

NOTICE OF OPEN AND CLOSED MEETING

Wisconsin Elections Commission Meeting Notice

Regular Meeting
Wednesday, September 11, 2024
10:00 A.M.

This meeting will be held in person in Room 412 East of the Wisconsin State Capitol building, which is located at 2 East Main Street, Madison, WI 53702. Participants will also have the option to present public comment virtually, via telephone/Zoom.

WisconsinEye is likely to stream the meeting online, and members of the public and media are encouraged to view coverage at <https://wiseye.org/> Please check WisconsinEye's schedule at <https://wiseye.org/schedule/> to determine whether it plans to stream the meeting.

Please visit <https://elections.wi.gov/event/september-2024-quarterly-meeting> to view materials for the meeting. Members of the public wishing to provide written comment to the Commissioners should email electioncomments@wi.gov with "Message to Commissioners" in the subject line.

*Members of the public who wish to address the Commission during public comment have the opportunity to do so virtually or in person. Please follow public comment instructions posted at <https://elections.wi.gov/event/september-2024-quarterly-meeting>. Once your request is received, you will receive instructions via email. Please submit requests to present public comment by 4:00 p.m. on Tuesday, September 10, 2024. **Please note that you must sign up ahead of time to be permitted to speak at the meeting. "Walk in" requests the day of the meeting without prior sign up will not be permitted.***

NOTICE OF OPEN AND CLOSED MEETING

OPEN AND CLOSED SESSION AGENDA

- A. **Call to Order**
- B. **Administrator’s Report of Appropriate Meeting Notice**
- C. **Public Comment**
- D. **Written Comments**
- E. **Approval of Previous Meeting Minutes**
 - 1. **August 27, 2024** 1
- F. **Presentation of “November General Election Status Update” Report**
Stand Alone PDF Document
- G. **Review and Potential Action Relating to the 2025-2027 WEC Biennial Budget**
Stand Alone PDF Document
- H. **CRM Licensing Renewal** 388
- I. **Discussion, Review, and Possible Action Pertaining to Clerk Communications**
 - 1) **Best Practices for Polling Place Challenges and Election Day “Pocket Guide”** 7 and 7A
 - 2) **Best Practices for Planning for Polling Place Emergencies Related to New Statute 5.25(3)** 39
 - 3) **Supplement to Election Day and Election Administration Manuals pertaining to military and overseas voters** 48
- J. **Consideration and Potential Action of Hart Voting Equipment Certification** 51
- K. **Presentation of Voter Registration Outreach Efforts following Approved Exception to ERIC Eligible But Unregistered (EBU) mailers** 93
- L. **Administrative Rulemaking:**
 - 1) **EL Chapter 4 Observer Rule – Consideration of Final Draft Language for Permanent Rule** 149

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3) EL Chapter 19 Judicial Privacy Protection Rule – Review and Approval of Public Hearing and Comment Period on Scope Statement	302
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M. Review and Potential Action Relating to Administrative Complaint Forms	363
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P. Closed Session*	
1. Litigation update and Consideration of Potential Litigation	
2. Advisory Opinion Consideration and Potential Action	
3. Wis. Stat. § 5.05 Complaints	
4. Voter Felon Audit	

§ 19.85(1)(g) – The Commission may confer in closed session with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.

§ 19.85(1)(h) – Consideration of requests for confidential written advice from the elections commission under s. 5.05 (6a) or the ethics commission under s. 19.46 (2), or from any county or municipal ethics board under s. 19.59 (5).

§ 19.851 – The Commission’s deliberations concerning an investigation of any violation of the law under the jurisdiction of the Commission shall be in closed session.

§ 19.85(1)(f) – Considering financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons except where par. (b) applies which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, or involved in such problems or investigations.

NOTICE OF OPEN AND CLOSED MEETING

Q. Adjourn

**The Elections Commission will convene in open session but may move to closed session under Wis. Stat. § 19.85(1)(f), (1)(g), (1)(h), and Wis. Stat. § 19.851 and then reconvene into open session prior to adjournment of this meeting. This notice is intended to inform the public that this meeting will convene in open session, may move to closed session, and then may reconvene in open session. Wis. Stat. § 19.85(2).*



Wisconsin Elections Commission

201 West Washington Avenue | Second Floor | P.O. Box 7984 | Madison, WI 53707-7984
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Wisconsin Elections Commission

Ballot Access Meeting

201 W. Washington Avenue, Second Floor

Madison, Wisconsin

11:00 a.m. August 27, 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, Robert Kehoe, Anna Langdon, Angela Sharpe, Riley Vetterkind, Riley Willman, Jim Witecha, and Meagan Wolfe, all by teleconference.

A. Call to Order

Commission Chair Jacobs called the meeting to order at 11:03 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.

C. Approval of Previous Meeting Minutes

- a. June 27, 2024**
- b. July 11, 2024**
- c. July 26, 2024**
- d. July 30, 2024**
- e. August 8, 2024**

MOTION: Approve all five sets of minutes.

Moved by Commissioner Riepl. Seconded by Commissioner Bostelmann.

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

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

Administrator
Meagan Wolfe

Motion carried 6-0.

D. Ballot Access Challenges and Issues for Challenges Timely Received by 4:30 p.m. on Friday, August 9, 2024

a. EL 24-80 – David Strange v. Cornel West & Melina Abdullah

Staff Attorney Angela Sharpe presented an overview of staff’s memo and recommendations to the Commission.

Discussion.

Chair Jacobs noted that individuals presenting arguments for the challenger and candidate would have five minutes to present.

David Hollander appeared and presented arguments on behalf of Challenger Strange.

Discussion.

Oliver Hall appeared and presented arguments on behalf of Candidate West and Candidate Abdullah.

Discussion.

MOTION: The Commission does not sustain the challenge of David Strange to the declarations of candidacy of Cornel West and Melina Abdullah and will not exercise its authority under Wis. Stat. § 8.30(4) to exclude them from the ballot for failure to timely file a declaration of candidacy. The Commission adds Cornel West and his running mate Melina Abdullallah to the list of candidates to be approved for ballot access. Commission staff shall issue a closure letter to the parties consistent with this motion.

Moved by Commissioner Millis. Seconded by Commissioner Spindell.

Discussion.

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

Motion carried 5-1.

The Commission took a break at 11:55 a.m. and returned at 12:05 p.m.

b. EL 24-81 – Michael Hoffman v. Shiva Ayyadurai

Chief Legal Counsel Jim Witecha presented an overview of staff’s memo and recommendations to the Commission.

Discussion.

No one appeared on behalf of the challenger.

Candidate Shiva Ayyadurai appeared and presented arguments.

Discussion.

Frank Marshall appeared and presented arguments.

Discussion.

MOTION: The Commission sustains the challenge of Michael Hoffman against Candidate Shiva Ayyadurai and Candidate Crystal Ellis, and the Commission exercises its authority under Wis. Stat. § 8.30(4) to exclude them from the ballot because Candidate Ayyadurai does not meet the constitutional requirements for the Office of President of the United States. The Commission directs staff not to add Shiva Ayyadurai and his running mate Crystal Ellis to the list of candidates to be approved for ballot access. Commission staff shall issue a closure letter to the parties consistent with this motion.

Moved by Commissioner Spindell. Seconded by Commissioner Riepl.

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

Motion carried 5-1.

E. Ballot Access Report and Certification for Presidential and Vice-Presidential Candidates for the General Election

Elections Supervisor Riley Willman presented staff's ballot access memo. He noted that Wisconsin Green party vice presidential candidate Butch Ware should be listed as Rudolph Ware, according to his declaration of candidacy received by staff after the Commission's materials had been published.

MOTION: Staff recommends that the Commission grant ballot access to the following candidates, who will appear on the November 5, 2024 General Election ballot as the national nominees for President and Vice President for their respective parties:

- a. Kamala D. Harris and Tim Walz as the nominees for the Democratic party.
- b. Donald J. Trump and JD Vance as the nominees for the Republican party.
- c. Randall Terry and Stephen Broden as the nominees for the Constitution party.
- d. Chase Russell Oliver and Mike ter Maat as the nominees for the Libertarian party.
- e. Jill Stein and Rudolph Ware as the nominees for the Wisconsin Green party.

Moved by Commissioner Millis. Seconded by Commissioner Spindell.

Chair Jacobs noted that the Constitution, Libertarian, and Wisconsin Green parties did not run any candidates for state senate or assembly. The Commission discussed whether this constituted noncompliance with Wis. Stat. § 8.18 and made the parties' nominated candidates ineligible for ballot access.

AMENDMENT: Divide the question so that the Democratic and Republican parties are voted on in one motion and the Constitution, Libertarian, and Wisconsin Green parties are voted on in a separate motion.

Moved by Chair Jacobs. Seconded by Commissioner Thomsen.

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

Amendment failed 3-3.

Discussion.

Chair Millis clarified that his motion was moved with the understanding that the last clause, “dependent on the timely receipt of the necessary ballot access documents as described in Wis. Stat. § 8.16(7)” was removed.

ORIGINAL MOTION: Staff recommends that the Commission grant ballot access to the following candidates, who will appear on the November 5, 2024 General Election ballot as the national nominees for President and Vice President for their respective parties:

- a. Kamala D. Harris and Tim Walz as the nominees for the Democratic party.
- b. Donald J. Trump and JD Vance as the nominees for the Republican party.
- c. Randall Terry and Stephen Broden as the nominees for the Constitution party.
- d. Chase Russell Oliver and Mike ter Maat as the nominees for the Libertarian party.
- e. Jill Stein and Rudolph Ware as the nominees for the Wisconsin Green party.

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

Motion carried 4-2.

Chair Jacobs noted that Robert F. Kennedy, Jr. had publicly withdrawn from the presidential race.

MOTION: Based on the review of the nomination papers, and the conclusion of the challenges, the Commission grant ballot access to the following candidates, who will appear on the November 5, 2024 General Election ballot as independent candidates for President and Vice President:

- a. Cornel West and Melina Abdullah as independent candidates representing the Justice For All party.
- b. Claudia De la Cruz and Karina Garcia as independent candidates representing the Party for Socialist and Liberation party.

(c) and (d) are removed based on withdrawal and Commission prior action, respectively.

Moved by Commissioner Millis. Seconded by Commissioner Spindell.

The Commission discussed the application of Wis. Stat. § 8.35(1) to the current situation.

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

Motion failed 3-3.

MOTION: Based on the review of the nomination papers, and the conclusion of the challenges, the Commission grant ballot access to the following candidates, who will appear on the November 5, 2024 General Election ballot as independent candidates for President and Vice President:

- a. Cornel West and Melina Abdullah as independent candidates representing the Justice For All party.
- b. Claudia De la Cruz and Karina Garcia as independent candidates representing the Party for Socialist and Liberation party.
- c. Robert F. Kennedy and Nicole Shanahan for the We The People party.

Moved by Commissioner Thomsen. Seconded by Commissioner Riepl.

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

Motion carried 5-1.

F. Discussion, Review, and Possible Action Pertaining to Ballot Proofing Best Practices

Administrator Meagan Wolfe summarized the draft clerk communication before the Commission. She clarified that the Commission proofs and approves ballot templates and county clerks generate the actual ballot styles.

Discussion.

MOTION: Approve the publication and distribution of the memo found on page 177 of the Commission's materials.

Moved by Commissioner Thomsen. Seconded by Commissioner Bostelmann.

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

Motion carried 6-0.

G. Closed Session

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

Moved by Commissioner Thomsen. Seconded by Commissioner Bostelmann.

Roll call vote: Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye

Millis: Aye Thomsen: Aye

Motion carried 6-0.

The Commission left open session at 2:01 p.m.

H. Adjourn

The Commission adjourned in closed session at 2:38 p.m.

####

August 27, 2024, Wisconsin Election Commission meeting minutes prepared by:

Anna Langdon, Help Desk Staff

October 4, 2024

August 27, 2024, Wisconsin Election Commission meeting minutes certified by:

Marge Bostelmann, Commission Secretary

October 4, 2024



Wisconsin Elections Commission

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DATE: For the September 11, 2024, Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Jim Witecha, Chief Legal Counsel
Wisconsin Elections Commission

SUBJECT: Election Day Pocket Guide

Included in the Commission’s meeting packet is an “Election Day Pocket Guide for Chief Inspectors and Law Enforcement.” Staff compiled the proposed draft of the guide for the Commission’s consideration because local election and law enforcement officials have noted during several training seminars that a quick summary of the laws regarding challenges, officials’ authority, and criminal statutes would be highly beneficial to facilitate timely decision making.

Some municipalities had begun to draft their own versions, so it would be a particularly opportune time for the Commission to now consider whether a statewide, uniform pocket guide would be useful for election officials and their law enforcement partners.

The proposed draft focuses in on the areas of concern or need identified by staff and local officials. The proposed language uses the same terminology as corresponding statutes, where appropriate, so that users can be sure that they are relying upon the correct language and standards as they carry out their duties on election day. The information contained in the pocket guide is not new information or guidance—it simply presents existing statutes and guidance in a compact, easy-to-reference format for users. Staff welcome any edits or feedback that the Commission sees fit to provide. This will be published in a locally printable format, and staff will also examine the extent to which pre-printed copies may be provided upon request.

Recommended Motions:

The Commission hereby approves, with any edits or additions incorporated by motion, for publication, distribution, and use, the “Election Day Pocket Guide for Chief Inspectors and Law Enforcement,” in accordance with the discussion or edits provided by the Commission at its September 11, 2024, meeting.

Wisconsin Elections Commissioners

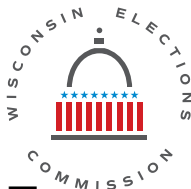
Ann S. Jacobs, chair | Marge Bostelmann | Don M. Millis | Carrie Riepl | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

ELECTION DAY POCKET GUIDE

FOR CHIEF INSPECTORS AND
LAW ENFORCEMENT

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WISCONSIN ELECTIONS COMMISSION

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WEC Helpdesk:
608-266-8005

WEC Helpdesk e-mail:
elections@wi.gov

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1 Voting Challenges

Any elector may challenge for cause any person offering to vote whom the elector knows or suspects is not a qualified elector. *Wis. Stat. § 6.925.*

Electoral challenges

Challenges must be for cause.

A challenge “for cause” is a challenge to the qualifications of an elector or absent elector (e.g. citizenship, age, residency, felony conviction without voting rights restoration, adjudicated incompetent, already voted).

Wis. Admin. Code EL §§ 9.02 & 9.04.

A challenge based solely on an elector’s race, ethnicity, or ability to speak English **does not** constitute cause and **cannot** be the basis for a challenge.

An elector cannot challenge:

- absentee certificate or application
- adherence to other voting requirements

Administering a Challenge

If a person is challenged as unqualified by an elector, election inspectors must follow the procedures in Wis. Admin. Code EL §§ 9.02 – 9.06.

Inspectors should use form EL-104 to administer the challenge.

One of the inspectors may administer the oath or affirmation to the challenged

and challenging electors and ask the electors questions which are appropriate to test the elector's qualifications.

Wis. Stat. § 6.925.

Absentee Challenges

he vote of any absent elector may be challenged for cause and the inspectors of election shall have all the power and authority given them to hear and determine the legality of the ballot the same as if the ballot had been voted in person.

Wis. Stat. § 6.93.

Penalty for abusing challenge process

Any elector who abuses the right to challenge under Wis. Stat. § 6.925 may be subject to sanctions available to inspectors under Wis. Stat. § 7.41(3). (See Election Inspector Authority section).

Wis. Admin. Code EL § 9.02.

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Election inspector challenges

Election inspectors working in the polling place have additional authority beyond that of an elector challenging a voter.

Each inspector shall challenge for cause any person offering to vote whom the inspector knows or suspects is not a qualified elector or who does not adhere to any voting requirement.

If a person is challenged as unqualified by an inspector, one of the inspectors shall administer the oath or affirmation to the person and ask questions to test the qualifications of the challenged elector.

Wis. Stat. § 6.92.

If an election inspector brings a challenge, they must follow the procedures in Wis. Admin. Code EL §§ 9.02 – 9.06 and use form EL 104.

2 Election Inspector Authority

Preserve order. The inspectors shall possess full authority to maintain order and to enforce obedience to their lawful commands during the election and the canvass of the votes
Wis. Stat. § 7.37(2)

In Wisconsin, the public has a right to be present at any polling place or absentee voting/processing site, subject to statutory or other reasonable restrictions. Wis. Stat. § 7.41.

Removal of disruptive observers.

However, the chief inspector of a polling place or the municipal clerk may order the removal of any such observer if the person disrupts operations or violates Wis. Stats. §§ 12.03(2) or 12.035. (See Election Crime Statutes section).

Wis. Stat. § 7.41(3).

Inspectors may order any law enforcement officer to remove the person from the voting area or to take the person into custody if they:

- refuse to obey the lawful commands of an inspector
- are disorderly in the presence or hearing of the inspectors or
- interrupt or disturb the proceedings.

Wis. Stat. § 7.37(2).

Prohibited Acts

No Person may:

- refuse to obey a lawful order of an inspector made for the purpose of enforcing the election laws
- engage in disorderly behavior at or near a polling place
- interrupt or disturb the voting or canvassing proceedings

These activities are crimes and are subject to fines up to \$1,000, up to six months imprisonment, or both.

Wis. Stats. §§ 12.13(3)(x) or 12.60(b).

3 Working with Law Enforcement

Plan ahead Clerk and election inspector pre-planning with law enforcement can be critical to the effective operations of polling places

- examine the threat landscape
- draft an incident action plan
- establish a direct line of communication
- assign resources to the polls

Determine the need for law enforcement. Clerks and chief inspectors should assess the need for a law enforcement presence and weigh that against the rights of the electors (e.g. having a plain clothes officer in the polling place, standing by in the building, direct cell phone communication, etc.). Nothing precludes uniformed officers from being in the polling place (e.g. to vote, serve as an end-of-line officer, serve as an escort for equipment/ballots, assist in enforcement, etc.). Local officials should consider how a voter will interpret or react to a law enforcement presence before maintaining that presence or calling for assistance.

Be prepared to de-escalate if safe to do so. Election inspectors and law enforcement should employ de-escalation practices and try to give a disruptive person opportunities to remedy their behaviors before further action is taken, particularly if that person has not yet exercised their right to vote.

The safety of voters and election officials is the most critical objective, and some conduct may be so serious that de-escalation itself may be unsafe. Never attempt to de-escalate if you fear that doing so will endanger your life or safety or that of another.

4 Election Crime Statutes

Contact law enforcement to report violations. Sometimes all attempts to de-escalate or reason with a person fail, or the situation is so serious from the outset, and law enforcement action becomes necessary. Election-specific crimes are detailed in Wis. Stat. Chapter 12. Below is a non-comprehensive summary of the provisions that are most likely to be experienced by law enforcement officers being dispatched to polling places.

Electioneering Prohibited

Wisconsin Statute § 12.03

Electioneering is any activity which is intended to influence voting at an election when that activity is conducted within 100 feet of the entrance to a polling place or other voting site.

Electioneering does not include private property that is within the “zone of electioneering,” such as a candidate sign in an apartment window or front yard adjacent to the polling place.

Certain activities are not considered electioneering if they do not relate to an issue or candidate on the ballot that day. For instance, petition circulators may circulate signature papers to voters in line, provided it is not an issue or candidate on the ballot. However, election inspectors may wish to ask those individuals if they would consider moving outside the zone of electioneering.

Posting and Distribution of Election-Related Material

Wisconsin Statute § 12.035

A municipal clerk, election inspector, or law enforcement officer may remove election-related material posted in violation of this statute and may also confiscate election-related material distributed in violation of this statute.

“Election-related material” means any written matter which describes, or purports to describe, the rights or responsibilities of individuals voting or registering to vote at a polling place or voting site.

Election Threats & Voter Intimidation

Wisconsin Statute § 12.09.

