



Wisconsin Elections Commission

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Wisconsin Elections Commission

First Quarterly Meeting

201 W. Washington Avenue, Second Floor

Madison, Wisconsin

10:00 a.m. February 8, 2024

Open Session Minutes

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

Staff present: Sharrie Hauge, Brandon Hunzicker, Robert Kehoe, Anna Langdon, Angela Sharpe, Jacob Walters, Regina Hein, John Smalley, Riley Willman, and Meagan Wolfe, all by teleconference.

A. Call to Order

Commission Chair Don Millis called the meeting to order at 10:02 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

Chair Millis then opened the floor for public comment, for which there were two speakers registered.

Appearing first was Sam Liebert, Wisconsin State Director for All Voting Is Local.

Mr. Liebert called for Commissioner Spindell to resign.

Commissioners Thomsen and Spindell followed with comments.

Appearing next was Nicholas Ramos, Executive Director of the Wisconsin Democracy Campaign.

Mr. Ramos asked for Commissioner Spindell resignation.

Commissioner Spindell followed with comments.

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

D. Written Comments

Chair Millis noted that the Commission also received written comments on a variety of issues from the League of Women Voters, Disability Rights Wisconsin, Common Cause in Wisconsin, the National Federation of the Blind, and America Votes.

Chair Millis also commended the staff for the absentee ballot envelope redesign, pointing out the bipartisan approval it received at an Assembly Committee on Campaigns and Elections hearing the day before.

E. Approval of Previous Meeting Minutes

Chair Millis asked if there was any discussion from Commissioners, or if someone wished to make a motion to approve the open session minutes for the Commission’s January 24, 2024, meeting.

MOTION: To approve the Wisconsin Election Commission’s open session minutes as drafted for its January 24, 2024, meeting.

Moved by Commissioner Thomsen. Seconded by Commissioner Bostelmann.

Roll call vote on the motion to approve the January 24, 2024, minutes:

Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

The motion carried 6-0.

F. Review, Possible Approval, and Commission Directives as Needed for the Agency’s Internal Control Plan

Sharrie Hauge, Chief Administrative Officer for the Wisconsin Elections Commission, appeared and presented to the Commission the agency’s 2024 Internal Control Plan. She stated that statute requires the agency to review its Internal Control Plan annually and that, upon this review, no major control deficiencies or material weaknesses were found. She then pointed to where this plan is in the Commissioners’ meeting materials, asked if they had any questions, and drew their attention to the recommended motion from WEC staff.

Discussion.

MOTION: To approve the WEC 2024 Internal Control Plan and authorize staff to submit the Plan to the Chief Clerks of the Senate and Assembly for distribution to the appropriate standing committees and to the State Controller’s Office.

Moved by Commissioner Thomsen. Seconded by Commissioner Riepl.

Roll call vote on the motion to approve the WEC’s 2024 Internal Control Plan:

Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

The motion carried 6-0.

Chair Millis forecasted with those in attendance roughly when the Commission will be breaking for closed session.

G. Review and Possible Action on Agency Administrative Rules¹

1. LAB Rule Memo Discussion

Staff Attorney Brandon Hunzicker reviewed the status and deadlines of LAB recommended administrative rules. He clarified that the observer rule was at the economic impact analysis stage, which needed to be undertaken before the Commission could send the final rule to the Legislature.

Attorney Hunzicker solicited feedback from the Commissioners on the following draft rules:

3. Training Rule (Chapter EL 13)

Attorney Hunzicker provided a summary of the existing draft language for 13.01 and 13.02(1) and (2). He noted that references to chief inspectors should be removed from 13.01, as a separate statute s. 7.31 addresses chief inspector training. He clarified that the municipal clerks may utilize the Commission or another election official who uses Commission materials to provide training, and suggested removing the language starting with, “and the training team...” in 13.02(2).

Chair Millis suggested that 13.02(2) read, “The municipal clerk may utilize the Commission or another election official who utilizes materials provided by the Commission to provide training. If the municipal clerk opts not to use the Commission’s provided training, the clerk shall submit the training materials to the Commission’s training team for review and approval no less than seven calendar days prior to the proposed training. If no materials exist, the municipal clerk must provide an agenda or detailed summary for the proposed training. The Commission’s training team may require revisions to the materials if errors, concerns, or inaccuracies exist. Training using other materials other than those provided by the Commission may not commence until approval is received from the Commission’s training team.” The language starting with, “and the training team...” will be struck.

Commissioner Jacobs suggested that the first line of 13.02(2) read, “The municipal clerk may utilize the Commission or another election official who uses the Commission materials or who has received approval as described in this section for training materials.”

