



Wisconsin Elections Commission

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DATE: For the November 2, 2023, Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Brandon Hunzicker, Staff Attorney

SUBJECT: Update and Cover Page for Election Observer Rule Discussion, Edits, and Potential Approval

Introduction: This cover page updates and reframes the Election Observer memo provided to the Commission for its October 25 meeting. It provides notice to the public as well as Commissioners that this material will receive a full discussion by the Commission on November 2. It also contains a small substantive addition related to recounts. This cover page and pages 29–62 of the packet provided for the October 25 meeting constitute Item J for the November 2 meeting, which will be posted to the Commission website.

Discussion: The redlined version (pages 34–49) and the clean copy (pages 50–62) of the draft observer rule provided for the October 25 Commission meeting have not changed. Any written edits or comments made by Commissioners on the Word document sent with those materials can be sent to staff by email on November 2 or brought as a hard copy to the meeting. Copies of written edits or comments received on November 2 will be provided to each Commissioner.

The memo for the Observer Rule (pages 29–33) has also not changed, but it needs several updates and clarifications for the November 2 meeting. First, as opposed to what the memo states for the October 25 meeting, the November 2 meeting will contain a full discussion and the potential for Commission action on the Observer Rule in addition to Commissioners providing written feedback. Staff intend to discuss each numbered item in that memo during the meeting. Some items may only require a brief acknowledgement and opportunity for comment from Commissioners, while others may require a longer discussion to determine the Commission’s approach. Second, staff wanted to add one small substantive point for discussion on November 2. Following what appeared to be consensus among Commissioners on September 7 that recounts are part of the election and thus, to the extent applicable, should be subject to this observer rule, staff made changes to the draft section EL 4.05(5) concerning recounts. Staff intend to discuss how these changes interact with the rest of the rule.

Conclusion: This cover page does not include any suggested motions. It is possible that the Commission will be able to address the entirety of this rule and can pass a broad motion approving the draft rule as discussed and amended on November 2 and instructing staff to take all necessary steps to proceed with promulgating the rule. In that case, the Commission would next see the rule after staff hold a public hearing on the text of the rule and receive public comments. It is also possible that the Commission may wish to bring the draft to another Commission meeting after it is updated using comments from the November 2 meeting and any written comments. An in-between option could include a Commission approval subject to staff consultation with the Commission Chair—or potentially the Chair and one member from the other political party—on the text of the rule as revised by staff following the November 2 meeting.

Wisconsin Elections Commissioners

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

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DATE: For the October 25, 2023, Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Brandon Hunzicker, Staff Attorney

SUBJECT: Initial Review and Written Edits on the Second Draft Election Observer Rule

Introduction:

This brief memo is intended as an overview of changes made to the Observer Rule draft since the Commission's first review on September 7 as well as an invitation for Commissioners to provide written feedback to staff. This item on the October 25 agenda is intended to only last a few minutes and consist of Commissioners emailing feedback on the draft to staff. Commissioners are encouraged to read the second draft of the observer rule and to provide any written comments, which can be individual textual edits on the word document or more general feedback on the rule as a whole or certain parts of the rule. Staff will take that written feedback, apply it to the draft, and send another version to Commission on October 27 in advance of the Commission meeting on November 2. This intermediate step may save significant time on November 2 as well as allowing Commissioners to make precise textual edits to the document. **Due to public meeting requirements and the fact that information on the same topic is being provided to and requested from each Commissioner, please wait until the meeting begins on October 25 to send feedback directly to Staff Attorney Hunzicker.**

Discussion:

Following the Commission meeting on September 7, staff applied numerous edits to the draft observer rule, and the rule is hopefully significantly closer to being ready to publish in the Administrative Register as an official draft rule. Following this memo is a redline draft, showing each change made to the rule. Following the redline version is a clean copy that can be used by Commissioners to provide feedback. Using track changes on the word document version provided to Commissioners by email may be the easiest way to provide feedback, but any kind and amount of feedback is welcome.

First, this memo will highlight the most significant changes made after the last Commission meeting. Because the Commission was not asked to vote on each issue, it is possible that some things were changed that Commissioners would prefer to keep, or to change in a different way. Anything that has been changed can be changed back or changed again.

