



Wisconsin Elections Commission

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Wisconsin Elections Commission

Quarterly Meeting

201 W. Washington Avenue, Second Floor

Madison, Wisconsin

10:00 a.m. September 7, 2023

Open Session Minutes

Present: Commissioner Marge Bostelmann, Commissioner Joseph J. Czarnecki, Commissioner Ann Jacobs, Commissioner Don M. Millis, Commissioner Robert Spindell Jr., and Commissioner Mark Thomsen, in the Tommy G. Thompson Center boardroom.

Staff present: Joel DeSpain, Sharrie Hauge, Brandon Hunzicker, Robert Kehoe, Anna Langdon, Jon Nelson, Angela O'Brien, Riley Vetterkind, Riley Willman, Jim Witecha, and Meagan Wolfe, in the Tommy G. Thompson Center boardroom.

A. Call to Order

Commission Chair Millis called the meeting to order at 10:09 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. Public Comment

Eileen Newcomer

Chair Millis noted that Eileen Newcomer also submitted written comment.

Eileen Newcomer offered support for the Wisconsin Elections Commission on behalf of the League of Women Voters of Wisconsin and provided comment on the election observer rule and the Uniform Absentee Ballot Instructions.

Discussion.

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

Peter Bernegger

Peter Bernegger did not appear in the meeting during the public comment period. Chair Millis moved on to the next speaker, then noted during Item G prior to closed session that Mr. Bernegger reached out to staff indicating he would not appear to give public comment and would instead rest on the written comments he provided prior to the meeting.

Barbara Beckert

Barbara Beckert appeared on behalf of Disability Rights Wisconsin and provided comment on the election observer rule and the Uniform Absentee Ballot Instructions. She also noted that she was retiring and expressed appreciation for the Wisconsin Elections Commission, Administrator Wolfe, and staff.

Discussion.

Leonard Boltz

Leonard Boltz appeared and expressed opposition to the scope statement regarding ballot access and election petition challenge procedure.

Discussion.

Kathryn Bartelli

Kathryn Bartelli appeared and expressed opposition to the scope statement regarding ballot access and election petition challenge procedure.

Discussion.

D. Written Comments

Chair Millis noted that the Commission received several hundred written comments concerning the 14th Amendment, as well as a memo from Free Speech for People.

E. Approval of Previous Meeting Minutes

- a. June 1, 2023**
- b. June 5, 2023**
- c. June 27, 2023**
- d. August 4, 2023**
- e. August 16, 2023**

MOTION: To approve the June 1, 2023, June 5, 2023, June 27, 2023, August 4, 2023, and August 16, 2023 meeting minutes.

Moved by Commissioner Czarnezki. Seconded by Commissioner Bostelmann.

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

Motion carried 6-0.

F. Petition for Approval of Electronic Voting System: ClearVote 2.3

Elections Specialist Cody Davies presented the memo covering Clear Ballot Group's petition for approval of the ClearVote 2.3 voting system. He noted that WEC Elections Security Lead Tony Bridges and Clear Ballot Group National Sales Manager James Rundlett were present to take questions.

Discussion.

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.

Moved by Commissioner Thomsen. Seconded by Commissioner Czarnezki.

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

Motion carried 6-0.

G. Discussion of the Second Advisory Committee Meeting on Election Observers and Administrative Rule Material Review/Revision¹

Attorney Hunzicker reviewed general takeaways from the Advisory Committee meetings and solicited feedback and preferences from Commissioners regarding the current draft rule language. He noted that Commissioner Jacobs submitted notes by email during the meeting.

Discussion.

Attorney Hunzicker specified the eleven most significant areas of disagreement among Committee members. Feedback from the Commissioners regarding these points is listed below:

1. 4.02(5) & 4.06(2): Should Communications media be treated differently from other observers?

Chair Millis stated he was uncomfortable with the current definition as it doesn't reflect changed times.

Commissioner Bostelmann indicated there should be a balance between allowing the media in the polling place without making voters feel intimidated.

¹ This section may be clarified prior to the November 2, 2023, Commission meeting.

Commissioner Thomsen stated it was a decision for the Legislature. He suggested that “may,” “shall,” and “interfere” be defined. He expressed that he didn’t think the rule was saying anybody has a right to a camera, it says public access to observe.

Chair Millis expressed a preference for either getting rid of the distinction between communications media and observers and prohibiting recording or leaving it up to the election official in charge.

Commissioner Thomsen did not think there should be a distinction and noted that statute does not give observers the right to record.