Commissioner Jacobs suggested changing “seven days” to either two business weeks or ten business days. Chair Millis agreed that was reasonable.

Attorney Hunzicker provided a summary of the edits to the existing draft language for the remainder of 13.02, 13.05, and 13.10. He suggested deleting 13.05(1) and 13.10(1), and instead that 13.05(2) and 13.10(2) should say, “The content and curriculum of the training shall include:”

¹ This section may be clarified prior to the March 20, 2024, Commission meeting.

Chair Millis suggested 13.05(1) and 13.10(1) be kept and say, “The content and curriculum of the training required of election inspectors shall be prescribed by the Commission as described in (2).” Chair Jacobs suggested moving 13.05(1) and 13.10(1) into 13.02 and saying, “The content and curriculum of the training required of election inspectors and special voting deputies shall be prescribed by the Commission under 13.05 and 13.10.” She expressed approval of the checklist format of 13.05 and 13.10.”

Attorney Hunzicker noted that 13.05(2)(a) should say, “equipment vendors of approved election equipment” rather than “equipment vendors.” “The Commission hereby acknowledges that” should be deleted in 13.05(2)(a), 13.05(2)(j), and 13.10(2)(h). He further noted that the list should include outside subject matter experts and law enforcement.

Chair Millis agreed with this and suggested, in 13.05(2)(a), “Training may also be provided by...” rather than “Some of this training may also be provided by...”

Attorney Hunzicker noted that 13.05(2)(t) and 13.10(2)(l) should be their own subsection (3) clarifying that municipal clerks can provide any other materials provided by the Commission. He reiterated the note about chief inspectors as it pertained to 13.15.

Commissioner Jacobs suggested that 13.15 include chief inspectors and reference s. 7.31 for their requirements. Commissioner Spindell agreed with this.

MOTION: Staff is directed to make revisions consistent with today’s discussion and return to the Commission with an updated version.

Moved by Commissioner Jacobs. Seconded by Commissioner Bostelmann.

Roll call vote on the motion for staff to make revisions consistent with the day’s discussion:

Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

5. Emergency Polling Place Plan (Chapter EL 15)

Attorney Hunzicker reviewed the relevant statutes and deadlines for EL 15 and clarified the rulemaking process.

Discussion.

Attorney Hunzicker provided a summary of the existing draft language for 15.01 and asked the Commission whether “Impossible” and “Inconvenient” should be defined, either separately or as one unit, or left to local discretion.

Commissioner Spindell expressed a preference for defining the terms.

Commissioner Jacobs recommended defining “Impossible” as, “a threat to the safety of voters, persons present at the polling site, and persons traveling to and from the polling site on Election Day, or the ability to cast votes” and indicated that similar changes should be made to the definition of “Inconvenient.” She suggested that the rule instruct clerks to designate an alternate polling place, and if that site is also unavailable, instruct clerks on how to proceed. Chair Millis agreed that this made sense. Attorney Hunzicker asked whether the Commission would like 15.02(1) to be redrafted more along the lines of 15.02(2) in terms of discretion of what the substitute polling place plan shall contain, and suggested keeping the content of 15.02(1) but replacing “shall” with “may.”

Commissioner Jacobs clarified that establishing an alternate polling place should not be linked to having an emergency plan in an administrative rule.

Commissioner Spindell suggested the convening authority council approve emergency plans. Chair Millis suggested requiring clerks to have emergency plans that could include alternate polling places and require alternate polling places for various contingencies to be approved by the governing body.

Attorney Hunzicker affirmed there should be a requirement to approve alternate polling places, and asked if the emergency plan should be included in the rule at all. He suggested that the emergency plan could instead be communicated to clerks as guidance.

Chair Millis and Commissioner Jacobs expressed that the requirements for the emergency plan would discourage clerks from designating alternate polling places. Commissioner Jacobs suggested that the plan be focused on pollsite relocation and that the rule reference 7.37 and instruct clerks how to designate alternate polling places. She reiterated that the rule should also address a situation in which the alternate polling place is not available.

Administrator Wolfe noted that the Commission already provides municipalities with a template emergency response plan.

Attorney Hunzicker confirmed that the Commission preferred that the rule be redrafted into a shorter document that requires approval of alternate polling places but does not require an emergency polling place relocation plan by rule. He clarified that the rule could state it does not supersede the ability of election inspectors under s. 7.37 to adjourn to any location if necessary.

Commissioner Jacobs suggested a paragraph stating that nothing in the rule alters the rights of election inspectors pursuant to s. 7.37(1) to move pollsites if it becomes impossible or inconvenient to hold an election at the designated location.

