL 4.05(3)b.): Observers representing the same organization shall not be limited to less than one observer per processing table and tabulator. If the board of absentee ballot canvassers limits the number of observers for each processing table and tabulator, they may take steps necessary to accommodate observers within the space constraints in the room where absentee ballots are being canvassed.
- ~~Observers shall not create or transmit photographs, videos, or audio recordings of the observable location.~~

- e. (renumbered to EL 4.05(3)c.):Observers may create or transmit photographs, videos, or audio recordings of the observable location so long as it is not disruptive, as determined by the board of absentee ballot canvassers.

Respectfully submitted,

Michelle Nelson

EL 4.05(1)(a) vs. (1)(b)

- Strongly prefer 1a. Poll workers arrive to polling places at 6am and often do not know one another. The Chief Inspector has 1 hour or less to establish rapport, give set-up assignments, ensure everyone arrived, and to get the machine on and zero tape printed. Adding in observer management would complicate this.
- Furthermore, while the doors are unlocked to allow the poll workers into the schools, churches, and buildings at 6:00am, the building engineer often then locks them for safety until 7:00am.
- One compromise would be to have the workers wait until 7am to confirm the machine is zeroed and print the zero tape. However, this would be confusing for workers who are used to prioritizing this task. Having operating, functional machines ready for voting at 7am is critical to the smooth operation of the polling place.

EL 4.05(2)(a) vs. (2)(b)

- No strong preference on these differences. We are able to accommodate a public viewing/observation area in our front lobby for the first 4 weeks federal ballots are issued and could be returned to our office prior to the start of IPAV.

EL 4.05(2)(d)

- Strongly oppose this suggested rule all together. The preparation for transfer is extremely vague. Does this include the daily processing of mailed absentee ballots in our office prior to their transport to our secure warehouse? Does it include the sorting by ward and alphabetizing of absentee ballots that takes place on a daily basis?
- These are back office procedures of sealed ballots that create a great burden and sense of Big Brother to be observed. Chain of custody procedures are in place for the transport of ballots and are an official election record. There is no voting taking place with this process and it is unnecessary to include it in these rules.

EL 4.05(2)(f)

- Strongly support the abolition of photography when observing any IPAV activity, including the in-person return of absentee ballots by a voter.
- We have had voter intimidation incidents with observers recording the return of absentee ballots.

EL 4.05(3)(a) vs. (3)(b)

- Strongly oppose 3A and prefer 3B.
- Again, chiefs need to have the ability to organize workers, answer questions and give instructions without the interruption of observers arriving between 6 and 7am. Absolutely no ballots are canvassed without observers present. Actual voting or processing of ballots should be the standard for which observation is allowed – not setup or critical instruction time.

EL 4.05(3)(d) vs. (3)(e)

- Support 3E but it needs to be specific to municipalities that utilize Central Count and should exclude the canvassing of ballots at the polling place (with voters). Central Count has allowed

photography for my entire decade of oversight. We have had no issues whatsoever with photography or videography. In fact, it often makes the interaction between observers and election workers easier. If a ballot is being rejected, a quick photograph is often taken by the observer rather than the workers waiting for the observer to record name, address and reason for rejection.

- I would suggest adding in language that is specific to Central Count only and also specifies so long as no image is taken of any marked ballots.

EL 4.05(4)(e)

- STRONGLY support this change of language which would allow an observer to observe the voting process in common areas, but not give them the right to enter voter's rooms. They can easily view and hear the interaction from the doorway without needing to intrude into the voter's personal home. Allowing the observer into a voter's room would be similar to allowing them into the vehicle of a curbside voter – total overstep of voter privacy.

EL 4.05(6)(c) vs. (6)(d)

- See above comments regarding 3(d) and 3(e). Support 6(d) and think section 3 needs to explicitly state that it is in regards to canvassing at a polling place vs. Central Count.
- The way this is separated from the canvassing of absentee ballots in section 3 is confusing. Section 6 does not talk about whether setup of the location is observable or not. Are these sections supposed to overlap? If not, make it specific that Section 3 is at a polling place. Add whether or not setup of Central Count is observable (as stated previously, I oppose observation of setup).

Hunzicker, Brandon L - ELECTIONS

From: Katie Reinbold <townoffice@townofalgoma.org>
Sent: Tuesday, July 11, 2023 10:44 AM
To: Hunzicker, Brandon L - ELECTIONS
Subject: RE: Written Comments on Election Observers Following Second Advisory Committee Meeting

Follow Up Flag: Follow up
Flag Status: Flagged

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Here are my comments:

I would like to express my gratitude for being able to sit on this committee. I'm happy to have been part of the process. I do have to say though, it was tough coming into the second meeting. I really felt I missed some crucial discussion.

Some comments on the rules:

4.03 (5) I do not agree that an observation area must be behind the election inspectors. There are so many different room sizes for each polling location that being behind the inspectors may not be feasible. I also do not want to force that as I don't want to make my election inspectors uncomfortable.

4.03(4) There was a lot of discussion around this as to requiring a layout before the election for observers to view and make sure it's ok. They are not running the election. Every clerk will have a different definition of an observation area. And as long as we follow the rules as stated in the statutes then there should be no issue. If an observer wants to ask and have it explained to them, fine, but how about some respect for our clerks and election inspectors?

4.03(7)&(8) I understand if an observer wants to move to a different observation area, but making the Chief inspector "babysit" them doesn't seem right. I do think we want to be able to keep track of observers and where they are, but moving about the room and having a Chief chasing them to document where they are seems burdensome. I think this is something that may need more discussion, but at the same time I don't know what they answer would be. I don't want to have observers feel like they are being hindered.

4.03(17) I have no problem giving a written order of removal. It should be done based on situations though. If it's a issue where we need to have a person removed immediately and we're calling local authorities, that paperwork should be done at a different time then.