Use of Force or Threats: It is prohibited for anyone to use or threaten force, violence, or restraint to compel someone to vote or not vote.

Obstructing Voting Rights: No one may obstruct or prevent a person from voting freely by abduction, coercion, or fraud.

Coercion for Specific Votes: It is illegal to force someone to vote for or against any ballot item by any means.

Election Bribery

Wisconsin Statute § 12.11.

With relation to this criminal provision, “anything of value” includes any amount of money, or any object which has utility independent of any political message it contains, with a value exceeding \$1.

No person or business can offer anything of value in exchange for voting or not voting a certain way or at all.

This provision of criminal law does not apply to:

- public support of one candidate over another candidate
- an employer who uniformly gives employees paid time off to vote
- using one's own vehicle to transport electors to the polls at no charge
- public candidate promises to reduce taxes or expenditures, etc.

Election Fraud

Wisconsin Statute § 12.13

This provision of statute is categorized by violations pertaining to electors, election officials, and all persons.

Some of the most relevant portions of this statute include electors without proper qualifications or residency. This also includes falsely procuring registration, registering/voting more than once in the same election, impersonating a voter, etc.

This section also includes election officials that fail to perform statutory responsibilities through willful neglect or refusal to perform.

It is also a crime to observe how someone has voted without assistance being requested by the voter, to illegally change or modify ballots or vote totals, to knowingly allow a non-qualified party to vote, etc.

Tampering with Voting System

Wisconsin Statute § 12.13 (3)(z)

It is a crime to tamper with automatic tabulating equipment or any record of votes cast or computer program which is to be used in connection with such equipment to count or recount votes at any election so as to prevent or attempt to prevent an accurate count of the votes from being obtained.

5 Election Crime Penalties

Wisconsin Statute § 12.60 details the penalties for violations of the elections criminal code in Chapter 12 of the Wisconsin Statutes.

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Class I Felonies

- Election Threats
- Bribery
- Certain Fraud Provisions.

Provisions that may result in fines up to \$1,000 or up to six months imprisonment, or both include:

- Electioneering
- False Representations
- Certain Fraud Provisions (including disobeying a lawful order from Chief Inspector or disorderly conduct)

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Emergency Contacts

Wisconsin Elections

Commission: (608) 261-2028

Municipal Clerk:

County Clerk:

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Public Works:

Sheriff:

DRAFT





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

DATE: September 11, 2024

TO: Wisconsin Municipal Clerks
Wisconsin County Clerks
City of Milwaukee Election Commission
Milwaukee County Elections Commission

FROM: Wisconsin Elections Commission

SUBJECT: Wisconsin Statute § 5.25(3) and Emergency Polling Place Planning Guidance

2023 Wisconsin Act 124 was enacted on March 21, 2024, for the purposes of renumbering and amending Wis. Stat. § 5.25(3). Primarily, this provision of statute was meant to detail the extent to which emergency designations and closures of polling places could occur.

Many clerks were already aware that the Wisconsin Elections Commission (“Commission”) has long recommended that municipalities have an emergency action plan in place and approved by the local governing body, which would at least include pre-approved emergency backup polling place location(s). The Commission was working to promulgate an administrative rule, Wis. Admin. Code Chapter EL 15, that would have formalized these processes. However, the new Wis. Stat. § 5.25(3) would have superseded portions of proposed Chapter EL 15, and the Commission ordered that the rule no longer be pursued at its June 27, 2024, meeting, while also directing that this guidance be issued on the interpretation of Wis. Stat. § 5.25(3).

The key provisions found in Wis. Stat. § 5.25(3) are as follows:

1. All polling place locations shall be established for each election at least 30 days before the election. The location may not be discontinued more than 30 days before an election without the approval of the municipal governing body after a public hearing at which the public has an opportunity to present testimony on the proposed discontinuation.
2. Under no circumstances may more than one-half of a municipality’s polling places be closed within 30 days before an election, including on Election Day, except when the municipality has only one polling place and establishes a new polling place approved by the majority of the members-elect of the governing body and the municipal clerk.
3. With the exception of Section #2 above, no established polling place may be closed to voters on Election Day (with the change coming less than 30 days before election day) unless the majority of the members-elect of the governing body makes a finding of emergency. Then, that majority and the municipal clerk must approve the closure. A finding of emergency would most likely be done by passing a resolution at a public meeting on the topic, but clerks should consult local counsel to determine if that is how your municipality prefers to complete the process. Finally, the clerk must post all proper notices relating to the

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

Administrator
Meagan Wolfe

changes while also stationing, at or as near as possible to the closed location, a proper person to direct voters to the new polling place location. Statute does not further define a “proper person.” Selecting this person would be up to the discretion of the clerk and/or governing body, but the Commission believes the most logical interpretation is that a greeter, properly trained election inspector, and/or clerk’s office staff member would be a “proper person” to utilize for this purpose.

4. The provisions above do not apply to the election inspectors’ ability to adjourn to another location in accordance with Wis. Stat. § 7.37(1).

The Commission recommends all municipal clerks speak to their governing bodies with haste about incorporating a Polling Place Emergency Plan (“Plan”) into a public meeting agenda more than 30 days prior to the 2024 November General Election, or if time prohibits, at the next available opportunity. Municipalities that have had to close a polling place due to natural disaster or other unanticipated event have wished that they had a Plan in place beforehand. Creating a Plan in advance ensures the public, election inspectors, and local officials will all be aware of alternate polling locations and emergency planning provisions.

This Plan should consider and comply with the requirements of Wis. Stat. § 5.25(3). The most common way that a local governing body approves such a Plan is by a resolution that passes a proposed policy at a public meeting. A Plan could also be written into ordinance, but that would be less adaptable over time, although it may be a better fit for certain municipalities. The Commission recommends discussing appropriate approval methods and policy considerations with local counsel.

The Commission strenuously recommends that municipalities approve substitute polling places and an emergency plan to employ if a polling place becomes inconvenient or impossible to use, whether inside or outside of the 30-day preelection statutory deadline. The Plan may include, but is not limited to:

1. Details that ensure the primary and backup sites comply with the accessibility requirements of Wis. Stat. § 5.25(4) and notice requirements of Wis. Stat. § 10.01(2)(d).
2. The names and addresses of substitute polling locations and a set of protocols explaining how to transfer to a substitute polling location, including how ballots and voting equipment will be secured and transferred.
3. Sections defining what constitutes an emergency and the associated contingency plans for those events.
4. A section containing a chain of command flowchart detailing how election officials will communicate with each other during an emergency. This section shall contain a current list of the roles and contact information of each election inspector.
5. A section containing contact information for local media, law enforcement, and voting equipment vendors.
6. A plan to ensure the emergency plan is publicized and, if used, how the clerk will notify impacted voters.

A sample outline of a Plan has been attached for your convenience as Attachment A. The sample Plan is not intended to be comprehensive, municipality specific, or compliant/safe as may be required by your municipality, but it does provide a fairly comprehensive example of the types of provisions you may wish to build into a customized Plan. It is important that you review this sample policy with local officials, your governing body, and legal counsel before adopting this or a similar policy.

Please contact the WEC Help Desk at 608-261-2028 or elections@wi.gov if you have any additional questions.



Generic City, Wisconsin

Polling Place and Election Day Emergency and Contingency Plan

Adopted (Amended) by Resolution YY-XYZ

Last Updated: September 11, YYYY

Maintained By: City Clerk Janice Smith

Introduction:

This document will serve as the emergency and contingency plan in case of an unexpected event that requires a change of polling place location or operating procedures on or around an election day. The purpose of this plan is to provide guidance for election officials and other relevant parties regarding the general safety of polling locations, all while maintaining the security of an election.

This document shall be reviewed with election inspectors as part of the clerk’s preelection training. All relevant officials should be familiar with this plan and stand ready to implement its provisions as may become necessary. The document and its contents shall be considered sensitive in nature. The county clerk, polling place property owners and facility managers, and other applicable parties should be apprised of relevant aspects of this plan.

Polling Places and Location:

The Generic City Common Council has approved the following locations as primary and emergency polling places for the city’s election day activities:

Polling Place	Address
Primary Locations	
King Elementary School	123 First Street, Generic City, WI 12345
Jackson Municipal Building	123 Second Street, Generic City, WI 12345
Emergency Locations	
Patel Public Library	123 Third Street, Generic City, WI 12345

Election Official Responsibilities:

All Election Officials should be knowledgeable of what to do in the event of an emergency event, as described below or more generally. This plan addresses security issues relating to clerks and local officials, poll workers, electors, election records, and equipment.

General Responsibilities:

- Know where the primary and secondary exits are for your facility.
- Locate the fire extinguishers.
- Learn where to go in your facility in case of an emergency, severe weather or tornado.
- Have a specific point or location for all employees to assemble, both inside and outside your facility.
- Report any unusual activity or persons at your location. Notify the Generic City Clerk's Office at (608) 555-1234, or dial 911 for emergency services.
- Document any evacuation or emergency activities on your Inspectors' Statement.

Polling Place Details:

- Voters may cast their ballots at the appropriate polling place from 7:00 AM until 8:00 PM on election day.
- In the event of an emergency, a court order may be requested to extend polling place hours.
- In the event of an emergency which renders any Primary Location impossible or inconvenient for use, the Emergency Location designated herein shall be used as a replacement location. The list of potential emergencies listed herein constitutes the minimum emergency types that may warrant movement to the Emergency Location for polling place activities. Similar emergencies not listed in this policy, but otherwise requiring movement, are hereby authorized.
- Steps will be taken to ensure the primary and backup sites comply with the accessibility requirements of Wis. Stat. § 5.25(4), notice requirements of Wis. Stat. § 10.01(2)(d), and the designation requirements of Wis. Stat. § 5.25(3).
- If for any reason the polling place needs to be permanently evacuated during an election, all election materials shall be brought to the alternate location. Depending on the reason for the evacuation, a police escort and/or their designee will be provided. A trained individual must be stationed at or as near as possible to the closed location to notify all electors of the closure and of their new polling location. In addition, a notice should be posted on the entrance to the polling place notifying voters of the evacuation and that they should report to the alternate location to vote.
 - Ballot materials, voting equipment, and all materials must remain locked or properly secured, and at no time may these items be out of the sight of the election inspectors or local officials unless the emergency puts those parties in danger warranting evacuation without the materials. In that case, time and safety permitting, the election inspectors or local officials may take other measures to secure the election materials.

- Other forms of communication to voters will include ... (e.g. City social media pages, email and text blasts, emergency notification systems, city website, local media outlets, etc.).

Communications Plan:

The Generic City Clerk’s Office provides a cell phone to each polling place’s chief inspector. These telephones are to remain turned on all day and within hearing range. Should the Generic City Clerk or any emergency personnel need to talk to you, these telephones may be our only means of communication. Those numbers are shared with all relevant municipal officials and emergency officials, and the contact information for each emergency service provide or official will also be in that pre-provided cell phone’s contact list. This list will include, at a minimum:

Contact	Phone Number
Generic City Police/Fire/Medical	Emergency: 911; Non-emergency: (608) 555-0987
County Sheriff	(608) 555-0987
County Clerk	(608) 555-0987
City Clerk	(608) 555-0987
Wisconsin Elections Commission	(608) 555-0987
Energy Company	(608) 555-0987
Gas & Electric Company	(608) 555-0987
City Public Works	(608) 555-0987
Common Council President	(608) 555-0987
Fire Chief	(608) 555-0987
Duty Circuit Court Judge	(608) 555-0987
Duty Generic City Police Officer	(608) 555-0987

Election Equipment & Ballot Security:

The decision of what to do with ballots and election equipment will be directly proportionate to the type of emergency. The following represents a few considerations that may be necessary as the situation demands:

- When you are dealing with a life-threatening situation, the evacuation and safety of human life will be the first concern. Please remember to inform any voters at your location of the safety evacuation route.
- The chief inspector will call the Generic City Clerk’s Office at (608) 555-0987 to keep the office informed of the situation.
- The chief inspector will keep the cell phone turned on and in hand to ensure that a line of communication is available for the Generic City Clerk’s Office or other responding entities.
- If you have time and a safe exit route, you may bring the tabulator with you to your pre-arranged evacuation meeting location. Unplugging the tabulator will not affect your election results. (MUNICIPALITIES SHOULD CONFIRM THIS IS ACCURATE FOR THEIR CHOSEN EQUIPMENT, BUT IT IS GENERALLY TRUE)

- Election Officials will maintain custody of the poll books, registrations, and all unvoted ballots. If you are able, allow voting to continue in the Emergency Location or parking lot of the Primary Location. Contact the Generic City Clerk if a change of location is required, so that the necessary steps may be taken. This must include a proper person being stationed at or as near as possible to the closed location to notify all electors of the closure and of their new polling location.
- Document the incident on your Inspectors' Statement, including the amount of time voting activities were suspended or unavailable.
- FILL IN MUNICIPAL SPECIFIC RESPONSE PROVISIONS AS ALLOWABLE BY YOUR CITY'S OFFICIALS AND LEGAL COUNSEL.

Medical Emergencies:

If you observe an Election Official, voter or observer who appears to be seriously ill or injured:

- Dial 911 immediately. Give the 911 operator the location and type of emergency. Follow the directions given to you by the 911 operator. Try to ensure voters remain calm, aware that emergency or law enforcement officials may be present, and that the flow of voting continues to the greatest extent possible.
- FILL IN MUNICIPAL SPECIFIC RESPONSE PROVISIONS AS ALLOWABLE BY YOUR CITY'S OFFICIALS AND LEGAL COUNSEL. (*e.g.* when and how to administer aid, minimization of liability, information that should be reported or logged, etc.).

Fire Evacuation:

- Remain calm. Call 911.
- Direct all election officials and voters in an orderly fashion to nearest exit.
- Do not use elevators.
- Refer to Election Equipment & Ballot Security section for directions on dealing with ballots and equipment.
- Proceed to your designated assembly location. Be careful if crossing streets to your assembly point.
- Take a head count and note any missing people. Report any missing people to emergency personnel.
- Stay in your designated area until emergency personnel direct you to move elsewhere.
- Do not attempt to re-enter the building until advised by emergency personnel.
- Document this event on your Inspectors' Statement, including the amount of time voting was halted.
- FILL IN MUNICIPAL SPECIFIC RESPONSE PROVISIONS AS ALLOWABLE BY YOUR CITY'S OFFICIALS AND LEGAL COUNSEL (*e.g.* with whom can emergencies be discussed, how to handle media presence, additional safety protocols).

Threatening Phone Calls, Bomb Threats, and Suspicious Objects:

- Keep anyone from handling the object or going near it. The object may be dangerous. In addition, preservation of evidence is important for law enforcement.
- If a suspicious object is located, immediately evacuate the area, leaving the object undisturbed until the police arrive.
- In the event of a threatening phone call or bomb threat, promptly write down everything you can remember about receiving the verbal or written threat, parcel, or suspicious object. Listen for background noise, the caller's voice, and what was said. If the situation allows, ask questions about where the bomb is located, when it will explode, the person's name and address. Police interviewers will need this information.
- Call 911 immediately and assess whether an evacuation is necessary.
- Document this incident on your Inspectors' Statement, including the amount of time voting is unavailable.
- FILL IN MUNICIPAL SPECIFIC RESPONSE PROVISIONS AS ALLOWABLE BY YOUR CITY'S OFFICIALS AND LEGAL COUNSEL.

Threats of Violence:

Be aware of the possibility of an incident occurring at your polling location. Local officials should pre-plan for threats of violence, disruptions, and elections or other crimes in advance of election day. This includes de-escalation training, reminders of the chief inspector's authority, threat landscape briefings between local officials and law enforcement, and planning for law enforcement presence or responses on election day. Please note the following:

- Take all threats of violence seriously.
- Report any threats to the chief inspector to make a determination as to the next course of action.
- For any situation that involves an immediate threat of violence, an election official should notify law enforcement or the duty officer if one is predetermined. Dial 911.
- In the event of a confrontation, do not panic. Do exactly what you are told—no more and no less. Do not do anything to surprise the threatening individual.
- Document incident on the Inspectors' Statement.
- FILL IN MUNICIPAL SPECIFIC RESPONSE PROVISIONS AS ALLOWABLE BY YOUR CITY'S OFFICIALS AND LEGAL COUNSEL.

Active Shooter:

Active shooter situations are unpredictable and evolve quickly. Because active shooter situations are often over within three to five minutes, before law enforcement arrives on the scene, poll workers should be prepared both mentally and physically to deal directly with an active shooter situation. Keep safety first. If an active shooter event occurs at the polling place, use the **Avoid | Deny | Defend™** model. Once shooting starts, it is too late for negotiation to help.

- If it is safe to do so, exit the facility immediately to **avoid the shooter**. Run if the path is clear and you can easily reach an exit. Do not worry about the ballots or election supplies.
- If you are unable to safely exit the facility, lock yourself in any room and barricade the door to **deny the shooter access**. Because each polling location has different types of

doors, each polling place is encouraged to develop plans in advance for where and how to barricade the door shut. Depending on the type of door and how it opens, you might barricade the door using a door stop, binder, table, or belt. Turn off the lights, silence cell phones, and remain quiet. If you barricade, prepare for your next response if the attacker finds you or gets into the room.

- If you are unable to utilize the avoid and deny strategies successfully, **defend yourself using whatever means are available**. When the shooter is in close range and you cannot flee, your chance of survival is much greater if you try to incapacitate the shooter.

The weapon in the shooter's hand is the biggest threat. If possible, attack the shooter immediately as the attacker enters the room, before they orient themselves. Grabbing the gun with a c-grip around its top or slide prevents the gun operating correctly, causing a malfunction. After grabbing the gun by the slide, use your other hand with a hammer fist to strike at the shooter's vision and wind, or just keep hitting their nose. If the shooter has a rifle, grab outside of the shooter's hands from the side, and drive the rifle down toward the shooter's legs and away from you.

If you are within 21 feet of the shooter, you are better off running toward the shooter than away from them; otherwise, you are giving them time to aim at you.

Call 911 as soon as it is safe to do so.

If you are shot, use the square breathing technique to lower your heartrate and slow down your loss of blood. Slowly inhale for four seconds. old that breath for four seconds. Slowly exhale for four seconds. Hold between breaths for four seconds. Keep repeating this breathing exercise. **FILL IN MUNICIPAL SPECIFIC RESPONSE PROVISIONS AS ALLOWABLE BY YOUR CITY'S OFFICIALS AND LEGAL COUNSEL, OR IN ACCORDANCE WITH YOUR SPECIFIC ACTIVE SHOOTER PLAN OR TRAINING.**

Worldwide Terrorism Event:

- In the event of terrorist activity, all elections will continue unless federal or state of Wisconsin officials have ordered otherwise.
- If there is no police order to take cover or remain indoors, all operations of the polling place can remain intact.
- If you are notified to evacuate the polling place, refer to Election Equipment & Ballot Security section for directions on dealing with ballots and equipment.

Hazardous Leak:

- If you are the first person to identify a leak or hazardous substance release, call 911 to report the incident.
- The Generic City Fire Department or other relevant utility/agency will assess the situation.
- Remain at the polling location unless notified otherwise by the emergency personnel. Close doors and windows if leak or spill is outside of your facility.

- Refer to Election Equipment & Ballot Security section for directions on dealing with ballots and equipment.
- FILL IN MUNICIPAL SPECIFIC RESPONSE PROVISIONS AS ALLOWABLE BY YOUR CITY'S OFFICIALS AND LEGAL COUNSEL.