Commissioner Spindell expressed a preference for distinguishing between observers and communications media and expanding the definition of communications media to include more than legacy news media.

Commissioner Bostelmann suggested that the media be treated as a separate entity.

Commissioner Jacobs suggested that the press come to the Commission with suggestions on how to define “communications media.”

Commissioner Czarnecki did not think it should be left to the clerks.

2. 4.02(6): What information should be regarded as confidential?

Commissioner Jacobs indicated that type of proof of residence could not be observed without revealing confidential information, and could be subject to an open records request for the voter registration form rather than be available to be observed.

Commissioner Thomsen agreed with Commissioner Jacobs and requested that DOJ weigh in on the question.

Chair Millis disagreed with Commissioners Jacobs and Thomsen and differentiated type of proof of residence from the information on the proof of residence.

Commissioner Spindell thought it was appropriate for the observer to ask the election inspector which type of document is being provided.

3. 4.03(2) & 4.04(1): Should observers be required to present photo ID and list their address?

Commissioner Spindell indicated he didn’t like the idea that observers would be required to put their address on the sign-in sheet.

Commissioner Thomsen supported observers being required to put their address on the sign-in sheet.

Discussion on this item continued after the Commission returned from closed session.

H. Closed Session

Chair Millis indicated that the Commission would return from closed session at around 2:30 p.m.

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

Moved by Commissioner Jacobs. Seconded by Commissioner Bostelmann.

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

Motion carried 6-0.

The Commission moved into closed session at 12:47 p.m. and returned to open session at 2:47 p.m.

Continuation of Discussion of the Second Advisory Committee Meeting on Election Observers and Administrative Rule Material Review/Revision

Commissioner Spindell indicated he was in favor of having observers list their addresses on the observer log if the log were hidden from public view.

Commissioner Jacobs clarified that the addresses would still be subject to open records requests.

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?

Commissioner Thomsen did not think there should be an obligation to announce. He suggested that the word “inspect” come out of the definition of “observe” in 4.01(13).

Commissioner Czarnezki indicated it was a good idea to require a separate location where the remake of ballots would take place.

Chair Millis agreed with Commissioner Czarnezki and stated that he didn’t think election inspectors had to announce ballots being remade. He added that if a ballot is remade and the clerk doesn’t comply with the rule, that the ballot is not invalidated.

Commissioner Jacobs indicated that announcing a ballot is being remade and establishing a separate location for remaking ballots would be better as best practices rather than included in the rule language.

Commissioner Spindell indicated that the focus should be on the statute, Wis. Stat. § 5.85, requiring a witness for that process.

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?

Commissioner Jacobs expressed that it should be up to the clerks.

Commissioner Czarnezki agreed with Commissioner Jacobs.

Commissioner Spindell expressed a preference for no ambiguity in terms of what the requirements are.

Commissioner Bostelmann stated that having the observation area behind the election inspectors at the check-in table should not be mandatory and may be better as a best practice.

Commissioner Jacobs did not think Badger Books should be treated differently than paper poll books in terms of how they could be observed.

Chair Millis suggested that some points the Commission chooses not to put in the draft could be incorporated into guidance.

6. 4.03(9)&(10): How may observers move between observation areas within the polling place?

Commissioner Czarnecki indicated it should be left to the discretion of the clerk.

Commissioner Thomsen agreed and suggested the language be revised from “may reasonably limit” to “The designated election official shall reasonably limit the number of observers representing the same organization who are present at any one time” in 4.03(1). He emphasized that the local election officials need the ability to limit the number of observers and observers should not be interrupting the voting process.

Commissioner Spindell indicated that it should be up to the chief election inspector to limit how many observers are present, but that it has to be reasonable.

Commissioner Jacobs expressed that it should be up to the local election officials how they want to regulate observers moving around the polling place.

Commissioner Thomsen stated that observers should have to ask for permission to move from station to station within a polling place.

Commissioner Jacobs disagreed and clarified that observers should have the right to move between observation areas, but it should be regulated by the clerk; observers should not have “free range.”

Chair Millis agreed that the “free range” option was not reasonable but believed that observers should have the ability to move from station to station, within reason, as long as they are in the designated area. He stated that observers should not be able to shadow voters or poll workers.

Commissioner Jacobs concluded that both her and Chair Millis agreed with the current rule language.

Commissioner Spindell expressed a preference that the observer not have to go to the chief election inspector each time they wanted to move. He expressed hope that observers would be provided with the promulgated rules.

7. 4.03(15): Should observers be able to examine rejected certificate envelopes in a manner established by the designated election official?