I want to make sure that we are not allowing observers to transmit photographs, videos, or audio recordings of the observable location. There were a couple sections that listed they can and they can't and unfortunately I had to leave the meeting before we got to that section.

As for the meeting itself:

I have been a clerk for 6 years and don't have a whole lot of experience when it comes to observers. Which is why I wanted to join this committee, hoping I had some non-biased opinions that could help the group. As I stated at the beginning of my email, I definitely feel like I missed some crucial discussion coming in at the second meeting. I was very disappointed by the negativity attached to this meeting. I understand some observers have had some negative experiences and we need to acknowledge that, but that doesn't mean that's how it is across the board. There were moments where it was sounding as if the observers know more than our election inspectors. There was insinuation that we are all hiding something. The few reasons I heard as to why an observer is present was for all negative reasons. I'm always happy to welcome an observer and I'm hoping they are learning the process and understanding we are doing

what we need to do to run an honest election. The more we push our clerks and election inspectors, the more that will quit. As you know, 2020 was a rough year, and we lost a lot of clerks because of it.

I hope the Wisconsin Elections Commission will take into consideration what is already expected of Clerks and Elections Inspectors. Clerks are not only for running elections, we have other jobs too. We aren't all City of Racine, or Kenosha, or Milwaukee, or Madison. Some of us are very small and can only do what we can with what we have. I'm always looking to run a fair and honest election. Some of these rules are disappointing and frustrating thinking about what I will have to do in order to be "compliant". I think it's important to have observers and have more people understand the process. Maybe we need to look at how Clerks are trained and how election inspectors are trained. With these rules, we should also look at training done as a whole. Are we missing something? Because to me, all clerks should be receiving the same training. How we implement our training should be on us. We need to be flexible based on our locations and size and equipment. Not all locations will look the same. Will we follow the same rules? Absolutely!

Thank you for your time and for the opportunity.

Katie Reinbold
Clerk, Town of Algoma

15 N Oakwood Road
Oshkosh, WI 54904
920-235-3789 Phone
www.townofalgoma.org



From: Hunzicker, Brandon L - ELECTIONS <brandon.hunzicker@wisconsin.gov>

Sent: Friday, June 30, 2023 1:56 PM

Cc: Witecha, James - ELECTIONS <james.witecha@wisconsin.gov>; O'Brien, Angela B - ELECTIONS <angela.obrien@wisconsin.gov>; Jeidy, Caitlin M - ELECTIONS <caitlinm.jeidy@wisconsin.gov>; Willman, Riley P - ELECTIONS <Riley.Willman@wisconsin.gov>

Subject: Written Comments on Election Observers Following Second Advisory Committee Meeting

Advisory Committee members,

Thank you for participating in yesterday's productive second meeting. The Wisconsin Elections Commission appreciates your willingness to take the time to offer your expertise as the Commission works to promulgate a final rule on Election Observers.

I want to offer all members the chance to submit any additional written comments for the Commissioners following yesterday's meeting. Please submit any written comments to me by **Friday, July 14**. In particular, I would encourage members who were not able to attend the meeting yesterday to submit written comments, as that will allow me to incorporate them into the staff memo that I will present to the Commission on August 4.

Sincerely,

Brandon Hunzicker
Staff Attorney
Wisconsin Elections Commission
201 West Washington Avenue
P.O. Box 7984
Madison, WI 53707-7984
brandon.hunzicker@wisconsin.gov

TO: Wisconsin Elections Commission
FROM: Republican Party of Wisconsin Appointees, Advisory Committee on Election Observers
Written Comments on Draft Rule EL Chapter 4
August 3, 2023

EL Chapter 4 Drafting Comments

- Except as otherwise specified during the “Second Advisory Committee Meeting Concerning Election Observers” held on June 29, 2023 and in these written comments, we are supportive of the draft rule as written.
- The scope statement submitted by the Wisconsin Elections Commission to the legislature dated September 29, 2022, does not consider the conduct of “communications media” under the rule as a separate entity. The draft rule expands the intended scope by treating “communications media” as a separate entity from “member of the public” under Wis. Stat. 7.41(1). Statutes do not make any such distinction. We request EL 4.01(5); 4.06, and any other references to “communications media” be removed from the final version of the rule.

1. A description of the objective of the proposed rule.

The Wisconsin Elections Commission (“Commission”) proposes to create Wis. Admin. Code EL Ch. 4 (“EL Ch. 4”), **pertaining to the conduct, regulation, and accommodation of Election Observers**. The Commission seeks to promulgate rules that set forth standards of conduct applicable to persons who are present at a polling place, or elsewhere, **for the purpose of observing all public aspects of an election.**

2. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives.

Existing Policy:

The Commission currently advises election officials, observer groups, and individuals on observer conduct using an expired version of emergency rules that were in place under the former Government Accountability

Board. The Commission advises that the expired rules are the Commission's interpretation of the public's right to access under Wis. Stat. § 7.41.

Proposed Policy:

The Commission proposes to codify a permanent rule as required by Wis. Stat. § 7.41(5). The rule will expand upon items addressed in the statute that need clarification, such as: what interactions are permissible between observers, voters, and election officials; how a chief inspector may restrict which areas are open to observers; and what may count as disruptive behavior.

Alternatives:

If the Commission does not create EL Ch. 4, the current advice provided to local election officials, observer groups and individuals will remain, without the force and effect of an underlying administrative rule.