Tornado/Severe Weather:

- In the event of a tornado warning, or severe weather warning, immediately seek shelter in a secure location. All Election Officials should know this location ahead of time. If time does not allow you to evacuate to a safe location, find shelter under a heavy object, such as a table, and protect your head.
- Take a head count of your group. Try to remain calm and quiet during the waiting period. Do not wander.
- If the building is struck by a tornado, remain in your location until it is safe to evacuate.
- It is important to stay away from all sources of power, power lines, phone lines, gas lines, and windows.
- Once you are clear of the area, do not re-enter the building without clearance from emergency personnel.
- Document the incident on your Inspectors' Statement, including the amount of time voting was halted.
- FILL IN MUNICIPAL SPECIFIC RESPONSE PROVISIONS AS ALLOWABLE BY YOUR CITY'S OFFICIALS AND LEGAL COUNSEL.

Power Outage:

- Remain calm and provide assistance to visitors and staff in your immediate area.
- If charged, use the flashlight provided by the Generic Clerk's Office.
- If you are in a location that does not have windows, proceed cautiously to an area that has emergency lights.
- The tabulator will retain all data in its memory.
- Document the incident on your Inspectors' Statement.
- Call the local power company and Generic City's Public Works Office to inquire about options for restoring power or utilizing backup power sources.
- FILL IN MUNICIPAL SPECIFIC RESPONSE PROVISIONS AS ALLOWABLE BY YOUR CITY'S OFFICIALS AND LEGAL COUNSEL (*e.g.* safety considerations related to power outages, requirements for the presence of backup generators, etc.).

Observers:

Observers are hereby put on notice that they are expected to follow all emergency procedures. They are prohibited from interfering with the election process or emergency procedures, and must obey lawful orders of the chief inspector or local officials.



Wisconsin Elections Commission

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DATE: For the **September 11, 2024**, Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Prepared and Presented by:
Angela O'Brien Sharpe
Staff Attorney

SUBJECT: Additional Manuals Supplement – Topics Not Yet Addressed by Commission
Election Day Manual (August 2024)
Election Administration Manual (August 2024)

Purpose & Orientation

At the December 19, 2023, meeting, Commission staff outlined five general categories of proposed revisions to the Election Administration and Election Day manuals ahead of the start of the 2024 election cycle. Categories one through four were addressed and resolved by the Commission during public meetings on December 19, 2023, January 24, 2024, and February 8, 2024. New editions of the manuals were released with categories one through four implemented. Additional litigation update revisions were approved by the Commission during a public meeting on July 30, 2024. The current versions of both manuals are the August 2024 editions.

The fifth category of proposed revisions from December 19, 2023, has not yet been addressed by the Commission because staff explained at the December 19 meeting that this category consisted of legal and policy questions that warranted additional analysis before the Commission approves them.

Revisions Intended to Supplement Existing Manuals

The revisions contained in this memorandum are intended to supplement the existing Election Day and Election Administration manuals. Accordingly, no redlines are included, and the text of both manuals will be updated after the November General Election. Clerks should familiarize themselves with the contents of this supplementary memo ahead of November 5, 2024, as this memo is intended to have the same effect as the guidance in each manual.

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

Military Electors are Absent Electors

The fifth category largely consists of revisions relating to a topic that the Commission did not consider during previous rounds of manual revisions: Whether military voters must be voting absentee to be properly exempt from voter registration and proof of residence requirements.

Multiple statutory provisions support the conclusion that military electors can only ever be absentee voters. Military electors have their own specific section in Chapter 6, which is titled “Absentee voting for military electors.” Wis. Stat. § 6.22. In the sub-section titled “Voting Procedure,” the statute confirms that the ballots of military electors “...shall be marked and returned, deposited and recorded *in the same manner as other absentee ballots.*” Wis. Stat. § 6.22(5) (Emphasis added). Similarly, military voters “...may file an application *for an absentee ballot.*...” Wis. Stat. § 6.22(2)(e) (Emphasis added). Within the proof of residence provision, military elector is more specifically defined, in part, as “a member of a uniformed service on active duty who, by reason of that duty, *is absent* from the residence where the member is otherwise qualified to vote...” Wis. Stat. § 6.34(1) (Emphasis added). In summary, no provision of Wisconsin law appears to contemplate a scenario where a military elector is not an absentee elector.

Clarifying that military electors must always be absentee electors is important to eliminate confusion at the polls on Election Day. Simply put, if an elector is registering to vote in-person on election day at their polling place, they do not meet the definition of a military elector because they are not voting via absentee ballot. While they may meet the service definition of a military elector in § 6.22(1), Wisconsin law is clear that military voters must be voting absentee in order to be exempt from voter registration and proof of residence requirements. This distinction is only important for in-person voting on election day at the polls. If military voters are voting via in-person absentee ballot (IPAV), they exemptions for registration and proof of residence do apply as IPAV is a form of absentee voting.

The recommended edits to the Election Day and Election Administration manuals are consistent with that analysis and conclusion.

Election Day Manual – Affected Pages:

- Page 45
- Page 49
- Page 149

Election Administration Manual – Affected Pages:

- Page 56
- Page 60
- Page 64
- Page 96
- Pages 235–236

By-Mail Absentee Request Deadlines

An elector may only apply for an absentee ballot in person not earlier than 14 days preceding the election and not later than the Sunday preceding the election. Wis. Stat. § 6.86(1)(b). Existing Commission guidance has clarified that this statutory time frame also applies to the in-person return of absentee ballot applications. If an elector makes an in-person request, or attempts the in-person delivery of a request, more than 14 days prior to an election, the clerk should direct that the application be mailed, emailed, faxed, or requested by email using the MyVote Wisconsin website.

Staff recommend that page 71 of the Election Administration manual be revised to include this guidance.

Appendix B – Election Administration Manual – Affected Pages:

- Page 71

Federal Destruction Date of Election Notices

As part of the manuals revision process, staff identified a question of whether election notices and proofs of publication of notices and correspondence relative to publications are subject to the 22 month federal election retention schedule. Under federal law, “all records and papers...relating to any...application, registration, payment of poll tax, or other act requisite to voting...” in a federal election must be retained for a period of 22 months. 52 U.S.C. § 20701. The penalty for willful noncompliance with § 20701 is \$1,000 and/or up to one year of imprisonment.

Staff recommend that the Election Administration manual continue to advise that election notices and proofs of publication of notices and correspondence relative to publications be retained for 22 months for federal elections. Election notices provide critical information to voters, and thus very likely relate to “an act requisite to voting.” Furthermore, the steep penalties for noncompliance with § 20701 warrant a conservative read of its terms, which would also support a directive to err on the side of caution and retain these records for 22 months for federal elections.

Recommended Motion: The Wisconsin Elections Commission approves the changes to the Election Day and Election Administration manuals that are described by this memo as a supplement to those manuals and directs staff to communicate the changes with all clerks. After the November 2024 election, staff are directed to implement these updates, which can include formatting, numbering, and other scrivener’s edits, and to revise the edition dates on each manual.



Wisconsin Elections Commission

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DATE: For the September 11, 2024, Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Wisconsin Elections Commission Staff

SUBJECT: **Hart InterCivic Group, Inc.**
Petition for Approval of Electronic Voting System: Verity Voting 2.7

Introduction

Hart InterCivic Group, Inc. (Hart InterCivic) is requesting approval from the Wisconsin Elections Commission (WEC or Commission) for the Verity Voting 2.7 voting system. This approval will allow for the sale and use of this system in the State of Wisconsin. No electronic voting equipment may be offered for sale or utilized in Wisconsin unless first approved by the WEC based upon the certification requirements laid out in Wis Stat. § 5.91 (Appendix A). The WEC has also adopted administrative rules further clarifying the testing and approval processes in Wis. Admin Code Ch. EL 7 (Appendix B).

Verity Voting 2.7

Verity Voting 2.7 is a federally tested and certified paper-based, digital scan voting system. It includes the following primary components:

Component	Function
Verity Data/Build/Count (Election Management System)	Election management software application that provides ballot design, ballot proofing, ballot production, and generation of voting machine election definition file packages.
Verity Scan	A precinct count digital scan tabulator.
Verity Touch Writer and Touch Writer Duo	An accessible touchscreen ballot marking device.

Additional information on system components, including a full list of all associated hardware and software components, can be found in the United States Election Assistance Commission's (U.S. EAC or EAC) Scope of Certification document, which is attached to this report as Appendix C.

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

Recommendation

WEC staff is recommending approval of Verity Voting 2.7 for sale and use in Wisconsin. Detailed recommendations are listed on pages 13 - 15 following an analysis of the functional testing performed by staff to evaluate the system under consideration.

Application Background

On November 22, 2022, WEC staff received an Application for Approval of Electronic Voting System for Verity Voting 2.7. Hart InterCivic submitted complete specifications for hardware, firmware, and software related to the voting system. Also included with the submission were technical manuals, documentation, and user manuals necessary for the operation of the system components.

System Overview

The Voting System Test Laboratory (VSTL) responsible for testing Verity Voting 2.7, SLI Compliance, is based in Wheat Ridge, CO and is one of two test labs currently accredited by the EAC to conduct voting system testing. SLI Compliance conducted testing in early 2022 and issued both their final test report and recommendation for EAC certification on May 31, 2022.

Following VSTL testing, the EAC issued a Certificate of Conformance and an accompanying Scope of Certification document for this voting system on June 7, 2022. These documents signify that the system has been tested in accordance with current federal certification standards for electronic voting systems and that the system has met or exceeded those standards. Verity Voting 2.7's EAC Certification Number is HRT-Verity-2.7.

WEC staff conducted state-level certification testing for Verity Voting 2.7 in the WEC office from October 16 to October 20, 2023. This period included functional testing, which requires all components of the system to correctly process three mock elections, a meeting of the Wisconsin Voting Equipment Review Panel, which is a body of local election officials and third-party advocates, and a public demonstration of the system.

The following section of the system overview will provide additional information on the major hardware components of Verity Voting 2.7.

Verity Print

Verity Print is a ballot production device for use by election officials and/or poll workers. Paired with a commercial off-the-shelf (COTS) printer, this device produces unmarked paper ballots. Users can select the appropriate ballot style or styles based on the reporting unit or ward information and either print ballots on demand or in advance of an election to ensure sufficient inventory.



Verity Scan

Verity Scan is a digital scanner for paper ballots. For the Verity Vote 2.7 voting system, the Verity Scan is the primary digital scan tabulator for use in polling places. This device is capable of scanning ballots that are marked by hand or by a ballot marking device such as the Verity Touch Writer. When a ballot is inserted, the Verity Scan simultaneously images the front and back of the ballot while tabulating it. These images are saved and can be reviewed later by election officials.

Hart InterCivic recommends that a voter use either a black or blue pen when marking their ballots to ensure the ballot is read appropriately by the Verity Scan. VSTL testing and WEC in-office functional testing confirmed this. WEC staff also tested the ability of the tabulator to correctly process ballots marked with pencil as well as blue, green, and red ink. As with any other voting system, staff is recommending that ballots used as part of the Verity Voting 2.7 voting system be marked with either black or blue ink in the polling place and that any absentee ballots received that are marked in a different color be remade.

When a ballot is inserted into a Verity Scan unit, the device will interpret voter marks on the ballot and a variety of feedback screens will be displayed to the voter, ranging from a confirmation that the ballot was accepted to a warning that any ballots containing crossover votes or overvoted contests may lead to the voter's choices not being counted. In these instances, the voter will have the opportunity to have the ballot returned to them for further review or to cast the ballot as they originally marked it. After a ballot is accepted, the Verity Scan deposits it into a secure storage receptacle. While secure, the ballot box is collapsible for ease of storage and transportation.

When the polls close, Verity Scan prints a final results tape that tabulates all votes cast throughout the day. As with any voting system, this is now the time for election inspectors to review all cast ballots to ensure write-in votes are being tallied appropriately. In lieu of a standard USB device, the Verity Voting 2.7 system utilizes vDrives, which are flash memory media devices. vDrives are the primary media transfer device used with this system, which means the election definitions are generated in the Election Management System (EMS), loaded onto the vDrive, and then imported to the other devices in the system and they are also used to transfer cast vote records (CVR), reports, and other info back to the EMS after polls have closed. After the election is complete and the vDrive is removed, the Verity Scan does not store any images or data in its internal memory.

Verity Touch Writer and Touch Writer Duo

The Verity Touch Writer and Touch Writer Duo are both ballot marking devices that produce paper ballots. While both are similar and are both accessible voting devices, there are some key differences between the two iterations.

The Verity Touch Writer is configured as a standalone BMD accompanied by a COTS printer. The Touch Writer uses a touchscreen interface on which voters are able to mark their choices. The navigational cues on the screen walk the voter through the entire ballot and, in the case of slightly more complex ballots such as those used in partisan primaries, the device explains how to choose a

party preference and the consequences of not doing so. Crossover voting is not possible on this device, as only votes within a specific party are eligible to be counted. When a voter finishes making their selections, they are offered a review screen and a chance to go back to either change their votes on a specific contest or vote in contests they would have otherwise undervoted.

The Touch Writer is a ballot marking device only. The major takeaway here is that the device has no internal capability to tabulate or scan votes and any ballots that are marked by this system must be inserted into the Verity Scan to be tabulated. The COTS printer that is set up in conjunction with the Touch Writer prints full-sized ballots in the same format that voters marking a ballot by hand would be using in the polling place.

The Verity Touch Writer Duo is also a ballot marking device but one that uses an integrated printer in lieu of a standalone COTS printer. Another major distinction between this device and the standard Touch Writer is that the Duo is configured for use in a “daisy-chained” network of multiple DUO devices that are all connected to another device called the Verity Controller. The Verity Controller is a polling place management device that generates access codes that are used to active a ballot marking session on the Duo. These access codes are generated by poll workers on the Controller to ensure that the voter is marking the correct ballot style when the voting session begins. This configuration supports up to 12 Duo devices operating on the same Controller.



A key difference between the Touch Writer and the Touch Writer Duo is that, while the Touch Writer prints a full-sized ballot via the COTS printer, the Duo instead creates a printed vote record (PVR) when a voter has finished marking their choices, has reviewed them, and is ready to print their ballot. These PVRs are markedly different from the traditional ballots a voter would be marking by hand in the polling place. The PVR is a summary paper record that shows all the choices the voter selected on their ballot, which allows for a final review before the ballot is inserted into the tabulator.

In addition to the summary of a voter’s choices in each contest, the PVR also contains a prominent QR code in the top left corner. Unlike other BMDs, which also display a summary of the voter’s choices but actually use a QR code or barcode for tabulation purposes, the QR code created by the Duo does not contain any information about the voter’s choices. Instead, when a PVR is inserted into a Verity Scan tabulator, the voter’s selections are read using optical character recognition from the printed text in the selection column. The QR code only contains ballot metadata, e.g., election ID, precinct/jurisdictional information, etc.

The major commonality between the Touch Writer and the Touch Writer Duo is that both are accessible voting devices. While any voter may use a BMD in the polling place, these devices are a crucial means by which voters who have visual, auditory, or physical limitations or disabilities can mark their ballots privately and independently. In addition to being able to mark their choices on the touchscreen, voters may also use the Verity Access device to mark their ballots. The Verity Access is an audio-tactile interface (ATI) component that features three tactile buttons, an audio port for headphones, and an additional port into which a voter may plug a paddle or sip-and-puff device to aid them in marking their ballots. As with other voting systems, the audio component of each iteration will audibly read back all contest and candidate information, ballot navigational cues, and a summary of the voter's selections via the headphones.



The following section of the system overview will provide additional information on select software components of Verity Voting 2.7.

Verity Data

Verity Data is a component that allows election officials to enter and proof contest data, candidate names and information, referendum questions, and any necessary translation. This component is also where officials would load any necessary audio for use on accessible voting devices. From here, the information entered in Data is imported into Verity Build.

Verity Build

This component enables election officials to define ballot styles and generate election definitions. This is the primary tool that officials use to program and define the behavior of the other voting devices in the Verity Voting 2.7 system via the vDrive device detailed above and to generate the ballots for either in-house printing or export to a third-party ballot printer.

Verity Count

This component is an application that can tabulate results and generate reports. This is accomplished via the vDrives that election officials remove from the other hardware components of the system following close of polls. These drives include all cast vote records and any other information that can further be used to generate either general or customized user-specific reports.

Verity Central

This application enables election officials to scan paper ballots at a central location in conjunction with a COTS scanner. It is important to clarify that Central does not actually tabulate votes. Instead, all paper ballots are scanned and a CVR is created for each ballot. From there, the information is exported via a vDrive and imported into the Verity Count application for tabulation.

Verity User Management

This component enables users with the correct role and administrative credentials to create and manage user accounts within the Verity Voting 2.7 system.

Verity Election Management

This component enables users with administrative permissions to add, copy, delete, import, export, archive, restore, and manage elections in the system.

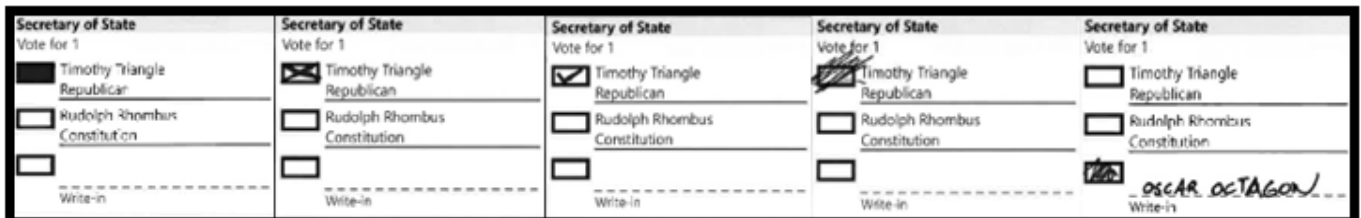
Functional Testing

As required by Wis. Admin. Code EL § 7.02(1), WEC staff conducted three mock elections with each component of Verity Voting 2.7 to ensure the voting system conforms to all Wisconsin-specific requirements. As in every certification, these mock elections included a partisan primary with a special nonpartisan school board election, a general election with both a presidential and special gubernatorial contest, and a presidential preference vote combined with nonpartisan offices and a special partisan contest.

Staff prepared a series of test decks by marking 1,500 ballots with various configurations of votes, e.g., valid votes, overvotes, crossover votes, etc., across all three mock elections to verify the accuracy and functional capabilities of Verity Voting 2.7. Using blank ballot stock provided by Hart InterCivic, WEC staff utilized a predetermined results set to hand mark 300 ballots for each of the three mock elections. 100 Touch Writer ballots were marked in each mock election, bringing the base total for each to 400 ballots. All 400 ballots for each mock election were proofed via Verity Count and successfully scanned via Verity Scan. Finally, to separately assess the Touch Writer Duo, staff marked a test deck of 200 Touch Writer Duo ballots for each of the three test elections and separately tabulated those ballots on the Verity Scan. In all cases, staff ensured the results produced by each hardware component matched the predetermined results sets before transitioning to the next mock election.

To ensure the equipment in this voting system is compatible with Wisconsin election law and able to process a variety of marks, the test ballots for each mock election included several ballots purposefully marked in ways not typically recommended by the vendor. In all cases where ballots were intentionally marked with overvotes, all tabulation equipment in this system was able to consistently identify those issues and no overvoted choices were counted. The same was true for crossover votes, which require a voter to vote in multiple primaries/cross party lines and are only possible in the mock partisan primary and presidential preference elections. Additionally, each mock election has two separate ballot styles, one of which includes a special contest or referendum question and one that does not. Including two separate styles assesses the ability to program multiple election definitions on each piece of equipment and to produce accurate results. In all instances, the equipment accurately tabulated votes between the separate ballot styles.

Test decks were also marked to determine exactly what constitutes a readable mark by each piece of tabulation equipment in this voting system. In addition to valid marks, a subset of ballots for each mock election included atypical marks, shown here:



The first column shows a typical mark, i.e., a completed rectangle. This is the most common way a voter will mark a ballot. The following columns show a selection of ambiguous marks, which include less-common ways a voter may complete the rectangle to indicate their choices. This is a good opportunity to highlight the fact that Hart InterCivic ballots do not have ovals like all other ballots currently used with electronic voting systems in Wisconsin do. Instead, the voter must fill a rectangle on the ballot to make their selection. Per EAC documentation, the minimum threshold for a mark to be picked up is 4% of the rectangular marking area. The Verity Voting 2.7 system was able to identify ballots marked with ambiguous marks as valid votes in all three mock elections.