Commissioner Jacobs indicated she liked the idea of letting observers examine rejected envelopes but clarified that it should be left to the discretion of the clerk how long the envelope is displayed to observers.

Chair Millis expressed that he didn't think the Commission should specify how long the observers could examine an envelope, but supported observers being able to examine the envelopes. He said it should be in the rule and not just guidance.

Commissioner Jacobs was hesitant to set up a process that would spur 5.06 complaints concerning how long a clerk held up an envelope.

Commissioner Spindell agreed with Commissioner Jacobs.

8. 4.05: Should the Commission establish minimum numbers for specific locations regarding observers representing the same organization?

Commissioner Jacobs preferred that it be left to the discretion of the clerks.

Commissioner Thomsen agreed that it should be up to the clerks and indicated that guidance on managing organizations fairly would be more appropriate as a best practice. He also expressed doubt that the "3-foot distance described in this paragraph shall be applied unless it would interfere with voting activities..." language in 4.03(4) should not be in the rules. He suggested that organizations be granted a spot at a polling place on a first-come, first-serve basis.

Commissioner Spindell preferred general instructions to clerks on how to manage observers representing the same organization and suggested that a future project of the Commission could be helping clerks find bigger polling places.

Commissioner Thomsen reiterated that it should be left up to the clerks and left out of the rule.

9. 4.05: When should observable locations be open to observation?

Commissioner Czarnecki preferred that this point be left to the discretion of local election officials.

Commissioner Spindell indicated that observers should at least be present to see the machines zeroed out.

Commissioners Millis, Bostelmann, and Jacobs agreed with Commissioner Spindell.

10. 4.05(5): Should recounts be included?

Commissioner Thomsen expressed that a recount is still part of the election and that the same rules should be applied.

Commissioner Bostelmann expressed concern that the rules wouldn't apply to the way a recount may be set up.

Commissioner Czarnecki noted that flexibility would be necessary for a recount.

Chair Millis suggested that the principles of the observer rule should apply to recounts, rather than the exact rule language and asked Attorney Hunzicker whether that was possible. Attorney Hunzicker affirmed that it was and he could include general language about candidates and representatives getting priority in a recount.

Commissioner Spindell noted that campaign workers should have priority to get into the recount site. He supported Commissioner Bostelmann and Commissioner Czarnezki's request for flexibility in the observer rules for recounts.

Commissioner Bostelmann expressed doubt that the "3 to 8 feet" language would apply to recounts and would not suggest making it apply to recounts.

Attorney Hunzicker raised the concern that it may not be possible for the Commission to do rules related to recounts under Wis. Stat. § 7.41. He wondered if it would require a separate scope statement.

Commissioner Thomsen and Commissioner Czarnezki opined that a recount is part of the election.

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?

Commissioner Spindell expressed that he was comfortable with observers observing from the common area of the facility and encouraged Attorney Hunzicker to take a look at possible electronic situations, such as observing via a tablet.

Commissioner Jacobs agreed with Commissioner Spindell.

Additional feedback:

Commissioner Jacobs stated that, in places where the current language requires clerks to submit reports within seven days, that the timeline be altered so they would not have to submit them until a time when pre-existing election deadlines had passed. She also expressed concern with the phrase "lawful commands" in 4.04(2).

Commissioner Spindell agreed with Commissioner Jacobs about the seven-day deadline.

Commissioner Thomsen suggested that for 4.04 (5), (7), (8), and (9), "may" should be changed to "shall," and reiterated that "may" and "shall" should be clearly defined.

Chair Millis directed Attorney Hunzicker to bring a draft back to the Commission that has perceived consensus on certain things, as well as alternatives that the Commission could discuss and vote on at the November 2, 2023 quarterly meeting.

Commissioner Jacobs suggested that the alternatives be clearly labelled.

Commissioner Thomsen indicated he would prefer to see the next draft in the middle of October to have sufficient time to make redlines.

Chair Millis indicated he would set up a meeting the second week of October where the Commissioners would transmit their redlined drafts to Attorney Hunzicker.

I. Discussion and Revision of Uniform Instructions for Wisconsin Absentee Voters

Deputy Administrator Robert Kehoe reviewed the Commission's direction from the June 1, 2023 meeting concerning the Uniform Instructions. Staff Attorney Angela O'Brien presented a legal analysis of ballot return guidance.

Discussion. Commissioners also provided feedback on the clarified language and updated formatting of the revised draft.

J. 2023 Four Year Voter Record Maintenance Process Review

Chair Millis tabled this item for a future meeting due to time constraints.