- The contents of proof of residence documents should be protected as “confidential information”, however the type of document is not. Wis. Stat. 6.36(1)(a)12. requires that the registration list include the type of identifying document used as proof of residence. With the registration list being open to public inspection under Wis. Stat. 6.36(1)(b) and 6.45(1m) and the type of proof of residence document not being exempted from inspection in Wis. Stat. 6.36(1)(b)1.a., the rules should explicitly state as such. To clarify the “confidential information” definition with this consideration, we request that EL 4.01(6) be amended to read:
 - “Confidential information” means information that is not part of the public aspects of the voting process and includes driver’s license numbers, birth dates, social security numbers, accommodation information, photo IDs, proof of residency documents, information concerning confidential electors, guardianship information, voted ballots, and communications by a voter to a person rendering voting assistance under ss. 6.82, 6.87(5), or 6.875(6)(c)1., Stats. The type of proof of residence document presented to the election official is not considered “confidential information” for the purposes of this subsection.
- To reference specific, defined terms, we request that EL 4.01(11) be amended to read:
 - “Member of the public” means any individual, excluding a candidate appearing on the ballot at that polling place or a registered write-in

candidate for an office voted on at that ~~polling place or other~~ observable location.

- To reference specific, defined terms, we request that EL 4.01(11) be amended to read:
 - “Public aspects of the voting process” means the election activities that take place at an observation location except ~~for those that are confidential as defined in (6)~~.
- To avoid representation issues, we request that EL 4.03(1) be amended to read:
 - If there are no alternatives due to physical limitations, the designated election official may reasonably limit the number of observers representing the same organization who are present at any one time. If the designated election official acts under this subsection, at no point shall the number representing each organization be unequal.
- EL 4.03(2)
 - To avoid issues relating to name or address changes for the purpose of verifying the photo identification of a member of the public observing at a site and to clarify the language of the rule to require notifying the observer who to direct questions to, we request EL 4.03(2) be amended to read:
 - The designated election official shall maintain an observer log and shall require observers to enter the required information under EL 4.04(1) into the observer log and shall ensure that the photo ID presented ~~conforms to the information entered~~ reasonably resembles the observer. The designated election official shall then inform the observers ~~how they may ask questions~~ who to direct questions to during the day and then direct the observer to an area of the observable location established by the designated election official as an observation area. Observer logs shall be returned to the municipal clerk after the election activities at an observable location have concluded.
- To require the distribution of observer rules, we request EL 4.03(3) be amended to read:
 - The designated election official shall provide each observer with a sticker, badge, or other item that identifies an individual as an observer and distinguishes observers from election officials. The designated election official shall distribute the observer rules applicable to that observable location to the election observer.

- To define the circumstance by which an election official shall repeat the name or address of an elector, we request that EL 4.03(4) be amended to read:
 - The designated election official shall establish one or more observation areas to enable observers to readily observe all public aspects of the voting process during the election without disrupting the voting process. An observation area shall be not less than 3 feet nor more than 8 feet from each table at which electors announce their names and addresses to be issued voter numbers or at which election officials announce the name of absentee voters, not less than 3 feet nor more than 8 feet from each table at which electors may register to vote, and not less than 3 feet nor more than 8 feet from each table at which election inspectors remake any ballots. Before remaking any ballot, election inspectors shall announce to observers that the ballot is being remade and the reason for doing so. If observers are unable to hear an elector or election official stating a name or address, an election official shall repeat the name or address upon the request of the observer. The 3-foot distance described in this paragraph shall be preferred unless it would interfere with voting activities due to the physical limitations of the observable location.
- Due to the fact that registration lists are open to public inspection under Wis. Stat. 6.45(1m) to individuals observing under Wis. Stat. 7.41, and to correct a **typo**, we request the language in EL 4.03(5) be amended to read:
 - The designated election official shall establish an observation area behind the election inspectors at each table at which electors announce their names and addresses to be issued voter numbers. If any electronic poll lists are used when voters announce their names and addresses, the observation area shall be positioned to allow observers to observe the screen, but observers shall not be permitted to see the screen of an electronic ~~poll list used to register voters~~ registration form.
- Adding additional observer time tracking requirements during Election Day puts an unnecessary burden on election officials. We request EL 4.04(1) be amended to read:
 - Any member of the public intending to exercise the right to observe an election under s. 7.41, Stats., shall notify the designated election official of that intent upon entering the observable location. An observer shall sign the election observer log acknowledging that the observer understands the applicable rules and will abide by them. An observer shall present photo identification, as defined by s. 5.02(6m), Stats., to the designated election

official and shall legibly print the observer's full name, street address and municipality, and the name of the organization the observer represents, if any, ~~and the time range spent observing on the observer log~~. The observer log shall not be available for public inspection at the polling place but shall be made available after Election Day through a public records request of the clerk or board of election commissioners.

- To cross-reference removal requirements in the observer rule, we request that EL 4.04(2) be amended to read:
 - Observers shall comply with the designated election official's lawful commands or shall be subject to removal from the polling place following a warning under EL 4.03(17)(a).
- To ensure observer requests or questions are responded to in a timely manner, we request that EL 4.04(3) be amended to read:
 - All observer questions shall be directed to the designated election official or other election officials as determined by the designated election official and communicated to observers when they sign the observer log. All observer questions shall be responded to in a timely manner.
- The opening of the polling place should be considered a "public aspect of the voting process" under Wis. Stat. 7.41(2). Additionally, final tally sheets and results tapes are open to public inspection under Wis. Stats. 19.35 and photos of them should be permitted. Therefore, we support the language in EL 4.05(1), as amended below:

(1) POLLING PLACE.

- ~~a. Observers shall be allowed to observe beginning at 7 a.m. on election day and ending at 8 p.m. or when the last voter who was in line to vote at or before 8 p.m. has finished voting. After 8 p.m., observers may remain at the polling place to observe canvassing under Wisconsin's open meetings law.~~
- b. (renumbered to EL 4.05(1)a.): Observers shall be allowed to observe as soon as the election inspectors begin setting up the polling place, including the zeroing of the voting machines. After 8 p.m., observers may remain at the polling place to observe canvassing under Wisconsin's open meetings law. No observer shall disrupt the setup process of the polling place. All observer questions shall be directed to the designated election official prior to the opening of the polling place.