Attorney Hunzicker confirmed he would reevaluate how to draft the rule to reflect that. Commissioner Spindell reiterated that the convening authority approve emergency plans.

MOTION: Staff is directed to make revisions consistent with today’s discussion and return to the Commission with an updated version.

Moved by Commissioner Thomsen. Seconded by Commissioner Riepl.

Roll call vote on the motion for staff to make revisions consistent with the day’s discussion:

Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

2. Uniform Instructions (Chapter EL 6)

Staff Attorney Angela Sharpe reviewed timelines and background information for the emergency and permanent rules regarding uniform instructions.

Commissioner Jacobs suggested “uniform instructions” be defined in the rule as, “Those instructions approved by the Commission pursuant to s. 6.869.” The rule would then be, “The municipality is not permitted to provide absentee electors with any instructions on completion of absentee ballots other than the uniform instructions set forth by the Commission, or to represent...”

Attorney Sharpe suggested including the form number for the uniform instructions in the rule. Commissioner Jacobs agreed as long as staff was certain the form number would not change. Commissioner Jacobs suggested 6.05 (2)(a) read, “... ability to provide administrative or logistical instructions to absentee electors in addition to the uniform instructions...” Chair Millis and Commissioner Jacobs suggested a similar addition be made to (2)(c): “If a municipality elects to provide administrative or logistical instructions pursuant to 6.05(2)(a) in addition to the uniform instructions...” Commissioner Jacobs confirmed that the rule would then define uniform instructions, affirmatively prescribes the uniform instructions to all absentee ballot holders, and contain clarified exceptions stating that administrative or logistical instructions could be provided in addition to the uniform instructions.

MOTION: The Wisconsin Elections Commission directs staff to implement edits to the proposed rulemaking draft for SS 093-23 and SS 094-23 for emergency and permanent rulemaking relating to the mandatory use of uniform instructions for absentee voting consistent with the discussion during the meeting, and to bring back a revised version of the rulemaking draft for Commission review and approval at an upcoming meeting.

Moved by Commissioner Jacobs. Seconded by Commissioner Bostelmann.

Roll call vote on the motion for staff to make revisions consistent with the day’s discussion:

Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

N. Closed Session

This agenda item was taken out of order.

Chair Millis asked if there was a motion to go into closed session.

MOTION: To go into closed session pursuant to Wis. Stats. §§ 19.85(1)(g) and 19.851.

Moved by Commissioner Thomsen. Seconded by Commissioner Jacobs.

Roll call vote on the motion to go into closed session:

Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

The motion carried 6-0.

At noon the Commission recessed for 15 minutes, reconvening in closed session at approximately 12:15 p.m.

G. Review and Possible Action on Agency Administrative Rules (continued)

The Commission reconvened in open session at 3:48 p.m.

4. Challenge Procedures for Nomination Papers and Declarations of Candidacy (Chapter EL 2)

Attorney Sharpe reviewed timelines and background information for the emergency and permanent rules regarding nomination paper and declaration of candidacy challenge procedures and provided an overview of the Commission's materials concerning the agenda item.

Commissioner Thomsen suggested that "clear and convincing" and "substantial compliance" be defined based on case law utilized in Wisconsin rather than Black's Law Dictionary. In regard to 2.07(3)(b) he noted that clear and convincing evidence is a middle burden of proof and suggested consistency with the general rules of evidence. Chair Millis agreed.

Commissioner Thomsen suggested removing "Along with a copy of the complaint, the filing officer shall also provide the candidate with notification of the response deadline, as well as notice that the procedures governing nomination paper challenges are covered by this chapter" from 2.07(2)(a). He indicated he would be fine with permitting staff to notify candidates as a courtesy: "If requested, the filing officer can aid..."

Commissioner Jacobs suggested adding Milwaukee County and the Milwaukee Election Commission to the definition of filing officer. Attorney Sharpe clarified that "board of elections commissioners" includes the County and City of Milwaukee and any jurisdictions that may cross that threshold in the future. Chair Millis suggested referencing the relevant statute.

Commissioner Spindell suggested clarifying "digital transmissions" in 2.05(3)(b) to specify that emailed copies are unacceptable. Attorney Sharpe noted the language could mirror EL 6.04. Commissioner Jacobs suggested adding the sentence, "Providing copies of documents or providing documents in digital form is not compliant," after the sentence starting, "Physical possession means the original documents..." Chair Millis suggested listing, "Copies, facsimile, email, or other digital transmissions." Commissioner Thomsen suggested clarifying that the originals must be with the filing officer and no others will be accepted. Attorney Sharpe clarified that the Commission had come to a consensus stating that the original documents must have been received and no other formats are acceptable.