Every voting equipment vendor recommends a specific type of marking device that should be used to complete a ballot. Hart InterCivic recommends black ink. Staff used black ink to mark most ballots in each test deck, but also included a variety of other marking devices to ensure the system was capable of tabulating votes marked with green ink, red ink, blue ink, and pencil. While past testing has resulted in issues with ballots marked in specific shades of red and green ink, no such discrepancies were found in this round of testing and the tabulation equipment functioned as expected.

Staff also included several ballots with folds and tears. In some cases, a torn ballot may not be read correctly by tabulation equipment. However, this is more common in instances where the tear goes through the timing marks that surround the outside of the ballot. Folded ballots are included to replicate (as closely as possible) an absentee ballot that will be processed either at the polling place or a central count location. Vendors recommend that all absentee ballots be scored in specific places on the ballot to avoid the potential of a particularly heavy crease reading as a “false positive” vote if the crease goes directly through an oval. Staff folded several test ballots to purposefully place the creases through ovals and no such false positive votes or overvotes were read by the tabulation equipment.

Testing Anomalies

Staff did not experience any anomalies during functional testing that would lead to any recommendation to not certify the voting system. As in any functional testing, there were mismarked ballots that did not follow the predetermined marking scripts. When these ballots are scanned by the voting system and the results totals do not match the predetermined results, staff must review every single ballot in the test deck to determine which was mismarked and remedy the issue.

Additionally, ballots marked with different colors of ink were not uniformly scanned by the voting system. Depending on the type of ink used, most voting systems may have issues properly interpreting the marks on a ballot if the ballot is marked in red or green ink. This is why vendors recommend a specific marking device and color of ink for marking ballots used with the system. Accordingly, staff has included a provision in the final recommendations for this system that all ballots used with Verity Vote 2.7 be marked in blue or black ink and that any returned absentee ballots that have been marked in another color be remade by election inspectors.

A final issue occurred while staff was marking the Touch Writer Duo ballots for the test partisan primary election. As previously noted, each mock election contains two separate ballot styles. There was an issue in the programming for the second ballot style that led to one of the contests (Attorney

General in the Green Party Primary) to not appear as a selection. This was uncovered after the first ballot style had been completely marked, but any changes to the programming would render those ballots invalid. The programming was updated to include the omitted contest and staff remarked the full set of 100 ballots for each ballot style in the mock election. No additional issues were uncovered and the results from these ballots matched the predetermined results set as defined by the testing script.

Results Transmission

Verity Voting 2.7 does include the capability to remotely transmit election results. The Verity Transmit, Verity Relay, and Verity Relay Receiving Station were all tested by the VSTL and received certification by the EAC. As with other testing campaigns, the voting equipment vendor is responsible for identifying clerks who are willing to let the vendor test their results transmission and to coordinate the logistics. Hart InterCivic was not able to coordinate this effort, and therefore there was not an opportunity for staff to test this functionality during the Wisconsin certification event.

As such, and after consultation with Hart InterCivic, staff is presenting the Verity Vote 2.7 system for certification consideration without this functionality or its associated hardware. Representatives from Hart InterCivic have expressed interest in pursuing separate certification for the results transmission components of this system at a future date. Staff is amenable to this approach and recommend that, should Hart InterCivic later reapply for certification of these components, a test campaign be conducted as normal with the results and any pertinent staff recommendations to be presented to the Commission for their consideration. As these components are optional and not required for the base functionality of the Verity Vote 2.7 system, staff recommendations will explicitly specify that these components not be included for consideration for certification at this time.

Wisconsin Elections Commission Voting Equipment Review Panel

To solicit valuable feedback from local election officials and community advocates, the WEC formed the Voting Equipment Review Panel. In accordance with Wis. Admin Code EL § 7.02(2), this panel includes municipal and county clerks, representatives of the disability community, and other advocates for the interest of the voting public.

Members of this panel attended the meeting both in person and virtually via Zoom. The meeting took place at the WEC office in Madison on October 19, 2023, from 2:00 p.m. to 3:30 p.m. Hart InterCivic representatives provided a demonstration of Verity Voting 2.7, and attendees were encouraged to test the equipment themselves by marking ballots and interacting with all the hardware components under consideration. Comments and feedback from the Voting Equipment Review Panel are included as Appendix D.

Public Demonstration

Following the Voting Equipment Review Panel, a public demonstration was held on October 19, 2023, from 4:00 p.m. to 5:00 p.m. This demonstration was appropriately noticed as a public meeting and was held in person in the WEC offices with Hart InterCivic representatives available to provide additional information and guide attendees through the functionality of the equipment. The public demonstration is an important opportunity for members of the public to interact with the equipment

and to have subject matter experts available to answer questions or dispel any possible misinformation or disinformation concerning electronic voting systems. There were no attendees.

Statutory Compliance

Wis. Stat. § 5.91 provides the following requirements voting systems must meet to be approved for use in Wisconsin. Additionally, voting systems must comply with standards set by the Help America Vote Act of 2002 (HAVA). Please see below for each requirement and staff's analysis of Verity Voting 2.7's compliance with the standards.

Wis. Stat. § 5.91(1)
The voting system enables an elector to vote in secret.
Staff Analysis
Verity Voting 2.7 meets this requirement by allowing a voter to vote a paper ballot in the privacy of a voting booth or at the accessible voting station without assistance (following the activation of the correct ballot style by an election inspector).

Wis. Stat. § 5.91(3)
The voting system enables the elector, for all elections, except primary elections, to vote for a ticket selected in part from the nominees of one party, and in part from nominees from other parties and write-in candidates
Staff Analysis
Verity Voting 2.7 allows voters to split their ballot among as many parties as they wish during any election that is not a partisan primary.

Wis. Stat. § 5.91(4)
The voting system enables an elector to vote for a ticket of his or her own selection for any person for any office for whom he or she may desire to vote whenever write-in votes are permitted.
Staff Analysis
Verity Voting 2.7 allows write-ins where permitted.

Wis. Stat. § 5.91(5)
The voting systems accommodate all referenda to be submitted to electors in the form provided by law.
Staff Analysis
Verity Voting 2.7 meets this requirement. Referenda included as part of testing were accurately tabulated by all Verity Voting 2.7 components.

Wis. Stat. § 5.91(6)
The voting system permits an elector in a primary election to vote for the candidates of the recognized political party of his or her choice, and the system rejects any ballot on which votes are cast in the primary of more than one recognized political party, except where a party designation is made or where an elector casts write-in votes for candidates of more than one party on a ballot that is distributed to the elector.

Staff Analysis

Components of Verity Voting 2.7 can be configured to always reject crossover votes without providing an opportunity for the voter to override. The system can also be programmed to provide a warning screen to the voter that identifies any contest with crossover votes. Either of these programming options allows this system to meet this requirement.

The warning screen gives the elector the option to either cast the ballot without correcting the crossover vote or to have the ballot returned to them for further review and correction. The use of the override function was previously prohibited by statute, but Wis. Stats. §5.85(2)(b) expressly allows for the optional use of the override function in event of an overvote. As in past certifications, WEC has applied the same standard to the use of the override function in the event of crossover vote.

Wis. Stat. § 5.91(7)

The voting system enables the elector to vote at an election for all persons and offices for whom and for which the elector is lawfully entitled to vote; to vote for as many persons for an office as the elector is entitled to vote for; to vote for or against any question upon which the elector is entitled to vote; and it rejects all choices recorded on a ballot for an office or a measure if the number of choices exceeds the number which an elector is entitled to vote for on such office or on such measure, except where an elector casts excess write-in votes upon a ballot that is distributed to the elector.

Staff Analysis

Components of Verity Voting 2.7 can be configured to always reject overvotes without providing an opportunity for the voter to override or to provide a warning screen to the voter that identifies any overvoted contests/referendum questions. Either of these programming options allows this system to meet this requirement.

The warning screen gives the elector the option to either cast the ballot without correcting the overvote or to have the ballot returned to them for further review and correction. The use of the override function was previously prohibited by statute, but Wis. Stats. §5.85(2)(b) expressly allows for the optional use of the override function in event of an overvote.

Wis. Stat. § 5.91(8)

The voting system permits an elector at a General Election by one action to vote for the candidates of a party for President and Vice President or for Governor and Lieutenant Governor.

Staff Analysis

Verity Voting 2.7 meets this requirement by placing Presidential or Gubernatorial candidates and their respective running mates within the same contest as a single choice. This applies to either hand-marked paper ballots or ballots marked on a BMD.

Wis. Stat. § 5.91(9)

The voting system prevents an elector from voting for the same person more than once, except for excess write-in votes upon a ballot that is distributed to the elector.

Staff Analysis

Verity Voting 2.7 meets this requirement.

Wis. Stat. § 5.91(10)

The voting system is suitably designed for the purpose used, of durable construction, and is usable safely, securely, efficiently, and accurately in the conduct of elections and counting of ballots.

Staff Analysis

Verity Voting 2.7 meets this requirement.

Wis. Stat. § 5.91(11)

The voting system records and counts accurately every vote and maintains a cumulative tally of the total votes cast that is retrievable in the event of a power outage, evacuation or malfunction so that the records of votes cast prior to the time that the problem occurs is preserved.

Staff Analysis

Verity Voting 2.7 meets this requirement.

Wis. Stat. § 5.91(12)

The voting system minimizes the possibility of disenfranchisement of electors as the result of failure to understand the method of operation or utilization or malfunction of the ballot, voting system, or other related equipment or materials.

Staff Analysis

Verity Voting 2.7 can be programmed to provide warning screens to the voter that identify any problem with their ballot. The warning screens provide an explanation of the problem and allow the voter to have their ballot returned to them to review and correct the error. The systems can be configured to always reject overvotes and crossover votes without providing an opportunity for the voter to override. The language on the warning screens can be customized to a format prescribed by the WEC.

Wis. Stat. § 5.91(13)

The automatic tabulating equipment authorized for use in connection with the system includes a mechanism which makes the operator aware of whether the equipment is malfunctioning in such a way that an inaccurate tabulation of the votes could be obtained.

Staff Analysis

Verity Voting 2.7 meets this requirement.

Wis. Stat. § 5.91(14)

The voting system does not use any mechanism by which a ballot is punched or punctured to record the votes cast by an elector.

Staff Analysis

No component of Verity Voting 2.7 uses any such mechanism to record votes.

Wis. Stat. § 5.91(15)
The voting system permits an elector to privately verify the votes selected by the elector before casting his or her ballot.
Staff Analysis
Verity Voting 2.7 meets this requirement by offering hand-marked paper ballots or accessible voting equipment that provides both an electronic ballot review screen and a marked paper ballot that can be further reviewed before tabulation.

Wis. Stat. § 5.91(16)
The voting system provides an elector the opportunity to change his or her votes and to correct any error or to obtain a replacement for a spoiled ballot prior to casting his or her ballot.
Staff Analysis
Verity Voting 2.7 meets this requirement. Hand-marked paper ballots can be changed and/or spoiled at any point up to being placed in the tabulator. Ballots marked on a Touch Writer or Touch Writer Duo unit are printed for the voter to review prior to casting in a tabulator and can be spoiled at will by the voter. Per Wis. Stat. § 6.80(2)(c), an elector may spoil up to two ballots and cannot be issued more than three ballots in total.

Wis. Stat. § 5.91(17)
Unless the ballot is counted at a central counting location, the voting system includes a mechanism for notifying an elector who attempts to cast an excess number of votes for a single office the ballot will not be counted and provides the elector with an opportunity to correct his or her ballot or to receive a replacement ballot.
Staff Analysis
Verity Voting 2.7 meets this requirement by including an option to have a voter's ballot returned for review/correction when overvotes are detected.

Wis. Stat. § 5.91(18)
If the voting system consists of an electronic voting machine, the voting system generates a complete, permanent paper record showing all votes cast by the elector, that is verifiable by the elector, by either visual or nonvisual means as appropriate, before the elector leaves the voting area, and that enables a manual count or recount of each vote cast by the elector.
Staff Analysis
Verity Voting 2.7 meets this requirement.

The Help America Vote Act of 2002 (HAVA) also provides the following applicable requirements that voting systems must meet:

HAVA § 301(a)(1)(A)
The voting system shall: (i) permit the voter to verify (in a private an independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted;

- (ii) provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error); and
- (iii) if the voter selects votes for more than one candidate for a single office –
 - (I) notify the voter that the voter has selected more than one candidate for a single office on the ballot;
 - (II) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and,
 - (III) provide the voter with the opportunity to correct the ballot before the ballot is cast and counted.

HAVA § 301(a)(1)(C)

The voting system shall ensure that any notification required under this paragraph preserves the privacy of the voter and the confidentiality of the ballot.

HAVA § 301(a)(3)(A)

The voting system shall—

(A) be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as other voters

Staff Analysis

Verity Voting 2.7 meets these requirements.

Recommendations

Staff has reviewed the application materials, including the technical data package and VSTL test report, and examined the results from the functional test campaign to determine if this system is compliant with both state and federal certification laws. Verity Voting 2.7 complies with all applicable state and federal requirements. The components of this voting system met all standards over three mock elections and staff determined they can successfully run a transparent, fair, and secure election in compliance with Wisconsin Statutes. The system also enhances access to the electoral process for individuals with disabilities with the inclusion of the Verity Touch and Verity Touch Duo ballot marking devices.

1. WEC staff recommends approval of Hart InterCivic Group, Inc.’s Verity Voting 2.7 voting system and the components of this system, set forth in Appendix C. This voting system accurately completed the three mock elections and was able to accommodate the voting requirements of the Wisconsin election process.
2. WEC staff recommends that as a continuing condition of the WEC’s approval, Hart InterCivic Group, Inc. may not impose customer deadlines contrary to requirements provided in Wisconsin Statutes, as determined by the WEC. In order to enforce this provision, local jurisdictions purchasing Hart InterCivic Group, Inc. equipment shall also include such a provision in their respective purchase contract or amend their contract if such a provision does not currently exist.
3. WEC staff recommends that as a continuing condition of the WEC’s approval, that voting systems purchased and installed as part of Verity Voting 2.7 be configured in the same manner in which they were tested, subject to verification by the Commission or its designee. Once

installed, the configuration must remain the same and may not be altered by Hart InterCivic Group, Inc., nor by state, county, or municipal officials except as approved by the Commission.

4. WEC staff recommends that election inspectors continue to check both the write-in bin, where applicable, and main ballot bin for validly cast write-in votes after the close of polls in each election, and not rely upon the optional write-in report.
5. WEC staff recommends that any absentee ballot returned by the tabulation equipment with an overvote or crossover vote notification must be reviewed by election inspectors prior to being overridden or remade. If necessary, ballots must be remade pursuant to approved procedures listed in the Election Day and Election Administration manuals and state statute.
6. WEC staff recommends that any returned absentee ballot which has not been marked in either black or blue ink be remade by election inspectors prior to any attempt at processing on the tabulation equipment.
7. WEC staff recommends that ballots marked with Touch Writer or Touch Writer Duo be included as part of the pre-election public test.
8. WEC staff recommends that as a continuing condition of the WEC's approval, that this system must always be configured to include the following options:
 - a. Automatic rejection of crossover and overvoted ballots with or without the option to override.
 - b. Automatic rejection of all improper ballots except blank ballots.
 - c. Digital ballot images shall be captured for all ballots tabulated by the system.
 - d. Provide visual warning messages, utilizing Commission approved language, to voters when overvotes and crossover votes are detected.
9. WEC staff recommends that the results transmission components of Verity Voting 2.7 do not receive Commission certification at this time due to an inability to test the functionality during the certification event. While the results transmission components of the system are optional, staff recommend that the Commission stipulate that all components associated with results transmission, e.g., Verity Transmit, Verity Relay, and Verity Relay Receiving Station are not certified or approved for use in Wisconsin until future in-state certification and functional testing can be performed on those components.
10. Only the hardware and software versions included in this system version can be used together to conduct an election in Wisconsin. Any updates to the hardware or software included in this system must be brought before the Commission for review and approval. As part of US EAC certificate HRT-Verity-2.7, only equipment included in this certificate can be used together to conduct an election in Wisconsin. Previous versions that were approved for use by the Elections Commission are not compatible with the new Hart InterCivic Group, Inc. voting system and are not to be used together with the equipment seeking approval by the WEC, as this would void the US EAC certificate. If a jurisdiction upgrades to Verity Voting 2.7, it needs to upgrade each and every component of the voting system to the requirements of what is approved herein.

11. WEC staff recommends that as a condition of approval, Hart InterCivic Group, Inc. shall abide by applicable Wisconsin public records laws. If, pursuant to a proper public records request, the customer receives a request for matters that might be proprietary or confidential, customer will notify Hart InterCivic Group, Inc., providing the same with the opportunity to either provide customer with the record that is requested for release to the requestor, or shall advise customer that Hart InterCivic Group, Inc. objects to the release of the information, and provide the legal and factual basis of the objection. If for any reason, the customer concludes that customer is obligated to provide such records, Hart InterCivic Group, Inc. shall provide such records immediately upon customer's request. Hart InterCivic Group, Inc. shall negotiate and specify retention and public records production costs in writing with customers prior to charging said fees. In absence of meeting such conditions of approval, Hart InterCivic Group, Inc. shall not charge customer for work performed pursuant to a proper public records request, except for the "actual, necessary, and direct" charge of responding to the records request, as that is defined and interpreted in Wisconsin law, plus shipping, handling, and chain of custody.
12. The Wisconsin application for approval contains a condition that requires the vendor to reimburse the WEC for all costs associated with the testing campaign and certification process. Hart InterCivic Group, Inc. agreed to this requirement on the application submitted to WEC on November 22, 2022, requesting the approval of Verity Voting 2.7
13. WEC staff recommends that the approval of the Verity Voting 2.7 voting system not come into effect until after the November 5, 2024 General Election.

Proposed Motion

MOTION: The Wisconsin Elections Commission adopts the recommendations for approval of Hart InterCivic Group, Inc.'s Application for Approval of Verity Voting 2.7 voting system in compliance with US EAC certification number HRT-Verity-2.7, including the conditions described above.

Appendices

- Appendix A: Wisconsin Statutes § 5.91
- Appendix B: Wisconsin Administrative Code Ch. EL 7
- Appendix C: US-EAC Certificate of Conformance / Scope of Certification
- Appendix D: Wisconsin Voting Equipment Review Panel Feedback

Appendix A: Wisconsin Statutes § 5.91

5.91 Requisites for approval of ballots, devices and equipment. No ballot, voting device, automatic tabulating equipment, or related equipment and materials to be used in an electronic voting system may be utilized in this state unless it is certified by the commission. The commission may revoke its certification of any ballot, device, equipment, or materials at any time for cause. The commission may certify any such voting device, automatic tabulating equipment, or related equipment or materials regardless of whether any such item is approved by the federal election assistance commission, but the commission may not certify any ballot, device, equipment, or material to be used in an electronic voting system unless it fulfills the following requirements:

- (1)** It enables an elector to vote in secrecy and to select the party for which an elector will vote in secrecy at a partisan primary election.
- (3)** Except in primary elections, it enables an elector to vote for a ticket selected in part from the nominees of one party, and in part from the nominees of other parties, and in part from independent candidates and in part of candidates whose names are written in by the elector.
- (4)** It enables an elector to vote for a ticket of his or her own selection for any person for any office for whom he or she may desire to vote whenever write-in votes are permitted.
- (5)** It accommodates all referenda to be submitted to the electors in the form provided by law.
- (6)** The voting device or machine permits an elector in a primary election to vote for the candidates of the recognized political party of his or her choice, and the automatic tabulating equipment or machine rejects any ballot on which votes are cast in the primary of more than one recognized political party, except where a party designation is made or where an elector casts write-in votes for candidates of more than one party on a ballot that is distributed to the elector.
- (7)** It permits an elector to vote at an election for all persons and offices for whom and for which the elector is lawfully entitled to vote; to vote for as many persons for an office as the elector is entitled to vote for; to vote for or against any question upon which the elector is entitled to vote; and it rejects all choices recorded on a ballot for an office or a measure if the number of choices exceeds the number which an elector is entitled to vote for on such office or on such measure, except where an elector casts excess write-in votes upon a ballot that is distributed to the elector.
- (8)** It permits an elector, at a presidential or gubernatorial election, by one action to vote for the candidates of a party for president and vice president or for governor and lieutenant governor, respectively.
- (9)** It prevents an elector from voting for the same person more than once for the same office, except where an elector casts excess write-in votes upon a ballot that is distributed to the elector.
- (10)** It is suitably designed for the purpose used, of durable construction, and is usable safely, securely, efficiently and accurately in the conduct of elections and counting of ballots.