K. Clerk Guidance Concerning Ballot Timeline for 2024 Presidential Preference Primary

Administrator Wolfe explained the impossibility in the statutory timeline concerning military and overseas voters and reviewed potential actions the Commission could take.

Discussion.

MOTION: Recommended motions #1 and #2. Recommended motion #3 is reserved for a future meeting date.

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.

Moved by Commissioner Jacobs. Seconded by Commissioner Bostelmann.

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| Roll call vote: Bostelmann: | Aye | Czarnecki: | Aye |
| Jacobs: | Aye | Spindell: | Aye |
| Millis: | Aye | Thomsen: | Aye |

Motion carried 6-0.

L. Polling Place Accessibility Toolkit Updates and Review

Chair Millis tabled this item for a future meeting due to time constraints.

M. Badger Book Program Updates and Possible Commission Directives

Chair Millis tabled this item for a future meeting due to time constraints.

N. Voter Felon Audit Updates

Chair Millis tabled this item for a future meeting due to time constraints.

O. Review and Approval of the “Report of Suspected Election Fraud, Irregularities, or Violations” for Distribution to the Wisconsin Legislature

MOTION: Authorize Administrator Wolfe to send the letter and data set forth in pages 256-259 of the Commission’s materials.

Moved by Commissioner Jacobs. Seconded by Commissioner Thomsen.

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|-----------------------------|-----|------------|-----|
| Roll call vote: Bostelmann: | Aye | Czarnecki: | Aye |
| Jacobs: | Aye | Spindell: | Aye |
| Millis: | Aye | Thomsen: | Aye |

Motion carried 6-0.

P. Revisions to Wis. Admin. Code EL Chapter 12 Following Scope Statement 008-22

Chief Legal Counsel Jim Witecha reviewed the background of the scope statement with the Commission.

MOTION: The Commission directs staff to proceed with the suggested changes to sections 12.01(2) and 12.02(7), and Option 3 concerning section 12.01(5), and to carry out all remaining rulemaking steps and providing updates to the Commission after each major step.

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.

Moved by Commissioner Thomsen. Seconded by Commissioner Jacobs.

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| Roll call vote: Bostelmann: | Aye | Czarnecki: | Aye |
| Jacobs: | Aye | Spindell: | Aye |
| Millis: | Aye | Thomsen: | Aye |

Motion carried 6-0.

Q. Administrative Rulemaking Process Discussion and Consideration of Uniform Instructions and Ballot Access Challenge Scope Statements

Chair Millis and Attorney O'Brien clarified where the Commission was in the rulemaking process regarding the scope statements.

Discussion.

MOTION: 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).

Moved by Commissioner Thomsen. Seconded by Commissioner Jacobs.

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

Motion carried 6-0.

Discussion.

MOTION: 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 264 Statements of Scope for Emergency and Permanent Rule Making relating to Uniform Instructions and Ballot Access Challenges September 7, 2023 Page 2 procedural components of nomination paper challenges to the Department of Administration pursuant to § 227.24(1)(e)1d. and § 227.135(2).

Moved by Commissioner Thomsen. Seconded by Commissioner Czarnezki.

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

Motion carried 6-0.

Discussion.

Commissioner Spindell discussed opposition to the motion.

MOTION: 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).

Moved by Commissioner Jacobs. Seconded by Commissioner Czarnezki.

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|-----------------|-------------|-----|------------|-----|
| Roll call vote: | Bostelmann: | Aye | Czarnezki: | Aye |
| | Jacobs: | Aye | Spindell: | No |
| | Millis: | Aye | Thomsen: | Aye |

Motion carried 5-1.

R. Discussion and Possible Action Regarding Implementation of *Braun v. WEC* Decision

MOTION: Set a meeting for September 14 at 9:00 a.m. to address the *Braun v. WEC* decision. Authorize Commission staff to identify areas of guidance the Commission has issued over the years implicated by the decision and to draft a clerk communication in response to the *Braun* decision.

Moved by Commissioner Thomsen. Seconded by Commissioner Jacobs.

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

Motion carried 6-0.

S. Adjourn

MOTION: To adjourn.

Moved by Commissioner Jacobs. Seconded by Commissioner Czarnezki.

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

Motion carried 6-0.

The Commission adjourned at 5:42 p.m.

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September 7, 2023 Wisconsin Election Commission meeting minutes prepared by:



September 7, 2023 Wisconsin Election Commission meeting minutes certified by:

A handwritten signature in blue ink, appearing to read "Don Millis", is positioned above a horizontal line.

Don M. Millis, Commission Chairperson

November 2, 2023