Commissioner Jacobs suggested that nomination papers “may” be numbered under 2.05(3)(b), rather than “shall.” Chair Millis indicated he was comfortable striking the last two sentences of 2.05(3)(b). Commissioner Jacobs suggested the “shall” be changed to “should,” keeping the second sentence. Commissioner Spindell agreed. Chair Millis suggested the last sentence should be: “Noncompliance of the prior sentence does not prevent the Commission from accepting the pages or invalidating signatures on a page that is not numbered.” Attorney Sharpe confirmed consensus concerning the two previous suggestions.

Commissioner Spindell suggested that “facial review” be replaced with “facial sufficiency” in 2.05(4)(a). Commissioner Thomsen and Commissioner Jacobs disagreed. Chair Millis proposed codifying a practice from the State Elections Board where if Board staff reviewed a candidate’s proposed nomination paper form and felt it was correct, the nomination papers would be insulated from challenges. Commissioner Spindell agreed. Commissioner Jacobs, Commissioner Thomsen, and Commissioner Bostelmann disagreed and indicated it would be more appropriate as a courtesy. Chair Millis suggested that “Central Time” be written out in 2.05(4)(b). Commissioner Jacobs and Commissioner Spindell agreed.

Commissioner Jacobs suggested the deadline outlined 2.05(4)(b) should be either three calendar days or subject to s. 990.001(4). Attorney Sharpe explained that the rule was written that way to account for special election filing periods where the deadline might fall on a weekend. Commissioner Jacobs suggested, rather than including both terms, include: “If the deadline falls on a Saturday, Sunday, or holiday, correcting affidavits must be submitted by fax or email.” Additionally, she suggested clarifying that correcting affidavits may be submitted electronically. Chair Millis confirmed consensus. Commissioner Spindell suggested that the struck sentence, “The death of a signer after a nomination paper has been signed does not invalidate the signature,” be included in the draft rule in 2.05(4)(d). Chair Millis and Commissioner Bostelmann agreed. Attorney Sharpe confirmed a consensus to keep the sentence.

Commissioner Jacobs suggested adding “nomination paper” to the first sentence of 2.05(4)(d), now reading: “After a nomination paper has been filed, no signature may be added or removed, but a nomination paper may be amended through a valid correcting affidavit.”

Commissioner Jacobs questioned, with respect to 2.05(5)(c), how anyone would know whether an elector signed their own name or not. She admitted it might be a bit of an “angels-on-a-pinhead” question, but nevertheless wondered what that challenge might look like.

Chair Millis spoke to another instance where this might arise, like in a case where the signature of the elector is very similar to the circulator’s. The defense to which, he said, would be the circulator saying, “well, the person was disabled.” He did note that someone might challenge that saying, “No, they’re not.”

Commissioner Jacobs questioned whether 2.05(5)(e) was necessary, and Chair Millis added that he’d be fine with removing that provision in the updated administrative rules.

No Commissioners disagreed.

Commissioner Jacobs expressed a desire to clean up the language in 2.05(5)(f). She felt that it should be broken up into two distinct sections. One stating, in essence, “Only one signature per person for the

same office is valid, subject to paragraph two below.” Paragraph two would then read, “Where an elector is entitled to vote for more than one candidate for the same office, a person may sign the nomination papers of as many candidates for the same office as the person is entitled to vote for at the election.”

Commissioner Jacobs was hesitant to use the word “complete” in 2.05(5)(g), pointing out the abundance of litigation on what constitutes a “complete” address.

Attorney Sharpe cited the address information that must be provided in Wis. Stat. § 8.10(4)(b), noting that it includes street name and house number.

Chair Millis said he’d be fine with removing the word “complete” and adding “including the street name and number.”

No Commissioners disagreed.

Commissioner Jacobs expressed concern with the use of the word “elector” throughout this section, because an “elector” is someone who is voting, however, to sign a nomination paper you just need to be an eligible elector. She suggested explicitly defining “signer” and “circulator” as that would cover all parties involved.

Attorney Sharpe said she would flag this as something for the Commission to discuss further when this administrative rule draft comes back for review.

Commissioner Jacobs asked what “residency of the circulator” means in 2.05(5)(i). Chair Millis considered what’s necessary to know regarding “the residency of the circulator.”

Attorney Sharpe noted that she’d flag this for the Commission to come back to, and also pointed out the statute that outlines what residency information must be provided by the circulator. Chair Millis added that residency typically includes the state. Commissioner Jacobs pointed out that that the statute they just reviewed did not have that.

Commissioner Spindell questioned if, say, a circulator forgets to include their state on one nomination paper, would it be permissible for that information to be obtained from the other nomination paper pages. He felt that it should. Chair Millis agreed.

