



Wisconsin Elections Commission

201 West Washington Avenue | Second Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8005 | elections@wi.gov | elections.wi.gov

Wisconsin Elections Commission
Special Teleconference Meeting
201 W. Washington Avenue, Second Floor
Madison, Wisconsin
10 a.m. May 16, 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: Ahna Barreau, Sharrie Hauge, Brandon Hunzicker, Jon Nelson, Angela Sharpe, John Smalley, Riley Vetterkind, Riley Willman, Jim Witecha, and Meagan Wolfe, all by teleconference.

A. Call to Order

Commission Chair Millis called the meeting to order at 10:03 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 and noted that the meeting notice was amended under the emergency public meeting notice provisions.

C. Consideration and Approval of Election Processes and Planning for the 2024 Partisan Primary, General Election, and Special Elections in Congressional District 8 and Wisconsin Senate District 4. Approval of any Remaining Ballot Proofs for the August and November 2024, Elections, and the Special Election for Wisconsin Senate District 4.

Staff attorney Brandon Hunzicker began his presentation on the agenda item by covering background information regarding the governor's two executive orders, the various timelines for the elections resulting from each, and other implications. Attorney Hunzicker noted that Commissioners may want to consider moving the deadline to receive challenge responses in the Senate District 4 (SD4) election to earlier in the day on June 10 to accommodate a ballot access decision on SD4 the same day.

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

Administrator Wolfe then provided Commissioners with an overview of the ballot templates for the Special Election and Primary in Wisconsin Senate District 4 and the Special and Regular Elections and Primaries in Congressional District 8.

Discussion.

MOTION: The Commission directs staff to implement and hold the special elections called for by Executive Order #225 and Executive Order #226, and to take all necessary steps relating to the administration of those elections and certification of the results. The deadline for any response to a challenge filed in Wisconsin Senate District 4 shall be at 9 a.m. on June 10, 2024. Staff shall design an explanatory insert to be made available at the polls and placed inside outgoing absentee mailer envelopes for the Elections and Primaries for Congressional District 8. The explanatory insert will explain to voters in Congressional District 8 that they may vote in both the special and regular Congressional District 8 Elections and Primaries. Staff shall bring the insert to the Commission for approval at its upcoming June 10, 2024, meeting.

Moved by Commissioner Bostelmann. Seconded by Commissioner Spindell.

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

Motion carried 6-0.

MOTION: The Commission approves the ballot templates for the Special Election and Primary in Senate District 4 and for the Elections and Primaries for Congressional District 8. The ballot templates for the Elections and Primaries for Congressional District 8 shall list the dates of the terms in the gray area after where “Representative in Congress District 8” is written. A colon should be used to separate “Representative in Congress District 8” and the dates of the terms. For the special elections for Congressional District 8, staff shall only list the end date of the term. For the regular elections for Congressional District 8, staff shall list the beginning and end date of the term. Staff shall have the discretion to determine the formatting of the listed dates of the terms.

Moved by Commissioner Thomsen. Seconded by Commissioner Riepl.

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

Motion carried 6-0.

D. Review and Possible Action on Agency Administrative Rules

1. Election Officials (Chapter EL 16) (Also Considering Possible Pre-Rule Agency Guidance Directive in Tandem with Rulemaking)

Chief Legal Counsel Jim Witecha discussed a draft scope statement pertaining to election officials in the context of Wis. Const. art. III, § 7(2). He explained that the Commission would not be limited only to

rulemaking concerning potential election official and outside party considerations stemming from the constitutional amendments, and that the Commission could also take the opportunity to address gaps in guidance or manual-related processes.

Discussion.

MOTION: The Wisconsin Elections Commission authorizes staff to begin the rulemaking process for EL Chapter 16: Election Officials. Staff shall submit the statement of scope, hereby approved in this motion, to the Department of Administration and Office of Governor Evers for approval. Staff may proceed with all rulemaking processes preceding the next necessary review or approval from the Commission.

Moved by Commissioner Thomsen. Seconded by Commissioner Riepl.

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

Motion carried 6-0.

MOTION: Staff shall begin working on guidance discussed at the May 14, 2024 Commission meeting related to the implementation of Section 7, (1) and (2), of Article III of the Wisconsin Constitution. Staff are directed to conduct research into the history of the topic, background on what might be considered under the guidance along with potential alternatives and ensure that it is kept distinct from the rule.

Moved by Commissioner Spindell. Seconded by Commissioner Bostelmann.

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

Motion carried 6-0.

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

Staff attorney Angela Sharpe updated the Commission on the status of the permanent and emergency rules discussed in the agenda item and informed them of considerations they should keep in mind as they consider next steps. She informed the Commission that staff have prepared final rule text versions of both the emergency and permanent rules consistent with the Commission's discussion at its meeting on May 14, 2024.

Commissioner Spindell asked Commissioners whether they would like to reconsider the portion of the rule on page 30 of the materials that stipulates that no signature on the page may be counted when the residential address of the circulator cannot be determined by the information given on the nomination paper, and that no signature may be counted if the date of circulator certification is incomplete or incorrect.

Attorney Sharpe informed Commissioners that that requirement is a statutory requirement.

Commissioner Spindell noted that the difference in deadlines for clerks to transmit challenges or responses to challenged candidates or challengers, respectively, for challenges or responses filed electronically versus in paper form, was inconsistent and confusing and should be changed to be consistent.