- (11)** It records correctly and counts accurately every vote properly cast and maintains a cumulative tally of the total votes cast that is retrievable in the event of a power outage, evacuation or malfunction so that the records of votes cast prior to the time that the problem occurs is preserved.
- (12)** It minimizes the possibility of disenfranchisement of electors as the result of failure to understand the method of operation or utilization or malfunction of the ballot, voting device, automatic tabulating equipment or related equipment or materials.
- (13)** The automatic tabulating equipment authorized for use in connection with the system includes a mechanism which makes the operator aware of whether the equipment is malfunctioning in such a way that an inaccurate tabulation of the votes could be obtained.
- (14)** It does not employ any mechanism by which a ballot is punched or punctured to record the votes cast by an elector.
- (15)** It permits an elector to privately verify the votes selected by the elector before casting his or her ballot.
- (16)** It provides an elector with the opportunity to change his or her votes and to correct any error or to obtain a replacement for a spoiled ballot prior to casting his or her ballot.
- (17)** Unless the ballot is counted at a central counting location, it includes a mechanism for notifying an elector who attempts to cast an excess number of votes for a single office that his or her votes for that office will not be counted and provides the elector with an opportunity to correct his or her ballot or to receive and cast a replacement ballot.
- (18)** If the device consists of an electronic voting machine, it generates a complete, permanent paper record showing all votes cast by each elector, that is verifiable by the elector, by either visual or nonvisual means as appropriate, before the elector leaves the voting area, and that enables a manual count or recount of each vote cast by the elector.

Appendix B: Wis. Admin. Code Ch. EL 7

APPROVAL OF ELECTRONIC VOTING EQUIPMENT

EL 7.01 Application for approval of electronic voting system.

EL 7.02 Agency testing of electronic voting system.

EL 7.03 Continuing approval of electronic voting system.

Note: Chapter ElBd 7 was renumbered chapter GAB 7 under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 7., Stats., [Register April 2008 No. 628](#). Chapter GAB 7 was renumbered Chapter EL 7 under s. 13.92 (4) (b) 1., Stats., [Register June 2016 No. 726](#).

EL 7.01 Application for approval of electronic voting system.

(1) An application for approval of an electronic voting system shall be accompanied by all of the following:

- (a) A signed agreement that the vendor shall pay all costs, related to approval of the system, incurred by the elections commission, its designees and the vendor.
- (b) Complete specifications for all hardware, firmware and software.
- (c) All technical manuals and documentation related to the system.
- (d) Complete instruction materials necessary for the operation of the equipment and a description of training available to users and purchasers.
- (e) Reports from an independent testing authority accredited by the national association of state election directors (NASED) demonstrating that the voting system conforms to all the standards recommended by the federal elections commission.
- (f) A signed agreement requiring that the vendor shall immediately notify the elections commission of any modification to the voting system and requiring that the vendor will not offer, for use, sale or lease, any modified voting system, if the elections commission notifies the vendor that the modifications require that the system be approved again.
- (g) A list showing all the states and municipalities in which the system has been approved for use and the length of time that the equipment has been in use in those jurisdictions.

(2) The commission shall determine if the application is complete and, if it is, shall so notify the vendor in writing. If it is not complete, the elections commission shall so notify the vendor and shall detail any insufficiencies.

(3) If the application is complete, the vendor shall prepare the voting system for three mock elections, using offices, referenda questions and candidates provided by the elections commission.

History: Cr. [Register, June, 2000, No. 534](#), eff. 7-1-00; **correction in (1) (a), (f), (2), (3) made under s. 13.92 (4) (b) 6., Stats., Register June 2016 No. 726.**

EL 7.02 Agency testing of electronic voting system.

(1) The elections commission shall conduct a test of a voting system, submitted for approval under s. [EL 7.01](#), to ensure that it meets the criteria set out in s. [5.91](#), Stats. The test shall be conducted using a mock election for the partisan primary, a mock general election with both a presidential and gubernatorial vote, and a mock nonpartisan election combined with a presidential preference vote.

(2) The elections commission may use a panel of local election officials and electors to assist in its review of the voting system.

(3) The elections commission may require that the voting system be used in an actual election as a condition of approval.

History: Cr. [Register, June, 2000, No. 534](#), eff. 7-1-00; **correction in (1) to (3) made under s. [13.92 \(4\) \(b\) 6.](#), Stats., and correction in (1) made under s. [13.92 \(4\) \(b\) 7.](#), Stats., [Register June 2016 No. 726](#).**

EL 7.03 Continuing approval of electronic voting system.

(1) The elections commission may revoke the approval of any existing electronic voting system if it does not comply with the provisions of this chapter. As a condition of maintaining the elections commission's approval for the use of the voting system, the vendor shall inform the elections commission of all changes in the hardware, firmware and software and all jurisdictions using the voting system.

(2) The vendor shall, at its own expense, furnish, to an agent approved by the elections commission, for placement in escrow, a copy of the programs, documentation and source code used for any election in the state.

(3) The electronic voting system must be capable of transferring the data contained in the system to an electronic recording medium, pursuant to the provisions of s. [7.23](#), Stats.

(4) The vendor shall ensure that election results can be exported on election night into a statewide database developed by the elections commission.

(5) For good cause shown, the elections commission may exempt any electronic voting system from strict compliance with this chapter.

History: Cr. [Register, June, 2000, No. 534](#), eff. 7-1-00; **correction in (1), (4), (5) made under s. [13.92 \(4\) \(b\) 6.](#), Stats. and corrections in (5) made under s. [13.92 \(4\) \(b\) 7.](#), Stats., and s. [35.17](#), Stats., [Register June 2016 No. 726](#).**

Appendix C: US-EAC Certificate of Conformance / Scope of Certification



United States Election Assistance Commission

Certificate of Conformance

Hart Verity Voting 2.7



The voting system identified on this certificate has been evaluated at an accredited voting system testing laboratory for conformance to the *Voluntary Voting System Guidelines Version 1.0 (VVSG 1.0)*. Components evaluated for this certification are detailed in the attached Scope of Certification document. This certificate applies only to the specific version and release of the product in its evaluated configuration. The evaluation has been verified by the EAC in accordance with the provisions of the *EAC Voting System Testing and Certification Program Manual* and the conclusions of the testing laboratory in the test report are consistent with the evidence adduced. This certificate is not an endorsement of the product by any agency of the U.S. Government and no warranty of the product is either expressed or implied.

Product Name: Verity Voting

Model or Version: 2.7

Name of VSTL: SLI Compliance

EAC Certification Number: HRT-Verity-2.7

Date Issued: June 7, 2022

Executive Director

Scope of Certification Attached

Manufacturer: *Hart InterCivic*
System Name: *Verity Voting 2.7*
Certificate: *HRT-Verity-2.7*

Laboratory: *SLI Compliance*
Standard: *VVSG 1.0*
Date: *6/7/2022*



Scope of Certification

This document describes the scope of the validation and certification of the system defined above. Any use, configuration changes, revision changes, additions or subtractions from the described system are not included in this evaluation.

Significance of EAC Certification

An EAC certification is an official recognition that a voting system (in a specific configuration or configurations) has been tested to and has met an identified set of Federal voting system standards. An EAC certification is **not**:

- An endorsement of a Manufacturer, voting system, or any of the system's components.
- A Federal warranty of the voting system or any of its components.
- A determination that a voting system, when fielded, will be operated in a manner that meets all HAVA requirements.
- A substitute for State or local certification and testing.
- A determination that the system is ready for use in an election.
- A determination that any particular component of a certified system is itself certified for use outside the certified configuration.

Representation of EAC Certification

Manufacturers may not represent or imply that a voting system is certified unless it has received a Certificate of Conformance for that system. Statements regarding EAC certification in brochures, on Web sites, on displays, and in advertising/sales literature must be made solely in reference to specific systems. Any action by a Manufacturer to suggest EAC endorsement of its product or organization is strictly prohibited and may result in a Manufacturer's suspension or other action pursuant to Federal civil and criminal law.

System Overview:

The **Verity Voting 2.7** system represents a set of software applications for pre-voting, voting and post-voting election project activities for jurisdictions of various sizes and political division complexities.

Verity Voting 2.7 functions include:

- Defining the political divisions of the jurisdiction and organizing the election with its hierarchical structure, attributes, and associations.

- Defining the election events with their attributes such as the election name, date, and type, as well as contests, candidates, referendum questions, voting locations and their attributes.
- Preparing and producing ballots for polling place and absentee voting or by-mail voting.
- Preparing media for precinct voting devices and central count devices.
- Configuring and programming the **Verity Scan** digital scanners for marked paper ballots and Verity Touch Writer printed vote records.
- Configuring and programming the **Verity Touch Writer** BMD devices.
- Configuring and programming the **Verity Touch Writer Duo Standalone** BMD devices.
- Configuring and programming the **Verity Controller** with **Verity Touch Writer Duo** BMD devices.
- Configuring and programming the **Verity Print** on-demand ballot production device.
- Transmission of the election results via **Verity Relay**.
- Transmission of the election results via **Verity Transmit**.
- Producing the election definition and auditing reports.
- Providing administrative management functions for user, database, networking, and system management.
- Import of the Cast Vote Records from **Verity Scan** devices and **Verity Central**.
- Preview and validation of the election results.
- Producing election results tally according to voting variations and election system rules.
- Producing a variety of reports of the election results in the desired format.
- Publishing of the official election results. Auditing of election results including ballot images and log files.

Verity Scan is a digital scan precinct ballot counter (tabulator) that is used in conjunction with an external ballot box. The unit is designed to scan marked paper ballots or Verity Touch Writer Duo printed vote records, interpret and record voter marks on the marked paper ballot or record voter selections on the printed vote records, and deposit the ballots into the secure ballot box.

Verity Relay provides remote transmission capability. Utilizing an optional modem with **Verity Scan**, at close of polls, results are transmitted from the polling place device to the **Verity Relay Receiving Station** workstation.

Verity Transmit provides remote transmission capability. Utilizing an optional modem, Wi-Fi, or Ethernet accessory kit. Results from the **Verity Scan** and **Verity Central** are transmitted to the **Verity Transmit Receiving Station** workstation.

The **Verity Touch Writer** is a standalone precinct level Ballot Marking Device (BMD) which also includes an Audio Tactile Interface (ATI), which allows voters who cannot complete a paper ballot to generate a machine-readable and human readable paper ballot, based on vote selections made, using the ATI.

The **Verity Touch Writer Duo** is a daisy chained configuration of a **Verity Controller** device configured with up to twelve **Verity Touch Writer Duo** BMD devices, which allows voters to

utilize the touchscreen or optional Audio Tactile Interface to generate a machine-readable and human readable printed vote record, based on vote selections made.

The **Verity Touch Writer Duo Standalone** is a standalone BMD device, which allows voters to utilize the touchscreen or optional Audio Tactile Interface to generate a machine-readable and human readable printed vote record, based on vote selections made.

Verity Print is an on-demand ballot production device for unmarked paper ballots.

Verity Election Management allows users with the Administrator role to import and manage election definitions. Imported election definitions are available through the Elections chevron in Build. Users can also delete, archive, and manage the election definitions.

Verity User Manager enables users with the correct role and permissions to create and manage user accounts within the **Verity Voting** system for the local workstation in a standalone configuration, or for the network in a networked configuration.

Verity Desktop enables users with the correct roles to set the workstations' date and time, gather **Verity** application hash codes (in order to validate the correctness of the installed applications), and access to Windows desktop.

Verity Data provides the user with controls for entering and proofing data and audio. **Verity Data** also performs validation on the exported information to ensure that it will successfully import into **Verity Build**.

Verity Build opens the election to proof data, view reports, and print ballots, and allows for configuring and programming the **Verity Scan** digital scanners, and **Verity Touch Writer and Controller/Touch Writer Duo** BMD devices, **Verity Print**, as well as producing the election definition and auditing reports.

Verity Central is a high-speed, central digital ballot scanning system used for high-volume processing of ballots (such as vote by mail). The unit is based on COTS scanning hardware coupled with custom **Hart**-developed ballot processing application software which resides on an attached workstation.

Verity Count is an application that tabulates election results and generates reports. **Verity Count** can be used to collect and store all election logs from every **Verity** component/device used in the election, allowing for complete election audit log reviews.

Verity Relay Receiving Station is a remote transmission software application that receives election data transmissions sent by Verity Scan devices equipped with an optional Relay modem accessory.

Verity Transmit Receiving Station is a remote transmission software application that receives election data transmissions sent by Verity Transmit devices.

[Certified System before Modification \(If applicable\):](#)

Verity Voting 2.6

[Anomalies and/or Additions addressed in Verity Voting 2.7:](#)

The following anomalies found in previous Verity releases are corrected in the Verity Voting 2.7 modification:

1. Verity Data/Build

Help screen for: "Shared Device Behaviors" is inaccurate. The help screen states, "Require user to view all choices in each contest" however what is displayed is "Require voters to view all choices in each contest."

2. Verity Scan

Scanner multi-feed calibration can get stuck on a spinner and not show the results screen, requiring a lock and unlock of the tablet to exit the screen.

3. All Verity Devices

Physical keyboard input of "Alt-ESC" returns to the user to the Verity launcher splash screen.

4. Verity Count

If the number of columns in contest are less than or equal to 14 in the Canvass Results Report, then a blank page will follow the contest on the PDF export.

The following additions were made:

Features for all devices and workstations

- When using the System Validation Tool on devices or workstations, the system exports hashes for all Verity-related system files, as well as the files themselves.
- Verity supports adding new languages to devices and workstations via the "Language Pack" functionality.
- Verity supports the following additional languages:
 - Gujarati
 - Hmong
 - Lao
 - Hawaiian
 - Cantonese
 - Punjabi
 - Bengali

COTS updates

- Added support for the Brother HL-L6400DWVS laser printer. This printer now replaces the OKI Data B432 printer for use on Verity Touch Writer, Verity Printer, Verity Build, and for report printing on all Verity workstation software.
- Added the Duracell DR660PSS UPS for battery backup for the new Brother HL- L6400DWVS printer when used with the Verity Touch Writer laser

printer.

- Added support for the IntoPrint SP1360 laser printer, which is a brand of the OKI Data C931 printer that it replaces on Verity Build.
- Added additional CFast card vendor.
- Added magnifying devices for use with ballots in the polling place.

Hawaii-specific Features

- Supports General and Open Primary elections only.

Verity Count Reporting

- Now allows users to set a custom order for contests on results reports across all Tasks in an election.
- Includes the following new reports and exports:
 - o Three-Column Summary Results Report
 - o Three-Column Precinct Results Report (export only)
 - o Statement of Vote Report
 - o Precinct Detail Export
 - o Summary Export
- Adds support for adding a Run ID to the report header of the following reports:
 - o Three-Column Summary Results Report
 - o Three-Column Precinct Results Report
- Adds support for identifying the following reports as “zero reports”
 - o Three-Column Summary Results Report
 - o Three-Column Precinct Results Report
- Added support for calculating ballots cast in a multi-sheet election using the highest recorded sheet count for the following reports:
 - o Three-Column Summary Results
 - o Three-Column Precinct Results
 - o Statement of Vote Report
 - o Precincts Reporting
 - o Summary Export
 - o Precinct Detail Export
- Added an Election Preference to “Enable Hawaii results reports and exports”.
- Manual vote recording now allows users to enter sheet counts for each sheet that exists in the ballot for the precinct-split/party being adjusted.

Paper Ballot Features

- Paper ballots support a maximum paper size of 8.5”x22”, without stub capability.
- Paper ballot stubs support adding a customizable prefix to the stub number display.
- Verity now supports 80lb Text paper weight for ballots.

- Added targeting landmarks to ballot corners for option box triangulation.

Grid Ballot Features

- Verity now supports grid-based paper ballots, where office contests appear in columns and parties in rows on odd-numbered pages, and propositions appear in a column-based layout on even-numbered pages.
 - Proposition-only ballots can utilize both sides of a sheet.
- Grid-based paper ballots support all paper sizes in a landscape orientation (short edge on left):
- Grid-based paper ballots support the same stub sizes and options as column-based paper ballots.
 - 8.5” x 22” ballots do not support a stub
- Grid-based paper ballots support all paper ballot election definition elements EXCEPT:
 - Party Selector contests
 - Open Primary Party Selector contests
 - “Ranked Choice”, “Cumulative”, or “Fractional Cumulative” contests
 - Ballot Additional Text
 - Rotation
 - Column or page forcing on Office type contests
 - Column or page forcing is allowed for contests appearing on the Proposition side of the ballot.
 - Contest images
 - Dependent contests
 - Two-line write-ins
 - Uncommitted choices
- Grid-based ballots support candidate cross-filing, where if a voter marks multiple boxes for a cross-filed choice, it will be recorded as a single vote for the choice.
- Added support for Slate Choices, where two choice names can be treated as a single votable option.

Features for all devices

- Updated model for each Verity device
 - A single standardized circuit board replaces baseboard and I/O board combinations found in all Verity devices, with no change to functionality. Electronic components from the existing Tally Tape Thermal Printer are added directly to the baseboard.
 - Tally Tape thermal printer for report printing now uses Hart built plastics and firmware.
 - Rear panel connectors now recessed to increase ruggedness and reduce cable strain if a device is handled while cables are installed.

- Power input connector no longer contains to slide to release cable retention feature.
- Tamper evident seal now serialized
- All Verity devices now show the first three sections (XX.XX.XX) of the system version number in the user interface, without needing to reboot the device.
- All Verity devices now follow these optional VVSG 1.0 user-interface conventions:
 - If an unrecoverable error occurs on a polling place device, the device suspends voting operations and presents a clear indication to the user of the malfunction.
 - Warnings and alerts issued to a voter on a device shall state the nature of the problem; the set of responses available to the voter; and whether the voter has performed or attempted an invalid operation, or the voting equipment itself has malfunctioned in some way.
 - When color is used to indicate status in the system, the user interface uses green, white, or blue for normal status; amber or yellow for marginal status; and red for an error status.
 - When color is used to indicate the type of information displayed, the user interface uses green, white, or blue for general information; amber or yellow for warnings; and red to indicate problems that require immediate attention.

Features for Verity Scan

- Added support for Write-in Mark Detection, where Scan can return the ballot for second-chance voting input if a mark is detected in the write-in area, but the option box is not marked.
 - If the ballot is accepted as-is, unmarked write-ins will count only if the Build setting for default counting behavior is enabled, except for ranked-choice or cumulative contests
- Performance improvements that reduce ballot processing time. This change is applicable to all Verity Scan models.

Features for Verity Scan with Relay only

- Device startup reports are now labeled "Verity Scan with Relay," not "Verity Scan."
- Voter-facing screens now do not display the product name "Verity Scan with Relay."