- c. (renumbered to EL 4.05(1)b.): Observers representing the same organization shall not be limited to less than one per ward served by the polling place.
 - d. (renumbered to EL 4.05(1)c.): Observers shall not create or transmit photographs, videos, or audio recordings of the observable location until after final tallies are completed and results are tabulated.
- The depositing of absentee ballots by electors in the municipal clerk's office in a public building during in-person absentee voting is a part of the "absentee ballot voting process", as affirmed by a recent Wisconsin circuit court order (see: *DeLorey v. Jeffreys*, 22-CV-1322). This interpretation may also be applied to the return of ballots by electors during the hours they may do so at a municipal clerk's office located in a public building. Additionally, we request simplifying the language in subd. e. (renumbered to subd. d. in our amended language). We support the language in EL 4.05(2), as amended below:

(2) MUNICIPAL CLERK OFFICE OR ALTERNATE SITE.

- a. Observers shall be permitted to observe the in-person issuing and voting of absentee ballots under s. 6.86(1)(b), Stats, as well as the return of voted absentee ballots during the hours such activities may occur at a municipal clerk's office whose office is located in a public building, or at an alternate absentee ballot site.
- ~~b. Observers shall be permitted to observe the in-person issuing and voting of absentee ballots under s. 6.86(1)(b), Stats, during the hours such activities may occur at a municipal clerk's office whose office is located in a public building, or at an alternate absentee ballot site. The return of voted by-mail absentee ballots to a municipal clerk's office or alternate site is not covered by this chapter unless it occurs in the same location and during the same hours as the issuing and voting of absentee ballots.~~
- c. (renumbered to EL 4.05(2)b.): Observers representing the same organization shall not be limited to less than two observers per municipal clerk's office located in a public building or alternate site.
- d. (renumbered to EL 4.05(2)c.): Observers shall be permitted to observe the preparations for the transfer of voted absentee ballots to

a polling place, central count location, or board of absentee ballot canvassers.

- e. (renumbered to EL 4.05(2)d.): Observers shall be permitted to observe at all alternate absentee ballot sites ~~regardless of such site's indoor, outdoor, or mobile location.~~
- f. (renumbered to EL 4.05(2)e.): Observers shall not create or transmit photographs, videos, or audio recordings of the observable location.

- The opening of the board of absentee ballot canvassers should be considered a “public aspect of the voting process” under Wis. Stat. 7.41(2) & Wis. Stat. 7.52(1)(a). Additionally, final tally sheets and results tapes are open to public inspection under Wis. Stats. 7.52(7) & 19.35, and photos of them should be permitted. We support the language in EL 4.05(3), as amended below*:

(3) ABSENTEE BALLOT CANVASS.

- a. Observers shall be permitted to observe the setup of the absentee ballot canvassing location, including the zeroing of election equipment, on election day and during all hours when a board of absentee ballot canvassers is meeting to canvass absentee ballots.
- ~~b. Observers shall be permitted to observe during all hours when a board of absentee ballot canvassers is meeting to canvass absentee ballots.~~
- c. (renumbered to EL 4.05(3)b.): Observers representing the same organization shall not be limited to less than one observer per processing table and tabulator.*
- ~~d. Observers shall not create or transmit photographs, videos, or audio recordings of the observable location.~~
- e. (renumbered to EL 4.05(3)c.): Observers may create or transmit photographs, videos, or audio recordings of the observable location so long as it is not disruptive, as determined by the board of absentee ballot canvassers.

*NOTE: Michelle Nelson has submitted an additional comment independently for consideration.

- Further restricting observers beyond current requirements does not contribute to improving public confidence in the electoral process. We request leaving the current guidance on voting occurring in a resident's room the same, as stated on page 13 of the manual *Absentee Voting in Residential Care Facilities and Retirement Homes*, published February 2022. We support EL 4.05(4), as amended below:

(4) ABSENTEE VOTING IN RESIDENTIAL CARE FACILITIES AND RETIREMENT HOMES.

- a. Only one observer from each of the 2 political parties whose candidate for governor or president received the greatest number of votes in the municipality, in the last general election, may accompany the special voting deputies to absentee voting locations described in s. 6.875, Stats. Each party wishing to have an observer present shall submit the name of the observer to the clerk or board of election commissioners no later than the close of business on the last business day prior to the visit to the facility.
- b. Observers shall be permitted to accompany the special voting deputies during the hours when the deputies will be administering voting in accordance with s. 6.875, Stats.
- c. Observers shall comply with any requirements imposed on visitors by a facility served by special voting deputies.
- d. Observers shall be permitted to observe the process of absentee ballot distribution in the common areas of the home or facility. Observers shall not be permitted to observe a voter or the special voting deputies providing assistance to a voter, filling out a ballot or expressing which candidates or referenda the voter selects.
- ~~e. If voting occurs outside of the common areas of a facility served by special voting deputies, observers shall not be permitted to enter a voter's private room, however, the observers shall be permitted to observe such voting from a common area in accordance with sub-~~
(4)(d). There may be instances when voting occurs in a resident's room. If space permits, observers are allowed inside the resident's room, and in an observation area from 3 to 8 feet where the voting occurs, as determined by the SVDs. If space constraints prevent accommodating an observation area within that distance, the special voting deputies shall document the actual location of the observation

area and the reasons why it could not be located within the 3 to 8 feet distance. Notwithstanding the 3 to 8 feet distance requirement, the observation area shall not be situated to permit observers to hear any conversation between the elector and an individual who is assisting the elector in marking the ballot, whether the assistor is a Special Voting Deputy or another individual. As an election official, SVDs must enforce the voter's constitutional right to cast a secret ballot, just as the individual is entitled to in other absentee or polling place settings.