Commissioner Jacobs was uncertain as to what the language, “The missing date need not be bracketed by correct and complete dates on either side of it to be substantially compliant,” in 2.05(5)(j)(1) means. Attorney Sharpe clarified that this comes from the WEC’s Common Nomination Paper Challenges Manual, which states that if a nomination paper signature is missing a date, but the signatures above and below that signature have dates, then it can be inferred that this person must have signed within that timeframe. She further clarified that this would change that practice so that if the date of signature can be reasonably inferred by other information on the page, not just the signature dates above and below it, that that signature should be counted.

Commissioners Millis and Jacobs felt that the current language as drafted in 2.05(5)(j)(1) does not say that, and Attorney Sharpe noted that this is another item she’ll flag for further review by the Commission.

Commissioner Jacobs was uncertain as to what "...or other missing information..." means in 2.05(5)(j)(3)(A). She also added that "apartment number" is not required in statute. She felt that if we're saying that an address shall still be considered valid even if it's missing the apartment number, then we should just say that.

Commissioner Jacobs suggested that 2.05(5)(j)(3)(B) be simplified to something like, "If the elector has abbreviated the name of their municipality, the address is substantially compliant as long as the municipality can be determined."

Commissioner Jacobs also felt that a 2.05(5)(j)(3)(C) would be warranted as well to address nicknames.

Commissioner Jacobs suggested that 2.05(5)(j)(4) be rephrased to say, "No person under the age of 18 may sign nomination papers regardless of their age on the date of the election."

Commissioner Jacobs suggested that the first sentence of 2.05(5)(j)(7) read, "If the filing officer cannot discern the signers name after reviewing both the signature and printed name it should be deemed illegible and not counted." She also suggested that the second sentence read, "The filing officer is not required to consult extrinsic sources of information to attempt to determine the signer's name, but may do so at his or her discretion if it assists in determining the name."

Attorney Sharpe drew attention to guidance in our manuals that distinguishes between determining the whole name versus part of the name, or a name that's partially legible, and Commissioner Jacobs discussed what that might look like in practice.

Commissioner Thomsen clarified with the Commission that what we're trying to say is, in essence, if you're having trouble discerning the name, and with the help of extrinsic evidence it can be determined, then you can count that signature. Administrator Wolfe spoke to the standard that WEC staff currently use as to what constitutes a name.

Commissioner Jacobs felt that the language 2.05(6)(c) was somewhat contradictory in that it requires candidates to list both their residential and mailing address, but then goes on to say that if it's not listed they'll be assumed to be the same. Commissioner Thomsen felt that we should base this requirement off of what's in statute. Commissioner Riepl pointed out that currently under candidate's mailing address on the nomination paper form it states, "required if different than residential address or voting municipality." Commissioner Spindell echoed that right now they're not required to list a mailing address, and Commissioner Jacobs said that's not in line with statute, but that a checkbox could be added to say, "mailing address same as residential address." Commissioner Spindell added that would be something easy to check.

Attorney Sharpe pointed to what the Commission's guidance currently is in its manual on reviewing nomination paper signatures. Chair Millis felt that the last sentence of 2.05(6)(c) makes sense as an instruction to a filing officer. Commissioner Thomsen agreed with that interpretation. Attorney Sharpe reformulated that last sentence and read it back to the Commission. "Absent evidence to the contrary, the filing officer may presume that a candidate's mailing address and voting municipality are the same as the residential address." Chair Millis agreed.

Commissioner Jacobs disagreed, pointing out that statute requires a mailing address. Commissioner Spindell highlighted that residential addresses and mailing addresses are going to be the same for 95% of people. Commissioner Jacobs agreed, but also said that higher profile candidates are going to have

campaign headquarters and such. Commissioner Riepl noted that a municipality for voting purposes and a municipality listed on a mailing address might differ. Commissioner Jacobs agreed and stated this is why the statute requires this.

Chair Millis added that if we go with this change, then we need to change our nomination paper form. Commissioner Thomsen felt that it would be imprudent to change our nomination paper form at this point in time as we head into the 2024 election season. Commissioner Jacobs appreciated that, but said this needs to be based on statute. Commissioner Thomsen agreed, but felt like now was not the time to make these changes.

Commissioner Jacobs went on to say she's fine with a nomination paper form that says, "If left blank, then the same." She reiterated that we should be basing our administrative rules on what's in statute.

Chair Millis disagreed in that he reads the statute to require listing the residential municipality if different from the mailing municipality, but not that they both need to be listed twice if the same. Commissioner Jacobs didn't disagree, but felt that the candidate should be required to mark "same."