- 1. EL 4.02(5) & 4.07, Communications Media:** To resolve the issues discussed concerning communications media, staff have created a distinction in sections EL 4.02(5) and 4.07. In this draft,

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communications media are not observers, meaning that they neither have the rights of observers to be physically close to voting activities nor the restrictions against video and audio recording. The distinction is based on Wis. Stat. § 5.35(4), which states, “[o]nly the proper election officials, persons observing the proceedings under s. 7.41, persons assisting voters under s. 6.82 (2) and electors receiving, preparing or depositing their ballots or casting their votes on the machines are permitted in the voting area.” This statute, as well as Wis. Stat. § 7.41 governing observers generally, indicates that there is one class of observer, and that observers have a special right to be physically close to voting procedures. It is very difficult to see a way to distinguish between media observers and other observers given the uniform statutes. However, § 5.35(4), above, refers to a “voting area” which is clearly different from and narrower than a polling place or other observable location.

This draft allows media individuals either to sign in as observers and be bound by the uniform observer rules, or to notify the designated election official that the individual intends to record audio or visual information. The designated election official would retain full discretion to allow media members to remain outside of the voting area and to record information provided such activities are not disruptive. This option is likely the closest to the historical practices in Wisconsin of media members working with clerks and election officials to report on voting without disrupting voting. Media members would have a right to observe with other observers and could be allowed the privilege to record information from further away by the designated election official.

2. **EL 4.02(6), Confidential Information:** The definition of confidential information was altered to define the confidential aspects as the text on particular documents rather than the documents themselves. However, a sentence that could indicate that observers had a particular right to view any documents has been removed. The intent is that any observer can look to see what kind of document is being handed over, but they do not have a specific right to ask for a document type from election officials. Regarding registration, that information can be obtained through a public records request submitted to the local municipal clerk.
3. **EL 4.02(13), Observe:** The word “inspect” was removed from the definition. Inspection likely created confusion since it is generally associated with touching something, which was already prohibited in the September 7 draft. Seeing and hearing covers what observers have always been able to do at observable locations and is not intended as a change from the status quo.
4. **EL 4.02(18), Representing the Same Organization:** The Commission appeared to indicate a preference for the more permissive option of this definition, and only that option was retained for this draft.
5. **EL 4.03(2), (4) Remaking ballots:** There was agreement on the Commission that remaking ballots did not need to be specifically announced, but also agreement that such processes should be clear and able to be witnessed by observers. The section requiring an individual announcement was removed, and replaced by a requirement to tell observers in the introduction where ballots may be remade throughout the day. The section requiring an observer area within 3–8 feet of where ballots are being remade remains in this draft.

6. **Behind the Election Officials and Electronic Poll Books:** There appeared to be consensus among Commissioners that this specific arrangement should not be required by rule, and that section was accordingly removed. The Commission may still consider future guidance on the optimal setup of observer areas.
7. **Width of Observer Area:** After reviewing the draft language and Commissioner comments, this section was removed as it likely did not accomplish anything. Clerks will need to define a width and the sections on how observers may be limited are likely the more important sections concerning this question.
8. **Moving between observer areas:** There appeared to be a consensus among Commissioners that the designated election official should establish, during the introduction in section 4.03(2), how observers may move between observer areas. That section was retained but moved to 4.04(3) as it related to actions of observers rather than actions of election officials.
9. **Viewing absentee certificate envelopes set aside to be rejected:** There appeared to be a consensus among Commissioners that observers should be able to view these envelopes, but also hesitation on prescribing a specific method or the availability of election officials to permit this viewing. Thus, the definition allows this activity but only as time permits under the discretion of the designated election official.
10. **EL 4.04, language:** Staff altered this section to prefer clear “shall” and “shall not” language, as well as preferring the singular form of the word observer.
11. **EL 4.05, Time of day sections:** There appeared to be a consensus among Commissioners that observers must be able to witness the zeroing of any election machines, and must be able to observe all voting, but that the setup of observable locations is not necessarily observable. These sections were altered accordingly.
12. **EL 4.05, Specific number requirements:** There appeared to be a consensus among Commissioners that limitations of observers must be in the discretion of the designated election official. Again, the sections concerning how to limit observers may be where this issue can be dealt with. Staff removed the sections according to the preference for local discretion.

Second, this memo notes sections of the observer rule that are most in need of comments by Commissioners. Some of these sections were not covered during the September 7 meeting, while others were touched on but not fully resolved.