Features for Verity Transmit

- Transmit supports transmitting vDrives written by:
 - Verity Central
 - Verity Scan
 - Verity Scan with Relay
- For Central vDrives, Transmit now displays "Central vDrive" in lieu of the vDrive polling place.

Features for all Workstations

- Secure Boot now enabled on workstations.
- Full Disk Encryption now required for all deployments.

Features for Election Management

- Added new feature “Configuration Control”, which supports limiting election variations based on what equipment and ballot types are used by a jurisdiction, eliminating unnecessary work for the user.

Features for Verity Data

- The Contest Title field limit is increased to 250 characters.
- Verity Data now supports entering separate contest instructions for devices and paper ballots.
 - Verity Data proofing reports containing contest instructions display both electronic instructions and paper instructions.
- Added support for defining Candidate Slate choices on grid-based ballots.
- Added additional rich-text formatting options for Ballot Additional Text.
- The Ballot Additional Text field limit increased to 3000 characters.
- Verity Data validates that fold lines do not intersect ballot landmarks, in addition to barcodes and option boxes
- The default PVR paper size changed to 8.5” x 11”.

Features for Verity Build

- Verity Build includes a new setting to print single language ballots on Touch Writer.
- Added support for Write-in Mark Detection, including:
 - New options to control second-chance voting behavior for unmarked write-ins on Scan devices.
 - New option to control the default counting behavior for unmarked write-ins on Scan devices.
- Added a note that “Setting the default Voting Method will also apply to Verity Reader”.

Features for Verity Central

- Added support for Write-in Mark Detection, including:
 - A new adjudication condition called “Unmarked Write-in”.
 - An election Preference to count unmarked write-ins as if they were marked; off by default.
 - An election setting to count unmarked write-ins as if they were marked.
 - An election preference and setting to allow automatic acceptance of unmarked write-ins during scan, or when accepting at the batch, ballot, or page level.

- Allowing the user to filter voter intent issues by “Unmarked Write-ins”.

Features for Receiving Stations

- Renamed “Verity Relay” application for clarity; now called “Verity Relay Receiving Station.”
- Features for Verity Transmit support added to a new “Verity Transmit Receiving Station” with the following modifications from the “Verity Receiving Station”:
 - Application supports receiving vDrives written by:
 - Verity Central
 - Verity Scan
 - Verity Scan with Relay
 - vDrives written from Verity Transmit Receiving Station support at least the same number of ballots as vDrives written from Verity Central, Scan, or Scan with Relay.
 - The Receiving Dashboard displays the status of Central vDrive data separately from the status of device vDrive data.
 - The vDrives Written Report displays, after the “ID of the transfer vDrive” field, the type of device that wrote the CVR data (“Central” or polling place device type) for each child vDrive written to a transfer vDrive.
 - The Received vDrives Report displays, before the “Polling place name” field, the type of device that wrote the CVR data (“Central” or polling place device type) for each received vDrive.

Features for Verity Count

- Count results reports containing contest instructions display electronic instructions only.
- Slate Choices: On results reports, both choice names are displayed next to a single vote counter.
- Count now includes a digital signature for any exported collection of CVRs.
 - The digital signature is user-verifiable using a separate utility.
- Improved Alias functionality:
 - Aliases Groups and Sets (collections of Alias Groups) can be exported or imported to/from removable media.
 - Alias Groups can be imported into any elections containing the same strings.
 - Alias Sets can only be imported into the election with the same Election ID from which they were generated.
 - Alias Sets can be used for reports and results exports, including the Detailed Vote Total export.
- Visually updated the Verity Count dashboard.
 - Modifications to Verity 2.7.1:**
 - Change the contest screen on Touch Writer to require voters to select a specific combination of candidate and party when voting for a cross-endorsed candidate.
 - Change the review screens on Touch Writer and Reader to reflect only the specific party association(s) selected by the voter.

- Add a device report that includes vote totals for each party association for cross-filed candidates.
- Add a Count report that includes vote totals for each party association for cross-filed candidates.

Mark definition:

System supports marks that cover a minimum of 4% of the rectangular marking area.

Tested Marking Devices:

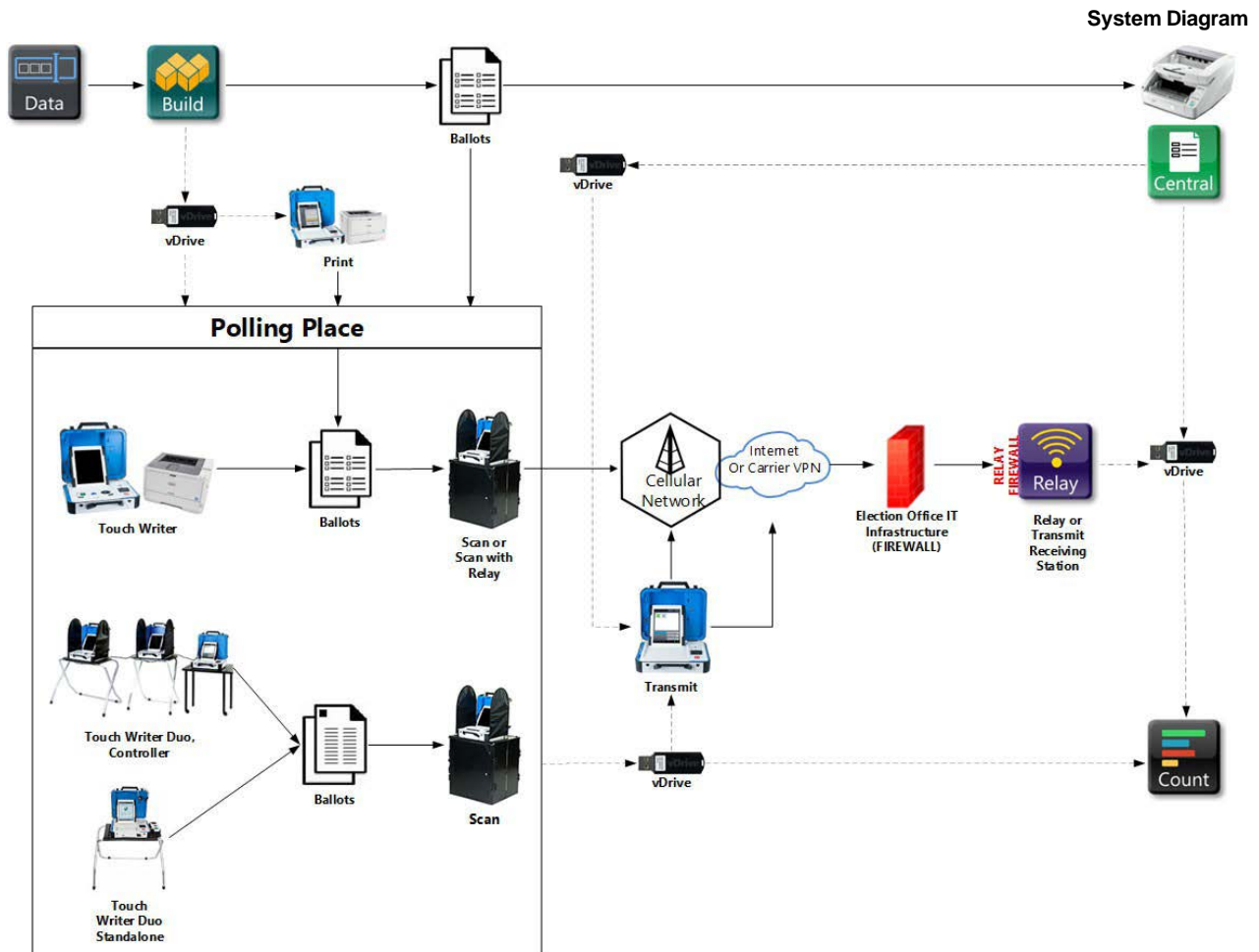
System supports Black and Blue ballpoint pens; testing was performed with black, blue, dark blue, pink, light green, green, orange, and red pens, as well as #2 pencil lead.

Language capability:

System supports English, Spanish, Chinese, Japanese, Korean, Khmer, Thai, Vietnamese, Tagalog, Ilocano, Hindi, Haitian Creole, Gujarati, Hmong, Lao, Hawaiian, Cantonese, Punjabi, and Bengali.

Components Included:

This section provides information describing the components and revision level of the primary components included in this Certification.



Proprietary Software

System Component	Software or Firmware Version	Comments
Verity Data	2.7.1	Data management software
Verity Build	2.7.1	Election definition software
Verity Central	2.7.1	High speed digital scanning software
Verity Count	2.7.1	Tabulation and reporting software
Verity Relay Receiving Station	2.7.1	Data transmission software (receiving station)
Verity Transmit	2.7.1	Data transmission software
Verity Transmit Receiving Station	2.7.1	Data transmission software (receiving station)
Verity Print	2.7.1	On-demand ballot printing device firmware
Verity Scan	2.7.1	Digital scanning device firmware
Verity Scan with Relay	2.7.1	Digital scanning device firmware with optional Relay functionality
Verity Touch Writer	2.7.1	Ballot marking device
Verity Touch Writer Duo	2.7.1	Ballot marking device, with internal COTS ballot summary printer and optional audio tactile interface
Verity Touch Writer Duo Standalone	2.7.1	Ballot marking device, with internal COTS ballot summary printer and optional audio tactile interface
Verity Controller	2.7.1	Polling place management device



Wisconsin Elections Commission

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 (608) 266-8005 | elections@wi.gov | elections.wi.gov

COTS Software and Firmware

Description	Version
Verity Data, Build, Count, Relay Receiving Station, Transmit Receiving Station	
Microsoft Windows 10 Enterprise 2019 LTSC	10.0.17763
Microsoft SQL Server Standard 2019	15.0.4153.1
McAfee Application Control for Devices (McAfee Solidifier)	8.2.1-143
Verity Central – Central Count Paper Ballot Scanner	
Microsoft Windows 10 Enterprise 2019 LTSC	10.0.17763
Microsoft SQL Server Standard 2019	15.0.4153.1
McAfee Application Control for Devices (McAfee Solidifier)	8.2.1-143
Nuance Western OCR, Desktop, OEM	V20
Verity Print, Touch Writer – Electronic BMD Device, Touch Writer Duo – Electronic BMD Device, Touch Writer Duo Standalone – Electronic BMD Device, Controller, Transmit	
Microsoft Windows 10 Enterprise 2019 LTSC	10.0.17763
Microsoft SQLite	3.36.0
McAfee Application Control for Devices (McAfee Solidifier)	8.2.1-143
Verity Scan – Precinct Paper Ballot Scanner	
Microsoft Windows 10 Enterprise 2019 LTSC	10.0.17763
Microsoft SQLite	3.36.0
McAfee Application Control for Devices (McAfee Solidifier)	8.2.1-143
Nuance Western OCR, Desktop, OEM	V20

Hardware

Description	Version
Verity Print – Ballot Printer	3006095 Rev A
Verity Print – Ballot Printer	3005356 Rev E
Verity Print – Ballot Printer	3005856 Rev B
Verity Scan – Paper Ballot Scanner	3006080 Rev A
Verity Scan – Paper Ballot Scanner	3005350 Rev I
Verity Scan – Paper Ballot Scanner	3005800 Rev B
Verity Touch Writer – Electronic BMD Device	3006090 Rev A
Verity Touch Writer – Electronic BMD Device	3005352 Rev H
Verity Touch Writer – Electronic BMD Device	3005852 Rev B
Verity Touch Writer Duo – Electronic BMD Device	3006070 Rev A
Verity Touch Writer Duo – Electronic BMD Device	3005700 Rev B
Verity Touch Writer Duo Standalone – Electronic BMD Device	3006075 Rev A
Verity Touch Writer Duo Standalone – Electronic BMD Device	3005730 Rev A
Verity Controller – Networked Centralized Management Device	3006085 Rev A
Verity Controller – Networked Centralized Management Device	3005825 Rev B

COTS Equipment

Description	Version
Verity Data, Build	

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

Verity Data and Build Applications and Workstation Kit <ul style="list-style-type: none"> HP Z4 G4 Workstation HP Z240 Workstation supported for existing customers only 	A
OKI Data C831dn Color Printer for existing customers only	N35100A
OKI Data C844dn Color Printer	N35301A
OKI Data C911dn color Printer for existing customers only	N36100A
OKI Data C931e Color Printer	N36100A
OKI Data B432dn Mono Report and Ballot Printer	N22500A
OKI Data B431d Mono Report Printer for existing customers only	N22202A
Verity Central	
Verity Central Applications and Workstation Kit <ul style="list-style-type: none"> HP Z4 G4 Workstation HP Z240 Workstation supported for existing customers only 	A
Canon DR-G1100 High-Speed Scanner	M111181
Canon DR-G1130 High-Speed Scanner	M111171
Canon DR-G2110 High-Speed Scanner	6130030
Canon DR-G2140 High-Speed Scanner	6130020
OKI Data B432dn Mono Printer Report Printer	N22500A
OKI Data B431d Mono Report Printer for existing customers only	N22202A
Brother HL-L6400 Series printer	HLL6400DWVS
8-port Ethernet Switch	1405-8GV3
Verity Count	
Verity Count Applications and Workstation Kit <ul style="list-style-type: none"> HP Z4 G4 Workstation HP Z240 Workstation supported for existing customers only 	A
OKI Data B432dn Mono Printer Report Printer	N22500A
OKI Data B431d Mono Report Printer for existing customers only	N22202A
Brother HL-L6400 Series printer	HLL6400DWVS
HP 8-port Ethernet Switch	1405-8GV3
Verity Relay Receiving Station	
Verity Relay Applications and Workstation Kit <ul style="list-style-type: none"> HP Z4 G4 Workstation HP Z240 Workstation supported for existing customers only 	A
OKI Data B432dn Mono Printer Report Printer	N22500A
OKI Data B431d Mono Report Printer for existing customers only	N22202A
Brother HL-L6400 Series printer	HLL6400DWVS
Verity Transmit Receiving Station	
Verity Relay Applications and Workstation Kit <ul style="list-style-type: none"> HP Z4 G4 Workstation HP Z240 Workstation supported for existing customers only 	A
OKI Data B432dn Mono Printer Report Printer	N22500A
OKI Data B431d Mono Report Printer for existing customers only	N22202A
Brother HL-L6400 Series printer	HLL6400DWVS
Verity Print	
OKI Data C831dn Color Printer for existing customers only	N35100A
OKI Data B432dn Mono Printer Report Printer	N22500A

OKI Data C844dn Color Printer	N35301A
OKI Data B431d Mono Report Printer for existing customers only	N22202A
Brother HL-L6400 Series printer	HLL6400DWVS
Optional AutoBallot Barcode Scanner Kit Includes the following 2d barcode scanner: <ul style="list-style-type: none"> Hart part number: 1003672 Motorola/Zebra part number: DS4308 or DS4608 	C
Verity Scan – Paper Ballot Scanner	
Verity Ballot Box	D
Optional Relay Accessory Kit (4G LTE Cat-M1) Includes the following COTS modem <ul style="list-style-type: none"> Hart part number: 1005248 MultiTech part number: MTD-MNA1-2.0 	A
Verity Touch Writer – Electronic BMD Device	
OKI Data B432dn Mono Printer Report Printer	N22500A
OKI Data B431d Mono Report Printer for existing customers only	N22202A
Brother HL-L6400 Series printer	HLL6400DWVS
Duracell UPS	DR660PSS
EATON UPS	5P1500
Accessible Voting Booth	D
Optional AutoBallot Barcode Scanner Kit Includes the following 2d barcode scanner: <ul style="list-style-type: none"> Hart part number: 1003672 Motorola/Zebra part number: DS4308 or DS4608 	C
Headphones <ul style="list-style-type: none"> Brand: V7, part number HA300-2NP or HA310-2NP 	2005230
Verity Touch Writer Duo – Electronic BMD Device	
Brother PJ700 Series Thermal Printer	PJ723
Accessible Voting Booth with ATI Tray	D
Standard Voting Booth	D
Optional Detachable ATI Kit	A
Optional headphones for ATI Kit Brand: V7, part number HA300-2NP or HA310-2NP	C
Verity Touch Writer Duo Standalone– Electronic BMD Device	
Brother PJ700 Series Thermal Printer	PJ723
Accessible Voting Booth with ATI Tray	A
Standard Voting Booth	D
Optional Detachable ATI Kit	A
Optional AutoBallot Barcode Scanner Kit Includes the following 2d barcode scanner: <ul style="list-style-type: none"> Hart part number: 1003672 Motorola/Zebra part number: DS4308 or DS4608 	C
Optional headphones for ATI Kit Brand: V7, part number HA300-2NP or HA310-2NP	C
Verity Controller	
Optional AutoBallot Barcode Scanner Kit Includes the following 2d barcode scanner: <ul style="list-style-type: none"> Hart part number: 1003672 Motorola/Zebra part number: DS4308 or DS4608 	C
Verity Transmit	

Optional Modem Accessory kit (4G LTE Cat-M1)Includes the following COTS modem: <ul style="list-style-type: none"> Hart part number: 1005248 MultiTech part number: MTD-MNA1-2.0 	A
Optional WiFi Accessory kit Includes the following COTS modem: <ul style="list-style-type: none"> StarTech part number: USB433ACD1X1 	A
Optional RJ-45 Ethernet Accessory kit	A
Includes the following COTS modem: <ul style="list-style-type: none"> StarTech part number: USB31000SW 	

System Limitations

This table depicts the limits the system has been tested and certified to meet.

Election Data Limits	Testing Limit/Requirement Z240 or Z4 G4 Systems (all supported workstations except Data/Build/Count combined system)	Testing Limit/Requirement Data/Build/Count combined system)
Languages in a single election	19	19
Precincts in an election	3,000	2000
Splits per Precinct	20	20
Total Precincts + Splits in an election	3,000	2000
Districts for voting devices and applications	400	75
Polling places in an election	3,050	1200
Parties in a General Election	24	24
Parties in a Primary Election	10	10
Contests in an election (including propositions)	2,000	200
Contest choices (voting positions) in a single contest	300	75
Total number of Contest Choices in an Election (independent from ballot size)	5,000	600
Unique write-in values per contest (Count)	500	500
Unique write-in values per task (Count)	40,000	40,000
Voting Types in an Election	10	10
Tasks per Election (Central, Count)	15	15
Registered Voters per Precinct (Count)	99,999	99,999
Maximum Sheets per ballot	4	4
Ballot Stubs per ballot	2	2
Ballots per vDrive (Scan, 1 sheet ballot)	25,000*	25,000*
Ballots per vDrive (Controller)	20,000	20,000
Ballots per vDrive (Central)	20,000	20,000
Ballots per <i>election</i> (Central & Count)	1,750,000	1,750,000

vDrives per <i>election</i> (Count)	3,050	3,050
Ballot Sizes (Build, Central, Print, Touch Writer, Scan)	8.5"x11", 8.5"x14", 8.5"x17", 8.5"x20", 8.5"x22"***	8.5"x11", 8.5"x14", 8.5"x17", 8.5"x20", 8.5"x22"***
Ballot Sizes (Build, Central)	11"x17"	11"x17"

* This is a recommended limit for the number of single-sheet ballots scanned on an individual Verity Scan during a single election. For a two-sheet ballot, divide this number by two; for a four-sheet ballot, divide this number by four.