Commissioner Jacobs noted that the difference in deadlines is to accommodate the additional work required to process paper materials.

Commissioner Spindell suggested the notification deadlines should be moved to noon the next day.

Commissioner Jacobs noted that she disagreed with the idea it would be difficult to inform the candidates of the rule given that the agency maintains a list of candidates who have filed declarations of candidacy and declarations of noncandidacy, and that it's essential this is passed as an emergency rule ahead of the June 3 deadline.

Commissioner Millis said he does not think it's a good idea to promulgate this as an emergency rule to have effect for the June 10 meeting, noting the possibility JCRAR may suspend the rule.

MOTION: The Wisconsin Elections Commission approves the proposed rulemaking drafts for SS 091-23 and SS 092-23 for emergency and permanent rulemaking relating to revised procedures for challenges to nomination papers. The Commission directs staff to submit the final draft emergency rule to the Governor, who must provide written notice of approval. Wis. Stat. § 227.24(1)(e)1g. Following gubernatorial approval, the Commission further directs staff to prepare a plain language analysis of the rule to be printed with the rule when published in the official state newspaper and with the Legislative Reference Bureau. Wis. Stat. § 227.24(1)(c), (d), (e) 1m., and (2). Staff are directed to take action on the steps authorized by this motion with a goal of promulgating this emergency rule before the first day that challenges can be filed to nomination papers filed by June 3, 2024. Staff are directed to draft and submit a fiscal estimate under Wis. Stat. § 227.24(1)(e)2. Finally, the Commission directs staff to proceed with the necessary permanent rulemaking steps for SS 091-23.

Moved by Commissioner Thomsen.

Discussion.

Seconded by Commissioner Jacobs.

Discussion.

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

Motion failed 2-4.

Discussion.

MOTION: The Wisconsin Elections Commission approves the proposed rulemaking drafts

for SS 091-23 and SS 092-23 for emergency and permanent rulemaking relating to revised procedures for challenges to nomination papers. The Commission directs staff to submit the final draft emergency rule to the Governor, who must provide written notice of approval. Wis. Stat. § 227.24(1)(e)1g. Following gubernatorial approval, the Commission further directs staff to prepare a plain language analysis of the rule to be printed with the rule when published in the official state newspaper and with the Legislative Reference Bureau. Wis. Stat. § 227.24(1)(c), (d), (e) 1m., and (2). Staff are directed to take action on the steps authorized by this motion with a goal of promulgating this emergency rule before the first day that challenges can be filed to nomination papers filed by August 13, 2024. Staff are directed to draft and submit a fiscal estimate under Wis. Stat. § 227.24(1)(e)2. Finally, the Commission directs staff to proceed with the necessary permanent rulemaking steps for SS 091-23.

Moved by Commissioner Bostelmann. Seconded by Commissioner Riepl.

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

Motion carried 6-0.

MOTION: The Wisconsin Elections Commission approves the proposed rulemaking drafts for SS 089-23 and SS 090-23 for emergency and permanent rulemaking relating to revised procedures for challenges to declarations of candidacy. The Commission directs staff to submit the final draft emergency rule to the Governor, who must provide written notice of approval. Wis. Stat. § 227.24(1)(e)1g. Following gubernatorial approval, the Commission further directs staff to prepare a plain language analysis of the rule to be printed with the rule when published in the official state newspaper and with the Legislative Reference Bureau. Wis. Stat. § 227.24(1)(c), (d), (e) 1m., and (2). Staff are directed to take action on the steps authorized by this motion with a goal of promulgating this emergency rule before the first day that challenges can be filed to nomination papers filed by August 13, 2024. Staff are directed to draft and submit a fiscal estimate under Wis. Stat. § 227.24(1)(e)2. Finally, the Commission directs staff to proceed with the necessary permanent rulemaking steps for SS 090-23.

Moved by Commissioner Thomsen. Seconded by Commissioner Bostelmann.

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

Motion carried 5-1.

MOTION: Any filing submitted in rebuttal to a response for the June 10, 2024 ballot access meeting shall be provided to the Commission no later than 9 a.m. on June 10. Staff is directed to immediately forward any submitted documents to the Commissioners. To the extent possible, staff is directed to move any argument by the parties where rebuttal has been submitted to the end of the June 10th agenda. If someone offers to provide factual testimony with a limit of three minutes during the June 10th meeting, Commissioner Millis will swear that person in under oath. Parties filing rebuttal shall explain to the Commission how they've served it on the candidate. A challenger shall serve the rebuttal on a candidate electronically, and if unable to do so, shall explain to the Commission why they could not do so. Commission staff are instructed to communicate with candidates the instructions listed in this motion.

Moved by Commissioner Jacobs. Seconded by Commissioner Thomsen.

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

Motion carried 6-0.

E. Closed Session

a. Litigation Update and Consideration of Potential Litigation

MOTION: Adjourn into closed session pursuant to Wis. Stat. 19.85(1)(g).

Moved by Commissioner Thomsen. Seconded by Commissioner Bostelmann.

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

Motion carried 6-0.

The Commission commenced closed session at 11:46 a.m.

The Commission adjourned in closed session at 12:10 p.m.

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May 16, 2024 Wisconsin Election Commission meeting minutes prepared by:

Riley Vetterkind, Public Information Officer

June 27, 2024

May 16, 2024 Wisconsin Election Commission meeting minutes certified by:



Marge Bostelmann, Commission Secretary

June 27, 2024