

# WISCONSIN ELECTIONS COMMISSION

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## MEMORANDUM

**TO:** Wisconsin Municipal Clerks  
City of Milwaukee Election Commission  
Wisconsin County Clerks  
Milwaukee County Election Commission

**FROM:** Michael Haas, Interim Administrator  
Nathan Judnic, Legal Counsel  
Diane Lowe, Lead Elections Specialist

**DATE:** November 2, 2016

**SUBJECT:** Counting Write-in Votes For President and Vice-President Candidates

Wisconsin Elections Commission (WEC) staff has received many calls with respect to counting write-in votes for the offices of President and Vice-President of the United States. The guidance below is based on the limited information provided in Wis. Stats. §§ 7.50(2)(i) and 8.185 which addresses the counting of these write-in votes. Please read this memo in its entirety to ensure that write-in votes for President and Vice-President are tabulated uniformly across the State, as it potentially requires canvassing votes for presidential candidates who are not registered as write-in candidates, if the candidate receives at least 10% of the votes cast in a particular ward.

### Background - Write-in Candidates for President/Vice President

The deadline has passed for prospective write-in candidates for the offices of President and Vice-President to file Declarations of Candidacy and a list of electors, as provided in Wis. Stat. § 8.185. All candidates listed as Registered Write-in Candidate for President and Vice-President on the attached report have met these requirements. There are currently nine President/Vice-President "teams" that qualify as registered write-in tickets. For the WEC staff to consider a write-in candidate for President or Vice-President as "registered" the individual must have submitted a Declaration of Candidacy and a list of electors by the statutory deadline. The Declaration of Candidacy provides the name of the write-in candidate, and the list of presidential electors states who will support the candidate in the Electoral College should they receive the highest number of votes in Wisconsin.

**Please note:** One write-in candidate for President did not submit a Declaration of Candidacy for his Vice-President running mate. Therefore *the presidential candidate is listed without a running mate.*

### The Statutory Basis for Counting Write-in Votes for President and Vice-President

The statute that discusses counting presidential write-in votes is not detailed. But Wis. Stat. § 7.50 provides direction on how votes should be counted for President and Vice-President in certain circumstances.

7.50(2)(i) *“The failure by an elector to write in the name of a candidate for the office vice president of the United States on the general election ballot does not invalidate the elector’s vote for any candidate whose name is written in for the office of president of the United States.”*

**A write-in vote for President should not be invalidated if the write-in line for Vice-President is left blank.**

Wis. Stat. § 7.50(2)(i) Cont: *“The failure of an elector to write in the name of a candidate for the office of president of the United States on the general election ballot invalidates the elector’s vote for any candidate whose name is written in for the office of vice president of the United States.”*

**A write-in vote for Vice-President, with the write-in line for President left blank, does not count as a vote for President.**

### Counting Combinations of Registered Write-in Votes for President/Vice President.

7.50(2)(h): *“In the general election or a partisan special election, a write-in vote may not be counted for any candidate if the candidate’s name appears on the official ballot, except a write-in vote cast for the same office under which the candidate’s name appears if no other similar name appears on the ballot for any office.”*

**Any write-in vote for President and Vice-President that combines the name of a registered write-in candidate with the name of a candidate on the ballot is not counted, unless the exact ballot ticket is written in.**

~~Cherunda Fox/Bill Weld~~   ~~Roger Kushner/Tim Kaine/~~   Donald Trump/Mike Pence **OK**  
Hillary Clinton/Tim Kaine **OK**

**A write-in vote for a registered write-in candidate for President which is combined with any (except a candidate named on the ballot) candidate for Vice-President (whether the VP name is registered or not) is a vote for the write-in candidate for President. The combinations below would all be votes tallied for candidate Evan McMullin.**

Evan McMullin/Nathan Johnson **OK**   Evan McMullin/Mindy Finn **OK**   McMullen/Sanders **OK**

Below is quick-reference guide for Tallying Write-In Votes for President on Election Night:

<b>Write In Vote For:</b>		
<b>Presidential Candidate</b>	<b>Vice Presidential Candidate</b>	<b>Vote Counted?</b>
Registered Write In	Registered Write In	Yes
Registered Write In	Not Registered	Yes
Registered Write In	None	Yes
Registered Write In	Candidate on Ballot	No
Not Registered	None	No
Not Registered	Not Registered	No
None	Registered Write In	No
None	Not Registered	No
Candidate on Ballot	Candidate on Ballot	Yes
Candidate on Ballot	Registered Write In	No

**\*Nonregistered Write-in Candidates for President/Vice President May Have to be Counted in Some Cases\***

Wis. Stat. § 8.185(1), provides that write-in votes for President/Vice-President are to be counted in two instances: 1) the candidate has filed with the Commission a list of presidential electors (and a Declaration of Candidacy as discussed earlier, and required by Wis. Stat. § 8.185(2)), or 2) a person who is written in for President receives 10% of the total votes cast in the ward, or the municipality if not divided into wards.

The 10% threshold has not been an issue in previous presidential elections, as write-in candidates have not been as popular among voters. With an increased emphasis and widespread movement to write in candidates this year that have not properly registered, the WEC staff is providing more detail on this rarely used statutory provision. The WEC staff has received calls from individuals who believe an individual may hit this threshold. It is possible that in some wards, a non-registered candidate could reach the 10% threshold.

In order to comply with Wis. Stat. § 8.185(1), we ask municipal clerks to instruct poll workers to count the write-in votes for President as outlined in this guidance above, but also to document any nonregistered write-in candidate who appears to be receiving a high-number of votes. Before beginning to count write-in votes for President/Vice-President, the poll workers may easily determine the number of votes a nonregistered write-in candidate would have to receive to meet the 10% threshold by taking the total number of votes cast in the ward and moving the decimal point left one digit. You will likely be able to tell on Election Night from your voting

equipment tape whether the total number of scattering votes for any office is even close to the 10% threshold and whether your election inspectors will need to document any nonregistered write-in candidate. If it is clear that the number of total scattering votes is not close to the 10% threshold, focus is only required to be given to the registered write-in candidates, as it would then be mathematically impossible for the threshold to be met.

Examples: Total votes cast for president in the ward:	5, 280.	10% of 5,280 = 528
Total votes cast for the office in the ward:	410.	10% of 410 = 41
Total votes cast for the office in the ward:	42.	10% of 42 = 5

If a candidate is at or close to 10% of the votes cast in the ward for the office of President, the votes for the candidate must be individually tallied. However, once it becomes evident that it is mathematically impossible for a non-registered write-in candidate to reach the 10% threshold, votes for that candidate no longer need to be tallied, and they are recorded in the scattering category.

We hope this guidance is helpful. We understand it is late in the process, but thought it was necessary to provide given the interest and inquiries we have received in the possibility of write-in candidates receiving a significant number of votes even if they are not registered.

If you have questions, please contact the Elections Help Desk at 608-261-2028 or [Elections@wi.gov](mailto:Elections@wi.gov).