Commissioner Spindell noted that even if someone listed someone's actual municipality on a piece of mail, i.e. the municipality to which they pay taxes, as opposed to the municipality that's typically listed for their mailing address, it would likely still be delivered to the addressed person.

Chair Millis echoed Commissioner Thomsen's sentiments that now is not the right time to change the WEC's nomination paper form, but was open to exploring this at a later time. Commissioner Jacobs felt that we should then take out the part of presuming them to be the same and let candidates argue substantial compliance. Chair Millis and Commissioner Thomsen did not express any issues with that.

Commissioner Jacobs asked if we should include in 2.05(7)(b) that such errors may be fixed with a correcting affidavit. Chair Millis asked Attorney Sharpe if correcting affidavits are mentioned elsewhere in the administrative rules, and Attorney Sharpe mentioned that a cross reference could be included to those other sections where correcting affidavits are mentioned. Chair Millis and Commissioner Jacobs were amenable to that, though Chair Millis expressed a desire to have anything that's correctable with a correcting affidavit referenced as such in the administrative rules. He asked that Attorney Sharpe flag this for the Commission's further review.

On nomination paper challenges, Commissioner Jacobs felt that the rules as drafted don't address the biggest issues. One of those being the lack of protocol for how a challenger may reply to a candidate's response to their challenge. Commissioner Thomsen agreed.

The other big issue she felt wasn't addressed was that it's required of the challenger to present clear and convincing evidence, but that there's no such standard for the candidate's response to that challenge. She felt that the candidate's response should have that same burden of presenting "clear and convincing" evidence.

Chair Millis asked Administrator Wolfe as to the feasibility of building in a challenger-reply process, given that the deadlines associated with nomination paper challenges are tight already. She indicated that would not be realistic. Commissioner Jacobs acknowledged the tight deadlines that staff already work within, but still felt like a challenger-reply process should be built in. She added that staff should not be expected to include a challenger's reply in the materials they provide Commissioners.

Commissioner Spindell added that working over the weekends might help alleviate the tightness associated with the deadlines. Commissioner Jacobs commented that we could require these replies to be electronic.

Chair Millis asked Administrator Wolfe what the latest is we can expect to receive candidate responses to challenges, which she said was 5:00 p.m. the day before the ballot access meeting.

Commissioners and WEC staff discussed the specifics of candidate filing deadlines, challenge filing deadlines, and the logistics of incorporating a challenger-reply process to candidate's responses to challenges.

Commissioner Thomsen felt like we ought to just say the Commission will accept replies to challenged candidate's responses. Commissioner Spindell suggested the deadline be 11:59 p.m. the day before the ballot access meeting. Commissioner Spindell and Administrator Wolfe discussed the statutory basis for when the ballot access meeting must be.

Commissioner Thomsen did not feel like a midnight deadline would be appropriate. He reiterated that we should just say we'll accept responses from challengers to candidate replies. Chair Millis did not disagree, but noted that the more time you give someone to read something the more likely they are to read it.

Commissioner Jacobs suggested that we just need to find a place to put in the administrative code that "the challenger may submit a brief in reply to the candidate's response." Commissioner Thomsen did not feel that the word "brief" was necessary, but that "reply" would suffice. Commissioner Spindell suggested that there be a deadline incorporated into that. Chair Millis didn't disagree, but noted that if they don't submit a reply within enough time to read it, that's their fault. Commissioner Jacobs agreed.

Chair Millis, calling back to a previous part of the discussion, was hesitant to shift the burden of presenting clear and convincing evidence to the candidate. He felt that, ultimately, the Commission should consider if the challenger presented clear and convincing evidence such that the challenge succeeds. Commissioner Jacobs asked what standard of evidence presentation should the candidate be held to in rebutting the challenge. Chair Millis reiterated his stance that, ultimately, it's on the challenger to present clear and convincing evidence.

Commissioner Jacobs felt that there was one more big "holistic" issue that warranted addressing with respect to challenges. She suggested that instead of a verified complaint what the Commission really requires is a verified statement of facts in addition to a legal brief in support of the challenge to the nomination papers. Chair Millis did not disagree in that someone may provide these documents if they wish. Commissioner Spindell expressed concern that many people running for office are not lawyers, and this may require them to hire lawyers.

The Commission reviewed the current language in EL 2.07(4) with respect to the "clear and convincing" standard of evidence and its origins.

The Commission decided to table the rest of the administrative rule discussion.

Commissioner Jacobs asked if there was any objection to her giving Attorney Sharpe her notes, to which there was none.

The Commission recessed at 5:46 p.m.

H. Discussion of a Potential Redesign of the Commission’s Wis. Stat. Chapter 5 Complaint Form

This agenda item was not discussed.