- f. Observers shall not create or transmit photographs, videos, or audio recordings of the observable location.
- Wis. Stat. 9.01 does not reference “members of the public” in Wis. Stat. 7.41, “observers”, or “election observers” - only “interested persons”. Chapter 9 of Wisconsin Statutes do not once refer to Wis. Stat. 7.41. The scope statement submitted by the Wisconsin Elections Commission to the legislature dated September 29, 2022, does not include the conduct of “interested persons” at recounts. The draft rule expands the intended scope by including recounts. We request EL 4.05(5), and any other references to “recounts” be removed from the final version of the rule.

1. A description of the objective of the proposed rule.

The Wisconsin Elections Commission (“Commission”) proposes to create Wis. Admin. Code EL Ch. 4 (“EL Ch. 4”), **pertaining to the conduct, regulation, and accommodation of Election Observers**. The Commission seeks to promulgate rules that set forth standards of conduct applicable to persons who are present at a polling place, or elsewhere, for the purpose of observing all public aspects of an election.

2. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives.

Existing Policy:

The Commission currently advises election officials, observer groups, and individuals on observer conduct using an expired version of emergency rules that were in place under the former Government Accountability Board. The Commission advises that the expired rules are the Commission's interpretation of the public's right to access under Wis. Stat. § 7.41.

Proposed Policy:

The Commission proposes to codify a permanent rule as required by Wis. Stat. § 7.41(5). The rule will expand upon items addressed in the statute that need clarification, such as: what interactions are permissible between observers, voters, and election officials; how a chief inspector may restrict which areas are open to observers; and what may count as disruptive behavior.

Alternatives:

If the Commission does not create EL Ch. 4, the current advice provided to local election officials, observer groups and individuals will remain, without the force and effect of an underlying administrative rule.

- Final tally sheets and results tapes are open to public inspection under Wis. Stats. 19.35, and taking photos of them should be permitted. We support the language in EL 4.05(6), as amended below:

(6) CENTRAL COUNT.3

- a. Observers shall be permitted to observe all counting of ballots occurring at a central counting location.
- b. Observers representing the same organization shall not be limited to less than one observer per processing table and tabulator.
- ~~c. Observers shall not create or transmit photographs, videos, or audio recordings of the observable location.~~
- d. Observers may create or transmit photographs, videos, or audio recordings of the observable location so long as it is not disruptive, as determined by the election official in charge of the central count under Wis. Stat. 5.86.

Please do not hesitate to reach out if there are any questions.

Respectfully submitted,

Ryan Retza

Debra Morin

Michelle Nelson*

Lana Lee Helm

*NOTE: Michelle Nelson has submitted an additional comment independently for consideration.

July 14, 2023

Wisconsin Election Commission Advisory Committee

Dear Brandon,

Please accept this letter, and the accompanying proposal, as the public comments of True the Vote, Inc. with respect to the proposed rules governing Conduct, Regulation, and Accommodation of Election Observers (“Rule 4”), currently under consideration by the Wisconsin Elections Commission Advisory Committee. This document is being submitted within the July 14, 2023 time frame allowed by the Commission. Kindly confirm receipt.

We wish to offer the following specific comments on the proposed Rule 4, which would, if adopted in current form, be contrary both to Wisconsin’s Constitution and to relevant statutes, as well as internally inconsistent, viz.:

- Violation of both the United States and Wisconsin Constitutions: The rule, as proposed, creates due process concerns by committing, to the unchecked discretion of election officials, the ability to impose potentially criminal penalties, on observers. In addition, EL 4.04(11) places an undue burden on free speech.
- Contrary to Wisconsin Statutes: The proposed language in EL 4.03(17) goes beyond the statutory authority of Wisconsin Stats. 7.41(3) and 7.41(5) regarding which officials have the authority to remove an observer. In addition, Wisconsin Stat. 7.41(5) grants authority to regulate *conduct at*, but not *access to*, polling places, whereas the proposed rule purports to control access not only to the election location, but also to information, to which observers should have access under the law.
- Novel definitions: the definitions of “Confidential information” under proposed EL 4.01(6) and “Public aspects of the voting process” under proposed EL 4.01(17) are circular and improperly create new categories of information that may be hidden from public view, contrary to Wisconsin Stat. 7.41(2).

In light of the foregoing problems with the proposed Rule 4, we offer, as a workable alternative, the attached substitute proposal, which we believe does not conflict with statutes or individual constitutional rights. It also meets the objectives set forth nearly 10 years ago by the Government Accountability Board (“GAB”) when, on July 21, 2014, it approved guidance governing election observers—which procedures have actually been referenced, including in elections training materials, across Wisconsin since that time. Indeed, such guidance is still included on the WEC website as of today’s date. If the substitute proposal looks familiar, that is because it is virtually identical to the Rule 4 procedures that have been used by municipal clerks and election officials for the past decade. We believe that to be a good base to work from.

Accordingly, we offer the accompanying substitute proposal, and urge that it be adopted in lieu of the constitutionally-, statutorily-, and logically problematic proposal currently under consideration.

Please contact me with any questions or comment.

Best,

Kenneth Dragotta
True the Vote

CHAPTER EL 4

ELECTION OBSERVERS

SECTION 1. EL 4 is created to read:

EL 4.01 Definitions.

(1) In this chapter:

(a) “Commission” means the Wisconsin Elections Commission.

(b) “Chief inspector” means the chief inspector at a polling place, under s.7.30(6)(b), Stats., or the election official that the chief inspector designates to carry out the responsibilities of the chief inspector under this chapter.

(c) “Clerk” means the municipal or county clerk, the executive director of the board of election commissioners, or the official designated by the clerk or director to carry out the election responsibilities under this chapter.

(d) “Communications media” has the meaning given in s. 13.62(5r), Stats.