** Older printer models may not support a 22" ballot.

Functionality

VVSG 1.0 Supported Functionality Declaration

Feature/Characteristic	Yes/No	Comment
Voter Verified Paper Audit Trails		
VVPAT	No	
Accessibility		
Forward Approach	Yes	
Parallel (Side) Approach	Yes	
Closed Primary		
Primary: Closed	Yes	Supports standard closed primary and modified closed primary
Open Primary		
Primary: Open Standard (provide definition of how supported)	Yes	Open Primary
Primary: Open Blanket (provide definition of how supported)	Yes	General "top two"
Partisan & Non-Partisan:		
Partisan & Non-Partisan: Vote for 1 of N race	Yes	
Partisan & Non-Partisan: Multi-member ("vote for N of M") board races	Yes	
Partisan & Non-Partisan: "vote for 1" race with a single candidate and write-in voting	Yes	
Partisan & Non-Partisan: "vote for 1" race with no declared candidates and write-in voting	Yes	
Write-In Voting:		
Write-in Voting: System default is a voting position identified for write-ins.	No	By default, the number of write-ins available in a contest is zero, users may increment as necessary
Write-in Voting: Without selecting a write in position.	Yes	Support is configurable per election.
Write-in: With No Declared Candidates	Yes	
Write-in: Identification of write-ins for resolution at central count	Yes	
Primary Presidential Delegation Nominations & Slates:		
Primary Presidential Delegation Nominations: Displayed delegate slates for each presidential party	Yes	
Slate & Group Voting: one selection votes the slate.	Yes	
Ballot Rotation:		

Rotation of Names within an Office; define all supported rotation methods for location on the ballot and vote tabulation/reporting	Yes	Rotation by precinct and precinct split
Straight Party Voting:		
Straight Party: A single selection for partisan races in a general election	Yes	
Straight Party: Vote for each candidate individually	Yes	
Straight Party: Modify straight party selections with crossover votes	Yes	
Straight Party: A race without a candidate for one party		
Straight Party: "N of M race (where "N">1)	Yes	
Straight Party: Excludes a partisan contest from the straight party selection	Yes	
Cross-Party Endorsement:		
Cross party endorsements, multiple parties endorse one candidate.	Yes	
Split Precincts:		
Split Precincts: Multiple ballot styles	Yes	
Split Precincts: P & M system support splits with correct contests and ballot identification of each split	Yes	
Split Precincts: DRE matches voter to all applicable races.	Yes	
Split Precincts: Reporting of voter counts (# of voters) to the precinct split level; Reporting of vote totals is to the precinct level	Yes	
Vote N of M:		
Vote for N of M: Counts each selected candidate if the maximum is not exceeded.	Yes	
Vote for N of M: Invalidates all candidates in an overvote (paper)	Yes	
Recall Issues, with options:		
Recall Issues with Options: Simple Yes/No with separate race/election. (Vote Yes or No Question)	Yes	
Recall Issues with Options: Retain is the first option, Replacement candidate for the second or more options (Vote 1 of M)	Yes	
Recall Issues with Options: Two contests with access to a second contest conditional upon a specific vote in contest one. (Must vote Yes to vote in 2 nd contest.)	Yes	
Recall Issues with Options: Two contests with access to a second contest conditional upon any vote in contest one. (Must vote Yes to vote in 2 nd contest.)	Yes	
Cumulative Voting		
Cumulative Voting: Voters are permitted to cast, as many votes as there are seats to be filled for one or more candidates. Voters are not limited to giving only one vote to a candidate. Instead, they can put multiple votes on one or more candidate.	Yes	
Ranked Order Voting		
Ranked Order Voting: Voters can write in a ranked vote.	Yes	
Ranked Order Voting: A ballot stops being counting when all ranked choices have been eliminated	N/A	Tabulation rules are unique per jurisdiction

Ranked Order Voting: A ballot with a skipped rank counts the vote for the next rank.	N/A	Tabulation rules are unique per jurisdiction
Ranked Order Voting: Voters rank candidates in a contest in order of choice. A candidate receiving a majority of the first-choice votes wins. If no candidate receives a majority of first choice votes, the last place candidate is deleted, each ballot cast for the deleted candidate counts for the second-choice candidate listed on the ballot. The process of eliminating the last place candidate and recounting the ballots continues until one candidate receives a majority of the vote	N/A	Tabulation rules are unique per jurisdiction
Ranked Order Voting: A ballot with two choices ranked the same, stops being counted at the point of two similarly ranked choices.	Yes	
Ranked Order Voting: The total number of votes for two or more candidates with the least votes is less than the votes of the candidate with the next highest number of votes, the candidates with the least votes are eliminated simultaneously and their votes transferred to the next-ranked continuing candidate.	N/A	Tabulation rules are unique per jurisdiction
Provisional or Challenged Ballots		
Provisional/Challenged Ballots: A voted provisional ballots is identified but not included in the tabulation, but can be added in the central count.	Yes	
Provisional/Challenged Ballots: A voted provisional ballots is included in the tabulation, but is identified and can be subtracted in the central count	Yes	
Provisional/Challenged Ballots: Provisional ballots maintain the secrecy of the ballot.	Yes	
Overvotes (must support for specific type of voting system)		
Overvotes: P & M: Overvote invalidates the vote. Define how overvotes are counted.	Yes	If the system detects more than the valid number of marks in a contest, it is counted as an overvote
Overvotes: DRE: Prevented from or requires correction of overvoting.	Yes	
Overvotes: If a system does not prevent overvotes, it must count them. Define how overvotes are counted.	Yes	If the system detects more than the valid number of marks in a contest, it is counted as an overvote
Overvotes: DRE systems that provide a method to data enter absentee votes must account for overvotes.	Yes	
Undervotes		
Undervotes: System counts undervotes cast for accounting purposes	Yes	
Blank Ballots		
Totally Blank Ballots: Any blank ballot alert is tested.	Yes	
Totally Blank Ballots: If blank ballots are not immediately processed, there must be a provision to recognize and accept them	Yes	

Totally Blank Ballots: If operators can access a blank ballot, there must be a provision for resolution.	Yes	
Networking		
Wide Area Network – Use of Modems	Yes	With optional Verity Scan with Relay and Relay Receiving Station or Verity Transmit and Transmit Receiving Station
Wide Area Network – Use of Wireless	Yes	With optional Verity Scan with Relay and Relay Receiving Station or Verity Transmit and Transmit Receiving Station
Local Area Network – Use of TCP/IP	Yes	
Local Area Network – Use of Infrared	No	
Local Area Network – Use of Wireless	No	
FIPS 140-2 validated cryptographic module	Yes	
Used as (if applicable):		
Precinct counting device	Yes	
Central counting device	Yes	

Appendix D: Wisconsin Voting Equipment Review Panel Feedback

These comments were provided via a structured feedback form. Members of the panel also had the opportunity to follow up with additional written comments. For each question, participants were asked to assess the equipment on a scale of 1 to 5, with 1 being very poor and 5 being excellent. Reviewers did not find this scoring metric to be sufficient, and many opted to include their own ratings and additional comments. All comments are presented below. The tables below show the number of participants that chose each ranking.

1. How would you rate the functionality of the equipment?

Very Poor	Poor	Fair	Good	Excellent
	1	1	3	

- Standalone machine can be made accessible by plugging in headphone, etc. That is a positive. Also good that poll works can enter code for all voters and people with disabilities are not singled out.
- The “move” wheel toggles between selection too easily. Someone with visual impairments or motor skill impairments might find this difficult. More resistance in between each click is necessary and would improve the user experience.
- Controller allows the voter to input an access code, which allows the voter to begin their session completely independently – for those with visual abilities. Voters with impaired vision would still need a poll worker to begin their session.
- Duo: Voter experience is intuitive. Easy flow through the ballot selections. The paper is provided by the printer manufacturer, is likely expensive, and does not contain a place for the clerk initials (which is required).
- Scan: looks so similar to the Duo, but the scanner is great.
- It can scan both ballots (ones printed by Touch Writer or Duo & the ballots voter marked with a pen). Scanner makes happy noise when ballot is accepted, sad noise when ballot is rejected.
- Scanner tells voter exactly which contest is not voted or the mark is too small/light. Also allows voters to be notified of a blank side and voters can choose to have the ballot accepted as-is.

2. How would you rate the accessible features?

Very Poor	Poor	Fair	Good	Excellent
		1	3	

- Tactile marking device:
 - That was the strangest ballot marking device I’ve ever encountered. It was not intuitive and took me some time to figure out how to use it.
 - I was concerned about mismarking my ballot, given how cumbersome it was to use the device.
 - The instructions included telling voters to turn the dial clockwise/counter-clockwise for particular actions, which may be confusing for those with cognitive processing issues.

- Overall, the device felt clunky and juvenile with its big shapes. I was concerned that voters might feel belittled using it. There is already such a societal norm of infantilizing people with disabilities and this ballot marking device seems like it taps into that societal norm.
- The single redeeming aspect is that it was easy to maneuver once I understood how to use it, which makes it more accessible for those with arthritic hands or more limited fine motor access.
- We were not able to test their big buttons, which are used by people with limited/no fine motor skills or no hands, as these had gotten damaged in transit. This was unfortunate, as I don't know how they interfaced with the ballot marking screen.
- Overall of these "buttons" is that there were no tactile differences between them, so anyone with motor issues and vision loss would not be able to use them.
- The buttons were red and green, which are the colors most commonly not seen by people with color blindness.
- Audio Output:
 - Candidate names are recorded by elections workers. There is variance between the automated voice used in giving instructions/ballot navigation and the names/parties of candidates. This is concerning, because it is distracting/jarring for the voter. Variances included:
 - Volume – I found the automated voice to be louder than the recorded voice of the elections worker. I'd adjusted my volume control based on the automated voice since that is what was used for instructions. The recordings of the candidates was softer, making it hard to hear. If I would have stopped my voting session to go into the "help" menu to adjust the volume, the automated voice would have been too loud. Additionally, this would have added to the length of my voting session.
 - Articulation – if the speaker doesn't have clear articulation, this could lead to confusion for the voter.
 - Ballots in other languages – it would be imperative for election officials to work with native speakers to be sure that a ballot read in Spanish, or Hmong or Chinese, or other language have correct pronunciation and articulation.
 - I appreciated that I could adjust speech rate. This is standard though on most equipment I've ever tested/used.
 - The automated voice was easy to understand. A question that I forgot to ask is if that automated voice can run in other languages?
 - The audio flow of the voting process went smoothly, especially as I understood how to move through the ballot more quickly.
- Screen view:
 - I appreciated that the screen had very little glare. I didn't have to reposition my body to reduce glare.
 - The magnification was insufficient for me to read the screen, so I definitely needed to use the audio. Anyone with low vision/legal blindness is likely unable to interact with the screen.
 - I could see enough on the screen to note that the contest and candidate names were outlined when I scrolled through them. I could also see the ballot being marked.
 - I appreciated that there was a screen curtain so that the screen wouldn't be visible. This is particularly important for blind voters if we can't see how close others are standing to our voting area and we want to assure privacy.
- Touch Writer machine looks a lot like the non-accessible equipment (good). Toggle on accessible voting pad is a wheel that moves too freely and makes it tough not to scroll past your choice. People with fine motor issues might have difficulty. Jelly buttons did not work to try. A sip and puff seems gross.

3. Rate your overall impression of the system.

Very Poor	Poor	Fair	Good	Excellent
	1	1	3	

Overall impressions of the ballot marking system:

- It was disappointing that the voter can't start their accessible voting session independently. A poll worker needs to start the session. I'm always concerned that this will be a deterrent for people to use the equipment if they feel they are being singled out or called attention to in some way.
- From an orientation perspective, it was confusing not having a predictable place to find the headphones. A hook on the front of the voting booth or consistently placing the headset next to the ballot marking device would be helpful. The headphones, when hung on the top edge of the voting booth blended right in and I consistently couldn't find them when approaching the machine.
- It seemed there was good clearance underneath for a chair or wheelchair.
- Printer location – the placement of the printer right along side the ballot marking device is essential so that the voter can access their ballot right away, keeping it secure. If this equipment is used here, it will be critical for the poll workers to orient the voter to the location of the printer.
- I did not like it at all. The wheel was hard to use, the voice of the audio was very soft, the presenters provided broken "jelly buttons" and would be difficult to use if color blind.

Tabulator:

- I appreciated the bright green arrow lights on the tabulator for feeding the ballot. There were also good tactile guides and audio feedback when the ballot was tabulated



Wisconsin Elections Commission

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DATE: For the Sept. 11, 2024, Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Riley Vetterkind – Public Information Officer

SUBJECT: Voter Registration Outreach Efforts Following Approved Exception to ERIC Eligible But Unregistered (EBU) Mailers

This memo relates to the ongoing work of agency staff to launch a public outreach campaign this fall as an alternative to the Eligible But Unregistered (EBU) mailer required by Wisconsin’s membership in the Electronic Registration Information Center, also known as ERIC.

While this agenda item is designed to be for information only, staff would welcome any input Commissioners have about the campaign. Any feedback provided would be shared with the vendor.

The ERIC membership agreement allows for states to request an exemption from the EBU requirement, if they can prove that they could provide other ways to effectively encourage voter registration. At the July 30 meeting, staff explained to the Commission how seeking an exemption from the ERIC EBU requirement could accomplish two very important goals. The first goal being to use EBU funds to conduct more effective voter outreach and the second goal of using the funds saved from the EBU mailings to avoid going over budget due to paying for our newly increased ERIC dues, which have increased by more than \$35,000. By seeking an exemption, we can be prudent with our budget and more effectively and consistently educate all Wisconsin voters on opportunities to register to vote.

Commission members approved staff’s request to seek an exemption, and additionally approved a letter to the ERIC board seeking the exemption. The ERIC board approved the WEC’s exemption from the EBU mailer on August 21.

Campaign Status

In recent weeks, WEC staff have had conversations with advertising firms to understand whether any could assist the WEC with developing and launching an outreach campaign within the compressed timeline required to develop and launch it in the weeks leading up to the Nov. 5 General Election, and particularly with plenty of time before the Oct. 16 online registration deadline.

The goal of the outreach campaign is to direct Wisconsinites to MyVote Wisconsin, the WEC’s voter facing informational portal, to educate them about opportunities to register to vote, request a ballot, and establish the MyVote website as an official source of trusted election information. Staff would ensure that all outreach remains completely nonpartisan.

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

The outreach campaign is not a voter registration campaign, but instead is an effort to ensure that all Wisconsin voters have access to the accurate information they need to register to vote, vote, and understand how the process works.

Following these conversations, WEC staff selected Vendi, a full-service advertising firm based in La Crosse, to develop the campaign. Vendi maintains an existing state contract that WEC can use to expedite the launch of the project.

Estimated agency fees are \$37,800 and estimated media fees are \$22,200, for a total of \$60,000, although these figures are of course subject to change. All agency services are billed at \$150 per hour, and there are no media commissions or third-party vendor markups.

Vendi will provide marketing and advertising strategy, creative development, and campaign execution for the WEC's marketing campaign.

Deliverables include:

- Conducting a campaign strategy session to inform public outreach campaign positioning, marketing and campaign strategy
 - Pre-session questionnaire
 - Engaging workshop exercises
 - Post-session summary report
- Develop integrated campaign marketing, media and communications strategy and plan
 - Earned, owned and paid tactics
 - Channel recommendations
 - Media recommendations
 - PR recommendations
 - Budget allocations
 - Timeline and calendar
- Develop two unique campaign concepts for WEC to choose from
- Develop campaign positioning and messaging
- Develop campaign creative strategy
- Develop campaign creative assets
 - May include search, social and digital ads, terrestrial and/or streaming audio, print ads, news releases and/or out-of-home
- Perform media campaign builds, negotiation, placement and creative trafficking
- Perform campaign tracking and optimizations (if timeline allows)
- Present campaign summary report
- Perform ongoing account and project management including regular status
- Meetings and reporting

Additional details about Vendi, including its past work for government clients, is available in their proposal attached to the end of this document.

In terms of a timeline, Vendi estimates that the total timeline is 12 to 16 weeks, with campaign strategy and creative development taking place in August and September, and the campaign launch taking place in September. The campaign would be in market through October, with a campaign summary available in November.

Creative assets may include social and digital ads, terrestrial and/or streaming audio, outdoor advertising, print ad templates, news release copywriting, or photography and videography. The campaign will try to make use of

existing media relationships, such as those with broadcasters and newspaper associations, in addition to seeking out any opportunities for public service announcements set at more affordable rates.

Staff and members of the Commission will have full access to campaign analytics, including impressions, conversion rates, and click-through-rates.

Due to the campaign's limited budget and compressed timeline, it is staff's understanding that the final approved media plan is likely to lean toward digital ads and social media, as opposed to more time-consuming tactics, such as outdoor advertising or detailed campaign videos.

The timeline of the project will also likely lessen the ability of the firm to conduct intensive A/B or other testing. The campaign is likely to be simple, with a tightly focused message. While the campaign is in the market, Vendi, staff, and commissioners will have the ability to continuously monitor outcomes and adjust the course of the campaign as necessary.

WEC staff have emphasized to Vendi that all messaging must be nonpartisan and fair towards individuals of all political persuasions.

As planning for this campaign progresses, staff will share updates with Commission members and are happy to solicit feedback that can then be shared with Vendi.

Separate from the WEC's work with Vendi, Public Information Office staff are also hoping to compile an "election ambassador" toolkit. This program would provide interested members of the public, along with partner institutions and their members, a toolkit containing graphics, flyers, posters, templated social media posts, videos, fact sheets, and other resources on mis- and disinformation, media literacy, and requirements of the voting process, including voter registration resources and even voter registration applications. The goal would be for participating individuals and institutions to share these materials widely across their networks.



PROPOSAL

PREPARED FOR:
**WISCONSIN ELECTIONS
COMMISSION**
Agency Services

AUGUST 2024

CONTACT INFORMATION

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EXECUTIVE SUMMARY



Capturing a compelling message and effectively communicating it across multiple channels is the core strength of the Vendi team. Our common drive is to make our agency the strongest creative partner the Wisconsin Elections Commission (WEC) has ever had.

Vendi is an independent, full-service advertising agency with a highly skilled and talented staff of full-time professionals who deliver results.

Vendi has grown every year since our founding with vast in-house capabilities ranging from branding and digital marketing to video and web development. Equally important is our value as a creative, collaborative and technical resource for our clients.

Vendi is known for superior work that delivers exceptional results. Our work is innovative, effective and research-based. We believe in the power of strong media and message collaboration. Our in-house media, marketing, digital, creative and web staff work closely together. Vendi works with clients to define marketing goals, objectives and measurable outcomes and puts a great deal of emphasis on tracking and analyzing results to ensure a return on investment.

In this proposal, you will find evidence of our award-winning brand, marketing, web and campaign development capabilities (leveraging paid, earned and owned channels) as well as our dedication and integrity as a business partner.

We believe these attributes make Vendi an outstanding partner for WEC.

See more at vendiadvertising.com.

Primary service areas (all in house)

- Brand
- Creative
- Digital
- Marketing
- Media
- Research
- Strategy
- Video & Photography
- Web
- PR

“There’s no doubt we chose the right agency partner. A true team effort of strategy, creativity and insight!”

Beth Burgos
Former Director of Marketing
Communications
Mayo Clinic Health System



2023 Best Workplace in Wisconsin winner
2020 Outstanding Small Business award



Wisconsin Woman-Owned
Business Enterprise



Certified Google Partner

SECTION 1

**AGENCY BACKGROUND
AND CAPABILITIES**



AGENCY BACKGROUND

Vendi is a full-service advertising, marketing, brand, PR and web firm.

We got our start when national ad agency veterans decided they were ready for a change. They wanted to develop client partnerships that foster great work and results. They wanted to create a culture of kindness and creativity. And they wanted to do it from La Crosse—a gem of a town on the Mississippi River with incredible outdoor recreation and natural beauty. The only way to do it was to start their own agency. That turned out to be a pretty good idea. We’ve grown into the largest agency in western Wisconsin and built a reputation for great work, measurable results, long-standing client relationships and a culture of kindness and creativity.

Our team of 27 full-time, in-house professionals have the perfect mix of in-depth expertise and innovative, fresh ideas. They have remarkable technical and creative skills combined with thoughtfulness and a knack for collaboration. They also take a personal, serious interest in our clients’ work.