I. WEC Staff Updates to the Commission

This agenda item was not discussed.

J. Revisions to the Polling Place Accessibility Survey and Polling Place Plan

The Commission reconvened at 5:57 p.m.

Accessibility Specialist Regina Hein was no longer in attendance.

Wisconsin Elections Commission Supervisor Riley Willman discussed revisions to the survey used for polling place accessibility reviews and the WEC’s polling place review plan for the 2024-2025 elections cycle.

Supervisor Willman reviewed the history of polling place accessibility reviews and shared with the Commission the specific improvements that have been made to the program.

Discussion.

Commissioner Jacobs commended Commission staff for the good work that went into revising the survey.

MOTION: To approve the use of the 2024 Survey and the polling place review plan for the 2024-2025 election cycle.

Moved by Commissioner Jacobs. Seconded by Commissioner Riepl.

Roll call vote on the motion to approve the use of the 2024 Survey and polling place review plan for the 2024-2025 election cycle:

Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

The motion carried 6-0.

K. Discussion, Review, and Possible Action Pertaining to the Commission Manuals for County/Municipal Clerks

Attorney Sharpe briefly reviewed the history of manual revisions that were recently approved by the Commission and went on to highlight the few items before the Commission today. Those being further revisions to the manuals deemed necessary in light of recent court decisions.

Discussion.

MOTION: To approve the proposed section “Voter Correction of Incomplete Absentee Certificate Envelopes,” as modified by the reorganization and additional text in the chart above [beginning on page 248 of the Commission’s meeting materials], including the following line in paragraph 12: “If the voter consents and communicates that consent to the clerk, a witness may go to the clerk’s office or polling place for the witness to correct the defect in the witness information section.” The Commission directs staff to insert this section into both the *Election Day* and *Election Administration* manuals, and further authorizes staff to make formatting, numbering, and other scrivener’s edits to the manuals consistent with effectuating these changes.

Moved by Commissioner Thomsen. Seconded by Commissioner Jacobs.

MOTION TO AMEND: To include the instruction that, “The witness, upon arrival at the clerk’s office, before filling out the appropriate address, shows a picture ID.”

Moved by Commissioner Spindell. Seconded by Commissioner Millis.

Discussion.

Roll call vote on the motion to amend:

Bostelmann:	Aye	Riepl:	No
Jacobs:	No	Spindell:	Aye
Millis:	Aye	Thomsen:	No

Motion to amend fails 3-3.

Roll call vote on the motion to approve the proposed section, “Voter Correction of Incomplete Absentee Certificate Envelopes,” as modified by the reorganization and additional text in the chart above [beginning on page 248 of the Commission’s meeting materials]:

Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	No
Millis:	Aye	Thomsen:	Aye

The motion carried 5-1.

Attorney Sharpe then directed the Commission’s attention to page 259 of their meeting materials concerning options for a footnote related to the Commission’s just-approved manual revision.

Discussion.

MOTION: To approve the below version of the footnote for inclusion in the manuals:

Litigation Note: The definition of “witness address” is the subject of ongoing litigation. In two cases, Rise Inc., et al v. Wis. Elections Comm’n et al (2022CV0002446); League of Women Voters v. Wis. Elections Comm’n et al (2022CV002472), the Dane County Circuit Court-issued decisions on January 2, 2024, and permanent injunctions on January 30, 2024. Both cases are on appeal as of February 2024. Refer to “[Clerk Comm Title]” for further information on how the decisions and permanent injunctions provide explanation and definition of when a ballot may be rejected due to a defect in the witness address field. The manual will be updated to be consistent with the final appellate decisions in either or both cases.

Moved by Commissioner Jacobs. Seconded by Commissioner Thomsen.

Discussion.

Roll call vote on the motion to approve the footnote:

Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

The motion carried 6-0.

The Commission discussed additional edits to the *Election Administration* and *Election Day* manuals.

MOTION: To accept the staff’s recommendation to remove the parenthetical “street number, street name, and municipality” from the line referenced above [on pages 257 and 258 of the meeting materials] that appears in the *Election Administration* and *Election Day* manuals. The Commission further authorizes staff to make formatting numbering, and other scrivener’s edits to the manuals consistent with effectuating these changes.

Moved by Commissioner Jacobs. Seconded by Commissioner Riepl.

Roll call vote on the motion to accept the staff’s recommendation to remove the parenthetical “street number, street name, and municipality” from the line referenced above [on pages 257 and 258 of the meeting materials]:

Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

The motion carried 6-0.

Administrator Wolfe asked if the Commission would be willing to entertain a motion that changes the manuals’ revision date from January of 2024 to February of 2024.