1. **Do we need a definition of voting area?** The media sections now rely on a distinction of a voting area where observers may observe and an area further away where media may record information. A definition may be difficult to apply to all types of observable locations, but the lack of a definition may also cause disagreement. The current draft leaves this option up to a clerk’s discretion.

2. **Should accessibility reviewer be moved into the definition of Commission?** Staff recommend keeping them separate because there are far more accessibility reviewers than commission staff, even if the definition of Commission now fully includes accessibility reviewers.
3. **EL 4.03(1), Limiting observers “if there are no alternatives.”** This language was discussed on September 7, but staff does not believe that a majority of Commissioners agreed on whether or how the rule should establish that the designated election official can limit the number of observers. The current language establishes a high bar, but opinions may differ on what could be an acceptable “alternative” to allow a larger number of observers. Simply removing this phrase and beginning with “due to physical limitations” may more directly place the emphasis on available space, though there is likely no way to remove the possibility of disagreement over whether space permits a larger number of observers.
4. **EL 4.03(4), 3-foot distance preference:** Staff do not believe there was a consensus on retaining or removing the last sentence of this section, stating, “[t]he 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.” This, like the preceding paragraph, puts an emphasis on opinions of physical space which could create conflict. However, it also would guarantee to observers that they will not be placed further away arbitrarily rather than for reasons of space and election administration.
5. **EL 4.03(14), Removing Observes:** This section was modified significantly for clarity. Additionally, Wis. Stat. § 7.41(3) appears to give chief inspectors and municipal clerks the ability to remove observers from the observable location. However, Wis. Stat. § 7.37(2) allows any election official to remove an individual from a polling place. Given this ability, it may be reasonable for the Commission to give the designated election official the ability to remove an observer and notify either the clerk or the chief inspector.
6. **EL 4.04(1), Observer sign-in:** This draft clarifies that an observer may show any photo ID so long as the ID also contains the observer’s name. Since observers do not need to be Wisconsin residents nor qualified to vote at an observable location, the Wisconsin ID statute of § 5.02(6m) would be too restrictive. The Commission may wish to consider if there could be any parameters on these IDs, though this may be better as guidance than rule, given the large number of possible IDs. This draft also removes the public records sentence, leaving the responsibility to respond to a request for the observer log to the municipal clerk. It is highly unlikely that a clerk would be able to provide any copies on election day.
7. **EL 4.04(4), Timely answers to questions:** Should this section contain a requirement that observer questions be answered in a timely manner? Without this section, observers may feel ignored, though the section could also raise the possibility of complaints against clerks regarding different assessments of what “timely” means in a given context.
8. **EL 4.05(2), return of voted absentee ballots to a municipal clerks office or alternate site:** There are still two versions of when such a site may be observed. One allows observing whenever ballots are being voted at such sites, the other allows observing whenever voted ballots may be returned to such sites. This was discussed, but the staff does not feel that a clear consensus emerged and recommend that commissioners provide specific feedback on these options.

9. **EL 4.05, Photographs, video, and audio recordings:** This draft still prohibits photographs, video, and audio recordings at locations where voters are present, but allows them at locations where voters are not generally present, boards of absentee ballot canvassers, central count, and recounts. Staff seek the opinion of Commissioners concerning whether these three locations should permit photos, videos, and audio recordings.

Conclusion:

Staff hope that Commissioners will use the material provided in the memo and in the revised draft to offer specific and general written feedback for staff to apply before the November 2 Quarterly Meeting, when a full discussion on this topic will be noticed to occur. Feedback in advance of the discussion may allow many issues to be resolved, and to allow staff to clearly explain which issues remain and may require votes before a final draft can move to the next stage of the promulgation process.

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,~~ or the election official that the chief inspector designates to carry out the responsibilities of the chief inspector under this chapter.
- (4) “Clerk” means the municipal clerk, or the executive director of a municipal board of election commissioners, under s. 5.02(10), Stats, ~~or the official designated by the clerk or director to carry out the election responsibilities under this chapter.~~
- (5) “Communications media” means ~~newspapers, periodicals, radio stations, and television stations~~ 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 ~~driver’s 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 ~~Wis. Stat. §§. 5.02(6m) Stats.~~, information on proof of residency documents as defined by ~~Wis. Stat. s. 6.34(3) Stats.~~, information concerning confidential electors, guardianship information, voted ballots, and communications by a voter to a person rendering voting assistance under ~~§§. ss. 6.82, 6.87(5), or 6.875(6)(c)1., Stats.~~ ~~The type of proof of residence document presented to the election official is not considered confidential information within this subsection.~~

- (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 ~~of under~~ this chapter ~~related to election observers~~. 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, ~~or 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; ~~or inspect~~; and does not include physically handling election related materials or any materials provided by the voter.
- (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 are members of the same organization.~~
- ~~(19)~~(18) “Representing the same organization” means individuals who were deployed, assigned, trained by, or who identify as representing the same organization.