(e) “Electioneering” has the meaning given in s. 12.03(4), Stats.

(f) “Inspector” or “election inspector” means any individual appointed pursuant to s. 7.30, Stats., to conduct an election at a polling place.

(g) “Member of the public” means any individual, excluding a candidate appearing on the ballot at that polling place or a registered write-in candidate for an office voted on at that polling place or other location.

(h) “Observer” means any member of the public who is present at any polling place, or in the office of any municipal clerk whose office is located in a public building on any day that absentee ballots may be cast in that office, or at an alternate site under s. 6.855, Stats., on any day that absentee ballots may be cast at that site, for the purpose of observation of an election or the absentee ballot voting process.

(i) “Public aspects of the voting process” means the election activities that take place at a polling place, or other observation location, that include the opening of a polling place prior to the commencement of voting, waiting in line to vote by electors, the election day registration process, the recording of electors under s. 6.79, Stats., the elector’s receipt of a ballot, the deposit of the ballot into the ballot box, a challenge to an elector’s right to vote, the issuing of a provisional ballot, and the counting and reconciliation process.

EL 4.02 Observers at the polling place.

(1) Any member of the public intending to exercise the right to observe an election under s. 7.41, Stats., shall notify the chief inspector of that intent upon entering the voting area of a polling place. An observer shall sign the election observer log. An observer shall present photo identification to an election inspector and also legibly list the observer's full name, street address and municipality, and the name of the organization or candidate the observer represents, if any, on the log. The chief inspector shall make available to each inspector a summary of the rules governing election observers. The inspector shall verify by marking on the log that the observer's name listed on the log matches the photo identification, and shall attach the log to the Inspectors' Statement, GAB 104. The observer log shall not be available for public inspection at the polling place but shall be made available after Election Day through a public records request of the clerk or board of election commissioners. The chief inspector shall provide the observer with a tag or badge which reads "Election Observer." An observer shall wear this tag or badge at all times when inside the polling place.

(2) If necessary due to physical limitations, the chief inspector may reasonably limit the number of observers representing the same organization or candidate.

(3) The chief inspector shall direct the observer to an area of the polling place designated by the chief inspector as an observation area.

(4) The observation area shall be situated to enable observers to readily observe all public aspects of the voting process during the election without disrupting the voting process. The observation area shall be reasonably sized and shall be not less than 3 feet nor more than 8 feet from the table at which electors are announcing their name and address to be issued a voter number, and not less than 3 feet nor more than 8 feet from the table at which a person may register to vote. If observers are unable to hear the electors stating their name and address, the poll workers shall repeat the name and address. If space constraints prevent the polling place from accommodating an observation area within the 3 – 8 feet distance, the municipal clerk and chief inspector shall record on the Inspectors' Statement the actual location of the observation area and the reasons why it could not be located within the 3 – 8 feet distance. The municipal clerk shall, within seven days of the election, provide to the board, the portion of the Inspectors' Statement which documents the reasons why the observation area could not be located within the 3 – 8 feet distance.

(5) Before remaking any ballot, election inspectors shall announce to observers that the ballot is being remade and the reason for doing so. Election inspectors shall also inform observers at the time that absentee ballots are inserted into ballot boxes or tabulating equipment.

(6) Observers should comply with the chief inspector's lawful commands or may be subject to removal from the polling place pursuant to s. 7.41(3), Stats.

(7) All observer questions and challenges should be directed to the chief inspector or to the chief inspector's designee.

(8) Upon receiving a challenge to a voter's ballot at the polling place, the chief inspector shall follow the challenge procedure in ch. EL 9. The challenge shall be recorded on the Challenge Documentation Form, EL-104c or EL-104cs.

(9) No observer may engage in any loud, boisterous, or other overtly disruptive behavior that disrupts the orderly conduct of the election or interferes with voting.

(10) While in the polling place, observers should keep conversation to a minimum and shall try to conduct whatever conversation is necessary at a low enough volume to minimize distraction to electors and to the election inspectors and any other election officials.

(11) Observers shall be permitted to view the poll lists, excluding the confidential portions of the lists maintained under ss. 6.36(4) and 6.79(6), Stats., as long as doing so does not interfere with or distract electors under s. 5.35(5), Stats.

(12) No observer may be permitted to handle an original version of any official election document.

(13) No observer may engage in electioneering as defined in s.12.03, Stats.

(14) No observer may use a cellular telephone or other wireless communication device inside the voting area to make a voice call. Text messaging and other non-audible uses of such a device are permissible.

(15) The chief inspector may order that conversation be minimized if it is disruptive or interferes with the orderly conduct of the election.

(16) Nothing in this subchapter shall be construed to prevent any observer from assisting an elector under s. 6.82, Stats., provided that the elector requests the observer's assistance, and the assistance meets the other requirements of s. 6.82, Stats., and the observer qualifies to provide assistance under that statute.

(17) No observer may wear any clothing or buttons having the name or likeness of, or text related to, a candidate, party, or referendum group appearing on the ballot, or that is intended to influence voting at an election, or having text which describes, states, or implies that the observer is a governmental official or has any authority related to the voting process.

(18) No observer may use any video or still camera inside the polling place while the polls are open for voting.

(19) After the polls close, candidates are allowed to be present and the prohibition of video and still cameras does not apply unless it is disruptive or interferes with the administration of the election.

(20) The chief inspector shall:

(a) Warn an observer to cease offending conduct when:

1. The observer commits an overt act that violates a provision of this section which actually disrupts the operation of the polling place.

