

Jacobs' Redline – Observer Rules – 11/1/23

I EL 4.01 Right to vote. Nothing in this chapter shall be construed to distract, disrupt, obstruct, slow, 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), Stats. Accessibility reviewers are not observers under this chapter.
- (2) “Commission” means the Wisconsin Elections Commission. Individuals authorized by the Commission to conduct any election related activities at an observable location are not observers under this chapter.
- (3) “Chief inspector” means the chief inspector at a polling place, under s.7.30(6)(b), Stats.
- (4) “Clerk” means the municipal clerk, or the executive director of a municipal board of election commissioners, under s. 5.02(10), Stats.
- (5) “Communications media” means individuals who identify themselves to the designated election official as seeking to record or report information at ~~observable~~ locations outside of the voting area. Communications media individuals are not observers under this chapter.
- (6) “Confidential information” means information that is not part of the public aspects of the voting process including but not limited to operator’s license or identification card numbers issued by the Wisconsin Department of Transportation, birth dates, social security numbers or any portion thereof, accommodation information on a voter registration form, information on photo IDs as defined by s. 5.02(6m) Stats., information on proof of residency documents as defined by s. 6.34(3) Stats., information concerning confidential electors, guardianship information, voted ballots, and communications by a

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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 designated by a chief inspector or clerk to carry out the election responsibilities under this chapter. At a facility served by special voting deputies, designated election official means the special voting deputies. At a recount, designated election official means the board of canvassers.
- (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, a central count location, or a recount location during those hours specified in this chapter as permitting observation.
- (13) “Observe” means to see or hear and does not include physically handling election related materials or any materials provided by the voter.

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- (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 during those hours specified in this chapter as permitting observation, except for inspection of confidential materials as defined in sub. (6).
- (18) “Representing the same organization” means individuals who were deployed, assigned, trained by, or who identify as representing the same organization.
- ~~(18)~~(19) “Voting Area” is that area at a polling place where electors receive, prepare, or deposit their ballots, or where electors cast their votes on a voting machine.

EL 4.03 Conduct of election officials.

- (1) If ~~there are no alternatives~~ due to physical limitations ~~and~~and/or the orderly administration of elections, the designated election official may reasonably limit the number of observers representing the same organization who are present at any one time at an observable location. 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

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that the photo ID presented reasonably resembles the observer and the name entered. ~~The designated election official shall then inform the observers~~ After completing the log, observers shall be offered a summary of the rules governing election observers at the observable location, and be informed as follows:

- a) ~~to~~ To whom at the observable location they may direct questions during the day,
- b) ~~make available to the observer a summary of the rules governing election observers at the observable location,~~ How explain how observers may move between observation areas throughout the day, and
- c) ~~explain~~ The location where a ballot may be remade, ~~if applicable,~~ and then direct the observer Observers shall then be directed 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.

~~(2)~~(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.

~~(3)~~(4) _____ The designated election official shall establish at least one observation area 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

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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.~~

~~(4)~~(5) An election official shall repeat, once and then at the election official's discretion, a name or address upon request.

~~(5)~~(6) The designated election official shall position the observer area to minimize contact between observers and voters and election officials.

~~(6)~~(7) 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.

~~(7)~~(8) 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.

~~(8)~~(9) 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 60 days of the election for which the observable location was active.

~~(9)~~(10) As time permits, election officials shall allow observers to observe absentee ballot certificate envelopes that have been set aside to be rejected in a manner established by the designated election official.

~~(10)~~(11) 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., at such times as election officials determine that doing so does not interfere with or distract

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electors under s. 5.35(5) Stats. 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.

~~(11)~~(12) Election officials shall not permit observers to handle an original version of any official election document.

~~(12)~~(13) Election officials shall not permit observers to observe any confidential information.

~~(13)~~(14) If an observer violates a provision of this chapter or any applicable election statute the designated election official shall verbally warn an observer one time to cease the offending conduct.

- a) If an observer does not cease offending conduct following a warning under this section, the designated election official may order an observer to depart from the observable location. If the designated election official is a person other than the Chief Inspector or municipal clerk, the designated election official shall notify the Chief Inspector or municipal clerk, ~~who shall proceed under this section.~~
- b) If the offending observer who is ordered to depart under sub. (a) 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 signature of the designated election official.
- c) If the designated election official who has issued an order to an observer to depart has been appointed from a list provided by a political party under s. 7.30 (4) Stats.