MOTION: To change the revision date of the *Election Administration* and *Election Day* manuals from January of 2024 to February of 2024.

Moved by Commissioner Thomsen. Seconded by Commissioner Jacobs.

Roll call vote on the motion to change the revision date of the *Election Administration* and *Election Day* manuals from January of 2024 to February of 2024:

Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

The motion carried 6-0.

L. Discussion and Possible Action Pertaining to Potential Clerk Communications

Commission Staff Attorney Brandon Hunzicker appeared and apprised the Commission of developments in *Rise Inc., et al. v. Wis. Elections Comm'n et al.* (2022CV0002446) and *League of Women Voters v. Wis. Elections Comm'n et al.* (2022CV002472), including developments as recent as that afternoon.

Attorney Hunzicker reviewed with the Commission the directions they received from the Dane County Circuit Court on January 30, 2024.

Discussion.

MOTION: The Commission approves the revised and reissued clerk communication for *White et al. v. WEC*, the clerk communication for *Rise, Inc., et al. v. WEC et al.*, and attached orders, as edited by the Commission in today's meeting. Staff shall send the communications and attached orders to all Wisconsin County and Municipal Clerks and the County and City of Milwaukee Election Commissions on or before February 9, 2024.

The Commission approves the clerk communication for *League of Women Voters of Wisconsin v. WEC, et al.* as edited by the Commission in today's meeting. Staff shall send the communication and attached order to all Wisconsin County and Municipal Clerks and the County and City of Milwaukee Election Commissions on or before February 9, 2024.

The Commission approves the Q&A document as edited by the Commission in today's meeting. Staff shall send the communication to all Wisconsin County and Municipal Clerks and the County and City of Milwaukee Election Commissions on or before February 9, 2024.

Moved by Commissioner Thomsen. Seconded by Commissioner Jacobs.

Roll call vote on the motion to approve the clerk communications and the Q&A document:

Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

The motion carried 6-0.

Administrator Wolfe appeared and briefed the Commission on the next potential clerk communication, this one reminding clerks that use of the new absentee envelopes is mandatory. It also includes specifications for how these envelopes should be printed.

MOTION: To authorize issuance of the memorandum on page 278 and 279 of the Commission’s meeting materials.

Moved by Commissioner Thomsen. Seconded by Commissioner Bostelmann.

Roll call vote on the motion to authorize the issuance of the memorandum on pages 278 and 279 of the Commission’s meeting materials:

Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

The motion carried 6-0.

M. Discussion on Ballot Access Petition for Green Party

Administrator Wolfe appeared and directed Commissioners’ attention to the proposed motion on page 280 of their meeting materials. She added that the Green Party has petitioned under the statutory process for ballot status, their candidate for Secretary of State having received at least 1% of the statewide vote in 2022.

Administrator Wolfe also noted that the WEC is still waiting to receive the original paper copies of this petition and that this approval would be contingent on the WEC’s receipt of those.

MOTION: To grant approval of ballot status for the Wisconsin Green Party for the 2024 Partisan Primary and General Election subject to the arrival of the signed original document in the office of the Commission. Staff are directed to scan and send the document to the Commission upon its arrival, and to then take the actions necessary to implement the Green Party’s ballot status.

Moved by Commissioner Spindell. Seconded by Commissioner Riepl.

Roll call vote on the motion to approve ballot access for the Wisconsin Green Party:

Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

The motion carried 6-0.

O. Adjourn

MOTION: To adjourn.

Moved by Commissioner Jacobs. Seconded by Commissioner Bostelmann.

Roll call vote on the motion to adjourn:

Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

The motion carried 6-0.

The Commission adjourned at 7:08 p.m.

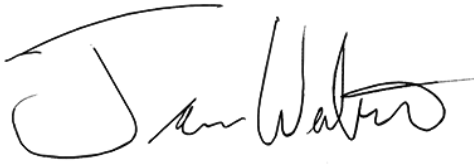
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February 8, 2024 Wisconsin Election Commission meeting minutes prepared by:



Anna Langdon, Help Desk Staff

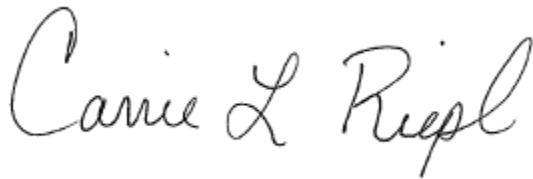
March 20, 2024



Jacob Walters, Elections Specialist

March 20, 2024

February 8, 2024 Wisconsin Election Commission meeting minutes certified by:



Carrie Riepl, Commission Secretary

March 20, 2024