2. The observer violates s. 12.03(2) or 12.035, Stats.

(b) Order an observer to depart the polling place when an observer does not cease offending conduct following a warning under sub. (a). If the offending observer declines or otherwise fails to comply with the chief inspector's order to depart, the chief inspector shall take lawful action to implement the order, including summoning local law enforcement to remove the offending observer. In the event that a chief inspector orders an observer to leave the polling place, the chief inspector shall contemporaneously provide a written explanation to the observer which includes the reason for the order and the signatures of the chief inspector as well as another inspector representing the opposite political party of the chief inspector, if available. The chief inspector shall have sole authority to order the removal of an observer, but the other inspector may note his or her concurrence or disagreement with the decision on the Inspectors' Statement.

(21) If an observer is removed from a polling place pursuant to subsection (20) above, the municipal clerk shall, within seven days of the incident, provide to the commission a copy of the portion of the Inspectors' Statement which documents the incident. Board staff shall submit a summary to the board of all reported incidents in which observers were removed from the polling place or other locations pursuant to this chapter.

EL 4.03 Observers at the municipal clerk's office.

(1) Observers shall be permitted to be present at the municipal clerk's office, provided the clerk's office is located in a public building, or an alternate site for absentee voting designated under s. 6.855, Stats., on any day that absentee ballots may be cast in the office.

(2) Observers shall conform their conduct to the requirements of s. EL 4.02. The municipal clerk shall exercise the authority of the chief inspector under s. EL 4.02 to regulate observer conduct.

(3) The clerk shall establish observation areas to allow observers to readily view all public aspects of the absentee voting process without disrupting the voting process. The observation area shall be reasonably-sized and shall be not less than 3 feet nor more than 8 feet from the table at which electors are announcing their name and address to be issued a voter number, and not less than 3 feet nor more than 8 feet from the table or counter at which a person may register to vote. If space constraints prevent the municipal clerk's office from accommodating an observation area within that distance, the municipal clerk shall document the actual location of the observation area and the reasons why it could not be located within the 3 – 8 feet distance. No observer is allowed behind the counter in the clerk's office. The municipal clerk shall, within seven days of the election, provide to the board, the portion of the Inspectors' Statement which documents the reasons why an observation area could not be located in compliance with the 3 – 8 feet distance requirement.

(4) All observer questions should be directed to the clerk or to the clerk's designee.

(5) If any observer engages in any loud, boisterous, or other overtly disruptive behavior that actually disrupts the orderly conduct of the election or interferes with voting, the clerk shall issue a warning as set forth in s. EL 4.02(20)(a) and, if the observer does not cease the offending conduct, order the observer's removal as set forth in s. GAB 4.02(20)(b).

(6) No observer may use any video or still camera inside the clerk's office while voting is in progress.

EL 4.04 Observers at the central counting location.

(1) In a municipality using a central counting location under s. 5.86, Stats., observers shall be permitted to be present at the central counting location.

(2) Observers shall conform their conduct to the requirements of s. EL 4.02. The municipal clerk shall exercise the authority of the chief inspector under s. EL 4.02 to regulate observer conduct.

(3) The clerk shall establish observation areas to allow observers to readily view all public aspects of the counting process. The observation area reasonably-sized and shall be not less than 3 feet nor more than 8 feet from the table at which the counting is taking place without disrupting that process. If space constraints prevent the location from accommodating an observation area within that distance, the municipal clerk shall document the actual location of the observation area and the reasons why it could not be located within the 3 – 8 feet distance. The municipal clerk shall, within seven days of the election, provide to the board, the portion of the Inspectors' Statement which documents the reasons why the observation area could not be located within the 3 – 8 feet distance.

(4) Before remaking any ballot, election inspectors shall announce to observers that the ballot is being remade and the reason for doing so.

(5) If any observer engages in any loud, boisterous, or other overtly disruptive behavior that actually disrupts the orderly conduct of the count, the clerk shall issue a warning as set forth in s. EL 4.02(20)(a) and, if the observer does not cease the offending conduct, order the observer's removal as set forth in s. GAB 4.02(20)(b).

(6) Observers shall be permitted to use a video or still camera inside the central count location unless in doing so it actually disrupts the administration of the election.

(7) All observer questions and challenges should be directed to the clerk or the clerk's designee.

EL 4.05 Observers at absentee ballot canvass.

(1) In a municipality using a central absentee ballot canvass location under s. 7.52, Stats., observers shall be permitted to be present at the canvass location.

(2) Observers shall conform their conduct to the requirements of s. EL 4.02. The board of absentee ballot canvassers shall exercise the authority of the chief inspector under s. EL 4.02 to regulate observer conduct.

(3) The board of absentee ballot canvassers shall establish observation areas to allow observers to readily view all public aspects of the canvassing process. The observation area shall be reasonably-sized and not less than 3 feet nor more than 8 feet from the table at which the canvassing is taking place. If space constraints prevent the location from accommodating an observation area within that distance, the municipal clerk shall document the actual location of the observation area and the reasons why it could not be located within the 3 – 8 feet distance. The municipal clerk shall, within seven days of the election, provide to the board, the portion of the Inspectors' Statement which documents the reasons why the observation area could not be located within the 3 – 8 feet distance.

(4) Before remaking any ballot, election inspectors shall announce to observers that the ballot is being remade and the reason for doing so.

(5) If any observer engages in any loud, boisterous, or other overtly disruptive behavior that actually disrupts the orderly conduct of the count, the board of absentee ballot canvassers shall issue a warning as set forth in s. GAB 4.02(20)(a) and, if the observer does not cease the offending conduct, order the observer's removal as set forth in s. GAB 4.02(20)(b).

(6) Observers shall be permitted to use a video or still camera inside the absentee canvass location unless it actually disrupts the administration of the absentee ballot canvass.

(7) All observer questions and challenges should be directed to the member of the board of absentee ballot canvassers designated to receive questions and challenges.

EL 4.06 Observers at absentee voting in certain homes, facilities, and complexes.

