

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 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 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.

- (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 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 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.
- (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.<sup>1</sup>
- (13) “Observe” means to see, hear, or read, and does not include physically handling election related materials.

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<sup>1</sup> 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 in use.

- (14) “Observer” means any member of the public who 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 those that are confidential.
- (18) “Representing the same organization” means individuals who are members of the same organization.
- (19) “Representing the same organization” means individuals 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.
- (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 conforms to the information entered. The designated election official shall then inform the observers how they may ask questions 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.

(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 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.

(5) 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.

- (6) 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) 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) 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) The designated election official shall position the observer area to minimize contact between observers and voters and election officials.
- (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.
- (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.
- (12) 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) 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) 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), Stats. Election officials shall not permit observers to create or transmit a photocopy, photograph, or video of the poll lists on election-day.
- (15) Election officials shall not permit observers to handle an original version of any official election document.
- (16) Election officials shall not permit observers to observe any confidential information.
- (17) 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, 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) 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 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.

#### **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.
- (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.
- (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 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, 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.
- (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. 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., 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 observable location.

(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 alternate absentee ballot sites regardless of such site's indoor, outdoor, or mobile location.

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

(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. 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.<sup>2</sup>

- 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.

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<sup>2</sup> 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."

(6) CENTRAL COUNT.<sup>3</sup>

- 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

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places, municipal clerks' offices, central counting locations, or absentee ballot canvass locations, or authorize others to do so for purposes authorized by the Commission.