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an election official representing the opposite political party than the designated election official, if timely available, shall be offered the opportunity to sign the written order, and to note any concurrence or disagreement with that order.

Failure of that election official to sign the written order, or the unavailability of that official to review the order in a timely fashion, does not affect the enforceability of that order.

- d) If an observer is ordered to leave an observable location, the incident shall be recorded and the designated election official shall, within 60 days of the incident, provide to the Commission a copy of the order and any other documentation of the incident. 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 showing the observer's name 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 photo identification does not need to conform to the requirements of s. 5.02(6m), Stats.
- (2) An Observer shall comply with the designated election official's commands or shall be subject to removal from the polling place pursuant to EL 4.02(14)(a).

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- (3) If more than one observation area is established within an observable location, an observer may move between such areas in a manner established by the designated election official.
- (4) An observer shall direct any questions 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.~~
- (5) 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.
- ~~(6)~~ An observer shall not 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 or registration.
- ~~(6)(7)~~ ~~An observer shall not including but not limited to any abuse of the ability to create or transmit photographs, videos, or audio recordings~~ of any observable location unless expressly permitted 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 or registration.~~
- ~~(7)(8)~~ An Observer shall keep conversation to a minimum and shall conduct whatever conversation is necessary at a low enough volume to minimize distraction to electors and election officials.
- ~~(8)(9)~~ An observer shall not 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.

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~~(9)~~(10) An observer shall not 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.

~~(10)~~(11) An observer shall not engage in any conversation concerning a candidate, party, or question appearing on the ballot.

~~(11)~~(12) An observer shall not use 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.

~~(12)~~(13) An observer shall not 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 briefly respond to the voter if such response does not disturb other voters or the orderly administration of the election. The observer may also 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 is not an election official. A brief wave or greeting to an individual known to the observer shall not constitute a violation of this section.

~~(13)~~(14) An observer may communicate ~~as needed~~ with the designated election official and any other election officials at the discretion of the designated election official.

~~(14)~~(15) 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.

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- a. An observer 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., or after the last voter who was in line has voted, whichever is later, an observer may remain at the polling place to observe canvassing under Wisconsin's open meetings law.
- b. An observer 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. An observer 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 under s. 6.855, Stats.~~
- b.a. An observer 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 under s. 6.855, Stats. 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.

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~~e. An observer 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.~~

~~d. An observer shall not create or transmit photographs, videos, or audio recordings of the observable location.~~

(3) BOARD OF ABSENTEE BALLOT CANVASSERS.

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

~~b. An observer shall not create or transmit photographs, videos, or audio recordings of the observable location.~~

~~e.b.~~ An observer 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.

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- b. An observer 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. An observer shall comply with any requirements imposed on visitors by a facility served by special voting deputies.
- d. An observer 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, an observer 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. An observer shall not create or transmit photographs, videos, or audio recordings of the observable location.~~

(5) RECOUNT.

- a. An observer shall be permitted to observe during all hours when a recount is occurring.
- b. The petitioner, all opposing candidates, and associated counsel shall be allowed to observe and may not be limited in number ~~under~~ pursuant to Sec. 4.03(1).
- c. The designated election official shall establish at least one area in which observers may observe the proceedings.

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

(6) CENTRAL COUNT.

- a. An observer shall be permitted to observe all counting of ballots occurring at a central counting location.
- b. An observer shall not create or transmit photographs, videos, or audio recordings of the observable location.
- c. An observer may create or transmit photographs, videos, or audio recordings of the observable location, [however an observer may not create or transmit any photographs, videos or audio recordings of any voter who may be present at the observable location.](#)

4.06 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.

4.07 Communications Media

- (1) Communications media individuals shall identify themselves and any organization they represent to the designated election official upon arriving at the observable location. At the discretion of the designated election official, communications media may use video and still cameras outside of the voting area provided the cameras are not used in a manner that allows the recording [of](#) any confidential information and provided the cameras do not disrupt or interfere with voting or disrupt the orderly conduct of the election.

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Communications media may not enter the voting area unless they are voting, assisting a voter, or observing under this chapter.