EL 4.03 Conduct of election officials.

- (1) If there are no alternatives due to physical limitations and 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 that the photo ID presented reasonably resembles the observer and the name entered. The designated election official shall then inform the observers to whom at the observable location they may direct questions during the day, make available to the observer a summary of the rules governing election observers at the observable location, explain how observers may move between observation areas throughout the day, explain where a ballot may be remade, if applicable, and then direct the observer to an area of the observable location established by the designated election official as an observation area. Observer logs shall be returned to the municipal clerk after the election activities at an observable location have concluded.
- (3) The designated election official shall provide each observer with a sticker, badge, or other item that identifies an individual as an observer and distinguishes observers from election officials.
- (4) The designated election official shall establish at least one ~~or, if necessary to meet the requirements of this paragraph, multiple~~ observation areas to enable observers to readily observe all public aspects of the voting process during the election without disrupting the voting process. An observation area shall be not less than 3 feet nor more than 8 feet from each table at which electors announce their names and addresses to be issued voter numbers or at which election officials announce the name of absentee voters, not less

than 3 feet nor more than 8 feet from each table at which electors may register to vote, and not less than 3 feet nor more than 8 feet from each table at which election inspectors remake any ballots. 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.

~~(5) Before remaking any ballot, election inspectors shall announce to observers that the ballot is being remade and the reason for doing so.~~

~~(6)~~(5) An election official shall repeat, once and then at the election official's discretion, a name or address upon request.

~~(7) The designated election official shall establish an observation area behind the election inspectors at each table at which electors announce their names and addresses to be issued voter numbers. If any electronic poll lists are used when voters announce their names and addresses, the observation area shall be positioned to allow observers to observe the screen, but observers shall not be permitted to see the screen of an electronic registration form used to register voters.~~

~~(8) The designated election official shall comply with the distance requirements described in sub. (4) and shall have the discretion to define the width of the observation area, but the width determined by the designated election official shall not prevent observers from readily observing all election processes.~~

~~(9) If more than one observation area is established within an observable location, observers shall be able to move between all such areas without restriction but must remain at least 3 feet from any election process.~~

~~(10) — If more than one observation area is established within an observable location, observers may move between such areas in a manner established by the designated election official.~~

~~(11)~~(6) The designated election official shall position the observer area to minimize contact between observers and voters and election officials.

~~(12)~~(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.

~~(13)~~(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.

~~(14)~~(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 ~~7-60~~ days of the election for which the observable location was active.

~~(15)~~(10) ~~As time permits, e~~Election officials shall ~~permit-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.

~~(16)~~(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., ~~as long as~~ ~~as at such times as election officials determine that~~ doing so does not interfere with or distract electors under s. 5.35(5) 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.

~~(17)~~(12) Election officials shall not permit observers to handle an original version of any official election document.

~~(18)~~(13) Election officials shall not permit observers to observe any confidential information.

~~(19)~~(14) ~~The designated election official shall~~If an observer violates a provision of this chapter or any applicable election statute: the designated election official shall ~~W~~warn an observer one time to cease offending conduct ~~when the observer violates a provision of this chapter or any applicable election statute.~~

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 ~~when an observer does not cease offending conduct following a warning under sub. (a). If the designated election official has been designated by a Chief Inspector or municipal clerk,~~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 subdivision~~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 ~~local~~ law enforcement to remove the offending observer. The designated election official shall provide a written order to the observer

which includes the reason for the order and the signatures of the designated election official.

a)c) _____ ~~as well as another~~ 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. 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. The Chief Inspector, municipal clerk, or both special voting deputies shall have sole authority to order the removal of an observer, but the other election official may note concurrence or disagreement with the decision on the order.

b)d) _____ If an observer is ordered to leave an observable location, the incident shall be recorded and the designated election official shall, within ~~seven~~ 60 days of the incident, provide to the Commission a copy of the order and any other documentation of the incident. ~~Commission staff shall submit a summary to the Commission of all reported incidents in which observers were ordered to leave an observable location pursuant to this chapter.~~ 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 Stats., to the designated election official and shall legibly print the observer's full name, street address and municipality, and the name of the organization the observer represents, if any on the observer log. The photo identification does not need to conform to the requirements of s. 5.02(6m), Stats. The observer log shall not be available for public inspection at the polling place but shall be made available after Election Day through a public records request of the clerk or board of election commissioners.