(1) One observer from each of the 2 political parties whose candidate for governor or president received the greatest number of votes in the municipality, in the last general election, may accompany the special voting deputies to absentee voting locations described in s. 6.875, Stats. Each party wishing to have an observer present shall submit the name of the observer to the clerk or board of election commissioners no later than the close of business on the last business day prior to the visit to the facility.

(2) The conduct of any observer shall conform to the requirements of s. GAB 4.02. The special voting deputies shall exercise the authority of the chief inspector under s. GAB 4.02 to regulate observer conduct.

(3) The special voting deputies shall establish observation areas to allow observers to readily view all public aspects of the absentee voting process without disrupting the voting process. The observation area shall reasonably-sized and be not less than 3 feet nor more than 8 feet from the location at which electors are marking their ballots. If space constraints prevent the facility from

accommodating an observation area within that distance, the special voting deputies shall document the actual location of the observation area and the reasons why it could not be located within the 3 – 8 feet distance. Notwithstanding the 3 – 8 feet distance requirement, the observation area shall not be situated to permit observers to hear any conversation between the elector and an individual who is assisting the elector in marking the ballot.

(4) If any observer engages in any loud, boisterous, or other overtly disruptive behavior that actually disrupts the orderly conduct of the absentee voting process, the special voting deputies shall issue a warning under s. EL 4.02(20)(a) and, if the observer does not cease the offending conduct, order the observer's removal under s. EL 4.02(20)(b).

(5) No observer may be permitted to use a video or still camera inside the voting location.

(6) All observer questions should be directed to the special voting deputies.

EL 4.07 Observers at a recount.

(1) Pursuant to s. 9.01(1)(b)11., Stats., the recount of any election shall be open to any interested member of the public, including candidates and their counsel.

(2) Observers shall conform their conduct to the requirements of s. EL 4.02. The board of canvassers shall exercise the authority of the chief inspector under s. EL 4.02 to regulate observer conduct.

(3) The board of canvassers may limit observers to a designated area, but the observers shall be positioned so that they can see the poll lists and each individual ballot as it is counted. If there is not enough room for all observers to view the ballots as they are being counted, visual preference shall be given to the candidates or their representatives.

(4) If any observer engages in any loud, boisterous, or other overtly disruptive behavior that actually disrupts the orderly conduct of the count, the board of canvassers shall issue a warning as set forth in s. EL 4.02(20)(a) and, if the observer does not cease the offending conduct, order the observer's removal as set forth in s. EL 4.02(20)(b).

(5) Observers shall be permitted to use a video or still camera inside the recount location unless it actually disrupts the administration of the election.

(6) All observer questions and challenges should be directed to the member of the board of canvassers designated to receive questions and challenges.

(7) The observation area and conduct of observers at a recount may be more specifically governed by a recount plan adopted by the board of canvassers consistent with the public's right to observe the recount process and the ability of election officials to conduct the recount.

EL 4.08 Communications media observers.

(1) Observers from communications media organizations shall identify themselves and the organization they represent to the chief inspector upon arriving at the polling place. The inspector shall record that information on the Inspectors' Statement, EL-104.

(2) Communications media observers shall be permitted to use video and still cameras provided the cameras are not used in a manner that allows the observer to see or record how an elector has voted and provided the cameras do not disrupt or interfere with voting or disrupt the orderly conduct of the election. The Board may also use video and still cameras at polling places, municipal clerks' offices, central counting locations, or absentee ballot canvass locations, or authorize others to do so for purposes authorized by the Board.

EL 4.09 Polling place accessibility assessments.

(1) This section applies to disability advocates and other individuals authorized by the board to assess the compliance of a polling place with s. 5.25(4)(a), Stats.

(2) When practical, groups and individuals observing under this section shall notify the clerk at least 24 hours in advance of their intent to assess polling place accessibility.

(3) Disability advocate observers shall be allowed out of the designated observation area to take accessibility measurements to ensure compliance with polling place accessibility requirements unless it is disruptive or interferes with the administration of the election.

(4) Disability advocate observers shall be allowed to take photos and video to document compliance with the accessibility requirements unless it is disruptive or interferes with the administration of the election.

(5) Disability advocate observers shall be allowed to wear shirts or name tags identifying themselves as disability advocate observers.

(6) Election officials, including poll workers, shall facilitate the work of disability advocate observers in making accessibility assessments.

From: [Cranley, Martha](#)
To: [Hunzicker, Brandon L - ELECTIONS](#)
Cc: [Witecha, James - ELECTIONS](#); [O'Brien, Angela B - ELECTIONS](#); [Jeidy, Caitlin M - ELECTIONS](#); [Willman, Riley P - ELECTIONS](#)
Subject: Election observer draft rule
Date: Friday, July 14, 2023 8:29:15 AM
Attachments: [image001.png](#)

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Dear Mr. Hunzicker

Thank you for the opportunity to share AARP's comments on the proposed Election Observer rule.

AARP has long advocated for fair and straightforward election procedures that help increase the participation of voters aged 50 and older. We assert that voting systems, processes and registration procedures should be designed to encourage maximum participation in voting. And changes to that process should ensure increased access, fairness, and simplicity; not added complexity. We understand the need for the Wisconsin Elections Commission to provide clarity around the role of observers in nursing homes.

We appreciate that the WEC's draft rule specifically protects the right of nursing home residents to have the privacy afforded to all voters while casting a ballot in their own room. Therefore, AARP strongly supports the requirement prohibiting observers from entering the voter's private room to observe voting as well as the language clarifying that the observation must take place from a common area (such as a hallway). We further agree with the distinction made in the proposed rule that the nursing home itself is the polling place but NOT the private room of the resident. This distinction is critical to protect the privacy rights of all residents.

Thank you for your commitment to the rights of all voters and to assuring that vulnerable nursing home residents' privacy is respected in this process.

Sincerely,

Martha Cranley

M. Martha Cranley
State Director
(She, Her, Hers)