(2) An Observers shall comply with the designated election official's ~~lawful~~ commands or shall be subject to removal from the polling place following a warning underpursuant to EL 4.02(~~1417~~)(a).

(2)(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.

(3)(4) ~~All~~ An observer shall direct any questions ~~shall be directed~~ to the designated election official or other election officials as determined by the designated election official and communicated to observers when they sign the observer log. All questions shall be answered by the designated election official in a timely manner.

(4)(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.

(5)(6) ~~No observer may~~ An observer shall not engage in any loud, boisterous, or otherwise disruptive behavior, including but not limited to any abuse of the ability to create or transmit photographs, videos, or audio recordings 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.

(6)(7) ~~An~~ Observers shall keep conversation to a minimum and shall ~~try to~~ conduct whatever conversation is necessary at a low enough volume to minimize distraction to electors and election officials.

(7)(8) ~~No observer may~~ 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.

(8)(9) ~~No observer may~~ 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.

(9)(10) ~~An observer shall not~~ No observer may engage in any conversation concerning a candidate, party, or question appearing on the ballot.

(10)(11) ~~An observer shall not~~ No observer may use a communication device inside an observer area to make an audio or video communication. Text messaging, email, and other non-audible uses of such a device are permissible except as otherwise prohibited by this chapter.

~~(11)~~(12) An observer shall not~~No observer may~~ 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 cannot communicate with voters~~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.

~~(12)~~(13) An O~~bservers~~ may communicate as needed with the designated election official and any other election officials at the discretion of the designated election official.

~~(13)~~(14) Nothing in this chapter shall be construed to prevent an observer from assisting an elector in accordance with ss. 6.82, 6.87(5), or 6.875(6)(c)1., Stats., provided that the elector requests the observer's assistance.

EL 4.05 Location specific requirements.

(1) POLLING PLACE.

a. An o~~bservers~~ 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.,~~ an ~~observers~~ may remain at the polling place to observe canvassing under Wisconsin's open meetings law.

~~b. Observers shall be allowed to observe as soon as the election inspectors begin setting up the polling place on election day, including the zeroing of the voting machines. After 8 p.m., or when the last voter who was in line to vote by 8 p.m.~~

~~has finished voting, observers may remain at the polling place to observe canvassing under Wisconsin's open meetings law.~~

~~e. Observers representing the same organization shall not be limited to less than one per ward served by the polling place.~~

~~d.~~ 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. 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.

~~e. Observers representing the same organization shall not be limited to less than two observers per municipal clerk's office located in a public building or alternate site.~~

~~d.~~ An Observers shall be permitted to observe the preparations for the transfer of voted absentee ballots to a polling place, central count location, or board of absentee ballot canvassers.

~~e.c.~~ Observers shall be permitted to observe at all alternate absentee ballot sites established s. 6.855, Stats.

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

(3) BOARD OF ABSENTEE BALLOT CANVASSERS.

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

~~b.~~ Observers shall be permitted to observe the setup of the absentee ballot canvassing location, including the zeroing of election equipment, on election day and during all hours when a board of absentee ballot canvassers is meeting to canvass absentee ballots.

~~e.~~ Observers representing the same organization shall not be limited to less than one observer per processing table and tabulator.

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

~~e.c.~~ An Observers may create or transmit photographs, videos, or audio recordings of the observable location.

(4) ABSENTEE VOTING IN RESIDENTIAL CARE FACILITIES AND RETIREMENT HOMES.

- a. Only one observer from each of the 2 political parties whose candidate for governor or president received the greatest number of votes in the municipality, in the last general election, may accompany the special voting deputies to absentee voting locations described in s. 6.875, Stats. Each party wishing to have an observer present shall submit the name of the observer to the clerk or board of election commissioners no later than the close of business on the last business day prior to the visit to the facility.
- b. An observer ~~Observers~~ shall be permitted to accompany the special voting deputies during the hours when the deputies will be administering voting in accordance with s. 6.875, Stats.
- c. An observer ~~Observers~~ shall comply with any requirements imposed on visitors by a facility served by special voting deputies.
- d. An observer ~~Observers~~ shall be permitted to observe the process of absentee ballot distribution in the common areas of the home or facility. Observers shall not be permitted to observe a voter or the special voting deputies providing assistance to a voter, filling out a ballot or expressing which candidates or referenda the voter selects.
- e. If voting occurs outside of the common areas of a facility served by special voting deputies, an observer ~~observers~~ shall not be permitted to enter a voter's private room, however, the observers shall be permitted to observe such voting from a common area in accordance with sub. (4)(d).
- f. An observer ~~Observers~~ shall not create or transmit photographs, videos, or audio recordings of the observable location.

(5) RECOUNT.

a. An observer ~~Observers~~ 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 Sec. 4.03(1).

~~a.c.~~ The designated election official shall establish at least one area in which observers may observe the proceedings.

~~b. Observers representing the same organization shall not be limited to less than one observer per processing table and tabulator.~~

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

(6) CENTRAL COUNT.

a. An observer ~~Observers~~ shall be permitted to observe all counting of ballots occurring at a central counting location.

~~b. Observers representing the same organization shall not be limited to less than one observer per processing table and tabulator.~~

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

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

4.06 ~~Media observers and post~~ 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) ~~Observers from e~~Communications media individuals organizations shall identify themselves and ~~the any~~ organization they represent to the designated election official upon arriving at the observable location ~~and shall sign the observer log as provided by section EL 4.04(1). At the discretion of the designated election official, c~~Communications media ~~observers shall may be permitted to~~ use video and still cameras ~~at the discretion of the designated election official outside of the voting area~~ provided the cameras are not used in a manner that allows ~~the observer to see or the~~ recording any confidential information and provided the cameras do not disrupt or interfere with voting or disrupt the orderly conduct of the election. Communications media may not enter the voting area unless they are voting, assisting a voter, or observing under this chapter. The Commission may also use video and still cameras at polling places, municipal clerks' offices, central counting locations, or absentee ballot canvass locations, or authorize others to do so for purposes authorized by the Commission.

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

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.

- (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.

EL 4.03 Conduct of election officials.

- (1) If there are no alternatives due to physical limitations and 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 that the photo ID presented reasonably resembles the observer and the name entered. The designated election official shall then inform the observers to whom at the observable

location they may direct questions during the day, make available to the observer a summary of the rules governing election observers at the observable location, explain how observers may move between observation areas throughout the day, explain where a ballot may be remade, if applicable, and then direct the observer to an area of the observable location established by the designated election official as an observation area. Observer logs shall be returned to the municipal clerk after the election activities at an observable location have concluded.

- (3) The designated election official shall provide each observer with a sticker, badge, or other item that identifies an individual as an observer and distinguishes observers from election officials.
- (4) The designated election official shall establish 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 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.
- (5) An election official shall repeat, once and then at the election official's discretion, a name or address upon request.

- (6) The designated election official shall position the observer area to minimize contact between observers and voters and election officials.
- (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.
- (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.
- (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.
- (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.
- (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 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.
- (12) Election officials shall not permit observers to handle an original version of any official election document.

- (13) Election officials shall not permit observers to observe any confidential information.
- (14) If an observer violates a provision of this chapter or any applicable election statute the designated election official shall warn an observer one time to cease 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. 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).
- (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, including but not limited to any abuse of the ability to create or transmit photographs, videos, or audio recordings 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) 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) 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.
- (9) 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) An observer shall not engage in any conversation concerning a candidate, party, or question appearing on the ballot.
- (11) 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) 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) 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) Nothing in this chapter shall be construed to prevent an observer from assisting an elector in accordance with ss. 6.82, 6.87(5), or 6.875(6)(c)1., Stats., provided that the elector requests the observer's assistance.

EL 4.05 Location specific requirements.

- (1) POLLING PLACE.
- a. 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., 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. 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.
- c. 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.
- c. 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.
- 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 Sec. 4.03(1).
- c. The designated election official shall establish at least one area in which observers may observe the proceedings.
- 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.

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 any confidential information and provided the cameras do not disrupt or interfere with voting or disrupt the orderly conduct of the election.

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