We commonly hear that we are exceptional communicators who provide impactful solutions. We benefit from our clients’ subject matter expertise but are mindful of their busy schedules while keeping them updated. Here’s another thing we hear: Vendi goes above and beyond to deliver. We have the talent, technology, experience and resources to execute efficiently and get results.

Our partial client roster includes Wisconsin Department of Workforce Development, Wisconsin Department of Natural Resources, Wisconsin Department of Health Services, Ohio Department of Job and Family Services, Ohio Department of Children and Youth, Wisconsin Public Radio, Wiscontext, University of Wisconsin—Madison, University of Wisconsin-Extension, University of Wisconsin-Milwaukee, University of Wisconsin-La Crosse, Winona State University, Kansas State University, the University of Chicago, Viterbo University, Western Technical College, Wisconsin Technical College System, StraighterLine, Kaplan, American Association of Nurse Anesthesiology, National Blood Clot Alliance, Academy of Orthopaedic Physical Therapy, Tamarack Health, Mayo Clinic Health System, Mayo Clinic Labs, Encompass Health, WinnMed, ViaroHealth, Gundersen Medical Foundation, All of Us, Long Term Care Institute (Verity), Meri Insurance, The Insurance Center, State Bank Financial, Co-op Credit Union, Marine Credit Union, Altra Federal Credit Union, Gensler, Kwik Trip, Inland Packaging, Toro, Trane Technologies, Ingersoll Rand, Mississippi Valley Conservancy, Black Leaders Acquiring Collective Knowledge (BLACK), Women’s Fund, Freedom Honor Flight and Oktoberfest USA.

“Working with Vendi has been such an easy, painless process. The communication on project status was excellent. You were able to interpret what we needed with very little direction.”

Emily Fann
Marketing Leader
Trane Technologies

PROFESSIONAL SERVICES

Vendi provides these in-house services:

Strategy From discovery to analysis to positioning to media to creative execution, our shared (with you) commitment to strategy means your marketing and advertising program resonates with your target audience and drives action.

Research An in-depth understanding of your market segments allows us to deliver messaging and strategies that are relevant and meaningful.

Media/digital Our approach to media includes incorporating innovative places and experiences that allow you to connect with target audiences where they are spending their time. Vendi media and digital marketing programs leverage the latest strategies, delivery methods and ad formats to consistently deliver above industry-average results. We continually test and analyze channels, networks, audiences, messages and formats to optimize campaign performance.

Brand We connect with target audiences on every level with a strong, integrated brand strategy. From competitive positioning to segmented messaging to visual identity and logo design, Vendi helps communicate the essence of your brand.

Creative We combine compelling copy with impeccable design, video and photography to inspire and connect with your audiences. Our award-winning creative team is known for actionable branded content, the highest quality production value and the absolute best representation of our clients' brands.

Public relations Strong brands make authentic connections with audiences and are able to weather a storm. As a proactive PR partner, Vendi supports our clients with content and event marketing, crisis communications, cause and influencer marketing, media relations and presentation preparation.

Video Whether you need a campaign spot, video pre-roll ad or informational video, Vendi creates award-winning video from concept to delivery. We'll help you tell your story with the medium everyone loves.

Web For website, mobile and application development, we leverage industry best practices to achieve your marketing goals. Our in-house capabilities are unmatched in our region. This leadership position means your site benefits from high-performing approaches to user experience, lead generation, content management, SEO, accessibility and security.

Photography Our photography can provide tremendous impact on your brand image. Vendi has extensive experience designing, coordinating, art directing, casting, styling, propping and managing post-production for photo (and video) shoots of virtually any size and scope. Vendi photography will add emotion to your brand.

"I have been truly impressed working with Vendi. They are extremely professional, highly skilled, proactive, available and helped us reposition our brand to give us the national and global look and feel that we desired. Vendi truly has become an extension of our marketing department. They took the time to get to know my team and me, as well as our company, and fully understand where we are trying to go and how we want to get there. They are very much in tune with our company and departmental goals and have gone above and beyond to help us succeed."

Jackie Kuehlmann
Former Director of Marketing
Inland Packaging

IS THE WORK GREAT?

Strategy

- Is it on strategy?
- Does the message match the medium?
- Are the needs of the target audience met?
- Does it serve its purpose?
- Are images, copy and experiences used consistently to reinforce brand experience and messaging?

Design

- Is there a wow factor?
- Does it look inviting?
- Is there a focal point and visual hierarchy?
- Is there an intuitive flow? (“There should never be a moment of doubt.”)
- Is there breathing room?
- Are photographs and footage diverse?
- Is the logo big enough?
- Are the specs met?
- Do production standards exceed expectations?

Content

- Is it actionable?
- Will every word be read?
- Is the main message see-able (not to be confused with readable)?
- Do headlines and subs carry the story on their own?
- Can narrative copy be better handled with numbered and bulleted lists?
- Do headlines break in natural places?
- Does it follow brand and/or (AP) style standards?
- Is there a prominent, customized call to action?
- Does the information stay well out of the weeds?
- Is industry jargon contained?
- Is the copy conversational?
- Are character counts met?

Experience

- Is there an emotional connection?
- Is the experience easy?
- Are we asking the audience to read or view or click more than they want?
- Do things work?
- Is it fast?
- Are there no dead ends?
- Is it a trustworthy technical experience?
- Do we show things (visually) instead of tell things (copy)?

Our standard of work

At Vendi, we stand behind our work and use these standards to judge every piece of work we produce.



Bottom line

Is it driving results?

NATIONAL AWARDS



2024 GOLD WinnMed Brand Identity, Healthcare Advertising Awards

2024 GOLD ViaroHealth You Belong at Viaro Campaign, Healthcare Advertising Awards

2024 GOLD Winona State University Take the Torch Recruitment Campaign, GDUSA Digital Design Awards

2024 GOLD University of Wisconsin School of Medicine and Public Health Website, GDUSA Digital Design Awards

2024 GOLD Women's Fund of Greater La Crosse Impact Video, Viddy Awards

2024 GOLD University of Wisconsin School of Medicine and Public Health Website, Hermes Awards

2024 GOLD UW Extension 4-H Recruitment Campaign, ADDY Awards

2024 GOLD University of Wisconsin–Madison Online Undergraduate Degrees Campaign, Educational Advertising Awards

2024 SILVER Winona State University Take the Torch Campaign, Communicator Awards

2024 SILVER Winona State University Take the Torch Campaign, Educational Advertising Awards

2024 SILVER WinnMed Logo Design, ADDY Awards

2024 SILVER Rm8 Logo Design, ADDY Awards

2024 SILVER Ohio Department of Workforce Development HOPE Video Series, Telly Awards

2024 BRONZE University of Wisconsin–Madison Online Undergraduate Degrees Spot, Telly Awards

2024 MERIT Gundersen Medical Foundation Pathfinders Publication, Healthcare Advertising Awards

2023 PLATINUM University of Wisconsin–Madison Online Undergraduate Degrees Campaign, AVA Digital Awards

2023 GOLD ViaroHealth Campaign: You Belong at Viaro, AVA Digital Awards

2023 GOLD AANA Website Redesign, AVA Digital Awards

2023 GOLD WinnMed Brand Identity, Hermes Creative Awards

2023 GOLD WinnMed Brand Identity, MarCom Awards

2023 GOLD WinnMed Brand Identity, GDUSA Health + Wellness Awards

2023 GOLD Wisconsin Department of Workforce Development Employment Recovery Dislocated Worker Campaign, GDUSA Digital Design Awards

2023 GOLD University of Wisconsin–Madison Pharmaceutical Sciences Social Campaign, AVA Digital Awards

2023 GOLD Gundersen Medical Foundation Pathfinders Publication, Communicator Awards

2023 GOLD Oktoberfest USA Economic Impact Social Infographic, GDUSA Digital Design Awards

2023 SILVER Wisconsin 4-H Division of Extension Recruitment Campaign, Communicator Awards

2023 SILVER Rotary Mobile Health Clinic Vehicle Wrap, Healthcare Advertising Awards

2023 SILVER Mississippi Valley Conservancy 25th Anniversary Campaign, ADDY Awards

2023 SILVER Wisconsin 4-H Division of Extension Recruitment Campaign, Communicator Awards

2023 SILVER University of Wisconsin–Madison Pharmaceutical Sciences Social Campaign, Educational Advertising Awards

MANAGING THE WORK

Vendi views every client relationship as a true partnership. We are invested in our clients' business goals and the work we produce aligns with those goals.

Philosophy and approach to customer service

Vendi is a highly collaborative agency and we believe the high quality of our work is due to successful partnering with our clients. We take responsibility for project management, but we encourage and welcome ideas, resources and contributions with the intent of working in the most creative, effective and timely manner.

Wisconsin Elections Commission staff are encouraged to contact any member of the Vendi team. You will be assigned an experienced, dedicated account manager who will serve as your main point of contact to efficiently and responsively route information, specifications, feedback, project status and inquiries between the agency and key contacts at WEC. Vendi's principals will oversee and contribute directly on the account.

Vendi has a well-earned reputation for excellence in quality and service across all functional areas. In addition to our experience, talented staff, highly regarded client communications and well-tuned internal processes, we provide our clients with the following customer service pledge:

- You will feel heard, respected and valued
- You will share in defining expectations
- You will know the project's progress at all times
- You will know what is needed from you and your team
- You will have 24/7 access to the Vendi team

Our client communication status meetings and reports are cited by clients as key to success. We efficiently conduct regular status meetings with pre-sent agendas. The meetings are as frequent (or infrequent) as needed and preferably conducted in person. Vendi status reports present project status, creative approvals, client responsibilities, agency responsibilities, deadlines, milestones and next steps and keep projects moving on schedule and delivering to the project scope of work.

DEI STATEMENT

At Vendi, we prioritize a culture of kindness, creativity and collaboration every day. Integral to that effort is the idea that people do their best work when they feel seen and supported as their authentic selves. We are committed to diversity, equity and inclusion across all areas of our organization.

See more at vendiadvertising.com/DEI.

"You gave us exactly what we need. You brought our vision to life."

Jane Stull
Former Marketing &
Communications Manager
Gensler

SECTION 2

TEAM OVERVIEW



TEAM OVERVIEW

Trite but true: the people make the difference. Our staff is remarkably talented, high-performing, proactive, professional and highly experienced, plus they're exceptionally nice folks and good listeners. That makes collaboration enjoyable, which is important because our partnership approach to the agency/client relationship is also a distinguishing attribute. You will benefit from the expertise of these professionals:

Creative director and agency creative lead

- Kathy Van Kirk

Marketing strategist, research and agency account service lead

- Julie Haas

Account management, marketing and research

- Audra Noe
- Hannah Stumpf
- Chloe Vehrenkamp
- Kate Weis
- Julie Werner

Media

- Erin Meiners
- Maggie Nesbit
- Molly Walleser

Copywriting and content

- Callie Przywojski
- Elly Reister
- Mike Thompson
- Sarah Wolff

Executive creative director

- Chuck Lacasse

Agency creative director

- Karen Bernhardt

Design and UI/UX

- John Horsfall
- Winnie Jaworski
- Jennifer Lossen
- Erik Olson

Videography and photography

- Kevin Cram

Web

- Chris Haas
- Jon Klocek
- Triston Sayaovang

Operations

- Sam Przywojski
- Anna Statz
- René Vande Zande

"I think all agencies are creative but where quite a few drop the ball is in project management and communication with the client. This is where Vendi wins every time."

Eric O'Connor
Chief Growth Officer
American Association of Nurse
Anesthesiology

SECTION 3

CASE STUDIES



WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT

Out-of-work Wisconsinites weren't aware of DWD's many reemployment services and resources.

Vendi helped Wisconsin's DWD get the word out with two series of user-friendly, user-focused videos, extensive job-seeker research and savvy campaign strategy.



DWD: an invaluable state agency...

DWD provides resources and services to all job seekers, assists employers needing staff and much more. A statewide network of Job Centers allows job seekers and employers to get help close to home.

... with a surprising number of services and resources

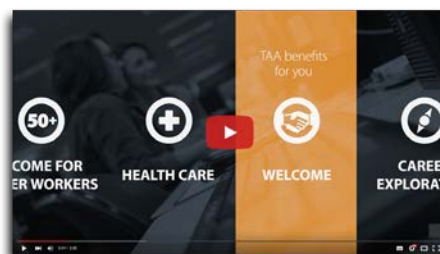
DWD approached Vendi, an agency with extensive government marketing experience, to tell Wisconsin residents that reemployment help is readily available, accessible, extensive and easy to use.

DWD selects Vendi for its long history of success in marketing government services

Vendi's work for DWD employed clear, simple, engaging language and visuals to help job seekers find rewarding careers.

Video series for benefits programs captures DWD's expertise

Trade Adjustment Assistance (TAA) videos (7 total; English) included a welcome video, as well as videos about career exploration, training opportunities, covering living expenses, obtaining extra income for older workers, paying for health care and getting the job. Vendi previously developed impeccably branded supporting materials for in-person TAA sessions.



CASE STUDY

Rapid Response videos (7 total; English and Spanish) included an introduction video, plus videos about job-loss coping strategies, Unemployment Insurance, job search tips, the Dislocated Worker Program, Employer Rapid Response and Job Center services.

Vendi videos for DWD:

- Simplified complex federal and state benefits program rules and processes
- Answered FAQs, reducing DWD's daily call volume so staff can focus more on other tasks
- Extended the reach of DWD staff to allow them to reach jobless people faster
- Enhanced the existing orientation format
- Helped job seekers feel more comfortable, at ease and hopeful



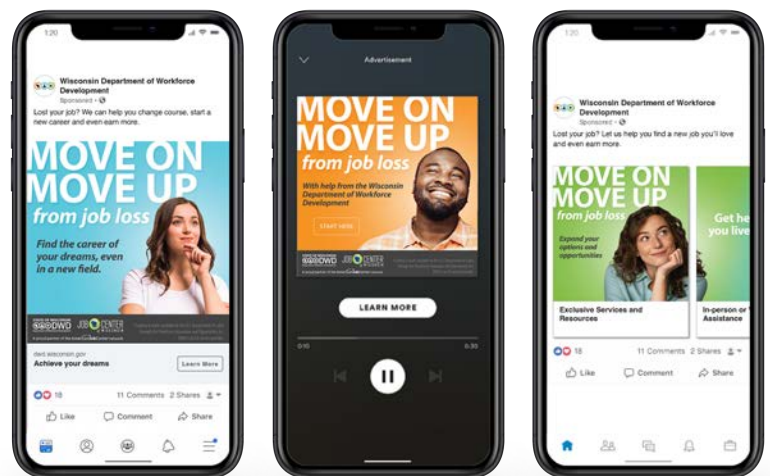
Vendi research sets the strongest foundation

Vendi conducted primary research to better understand the attitudes about and perceptions of Job Centers of Wisconsin (JCW) among job seekers and identify barriers DWD must overcome to encourage more job seekers to use their services. An online survey was conducted among JCW registrants and an online panel of Wisconsinites.

Vendi used K-means cluster analysis to divide research data into five distinct audience segments. Data and insights from segmentation analysis allowed Vendi to create descriptive audience personas and provide targeted marketing and communication recommendations. In 2023, DWD and Vendi used learnings from this research to launch a statewide awareness campaign.

Strategic, targeted campaign work will impact Job Centers statewide

DWD asked Vendi for assistance in creating a digital marketing campaign to increase use of specific grant-funded Job Center services and resources. Upon learning DWD needs and goals, Vendi creative and media team members planned a campaign of stand-out executions (in numbers appropriate for frequency and budget) to be placed within media channels people actually use. These executions targeted eligible Wisconsinites age 21–64 outside of the Milwaukee, Madison and Green Bay metro areas who have experienced job loss/are unemployed. For this campaign, DWD sought to target populations not typically associated with workforce programming, including racial and ethnic minorities, non-native English speakers and rural populations.



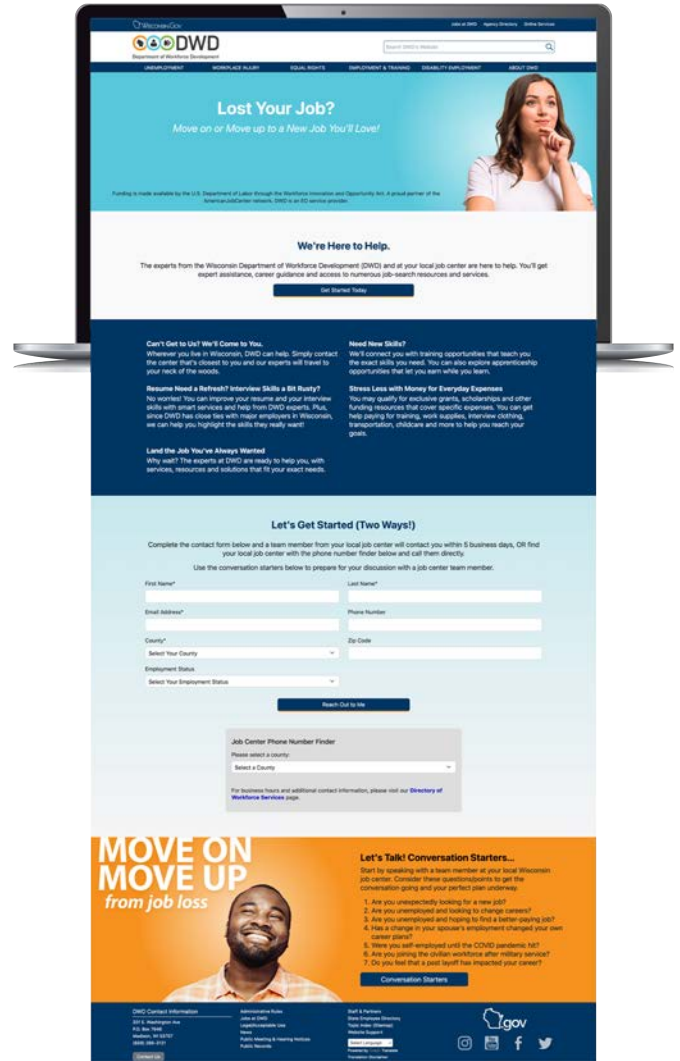
CASE STUDY


These campaign executions drove new interest in and use of unique, customized Job Center benefits:

- Paid responsive search ad for Google and Google search partners
- Meta (Facebook and Instagram) single-image ads and carousel ads with initial and retargeting versions
- LinkedIn in-feed image, in-feed carousel and inMail ads targeted by interest, job, title and education level
- Display banner ads in various sizes — two sets for general audiences based on interest, one set for retargeting
- Streaming audio (services such as Spotify and iHeart Radio) :30 spot with accompanying banner ad
- General awareness :15 video ad for online platforms, targeted based on interest
- Online campaign landing page with contact tools and downloadable PDF of job-search conversation starters

Vendi's new, fresh ideas continue to help DWD get Wisconsinites back to work

Together, the DWD team and Vendi team are a powerhouse for communicating the strength of DWD services and resources that help job seekers find rewarding new work.





Let's Talk!

When it's time to speak with a team member at your local Wisconsin Job Center, these questions/points can help get the conversation going and your perfect plan underway.

1. Are you unexpectedly looking for a new job?
2. Are you unemployed and looking to change careers?
3. Are you unemployed and hoping to find a better-paying job?
4. Has a change in your spouse's employment changed your own career plans?
5. Were you self-employed until the COVID pandemic hit?
6. Are you joining the civilian workforce after military service?
7. Do you feel that a past layoff has impacted your career?

And remember, you can find additional help and information—including job loss resources—24/7 at jobcenterofwisconsin.com.

This website product was funded by a grant awarded by the U.S. Department of Labor's Employment and Training Administration. DWD is an equal opportunity employer and service provider. If you have a disability and need to access the information on this website, contact us at 800.254.4888 or 800.254.4888 (TDD). For our rights contact us at 800.254.4888 or 800.254.4888 (TDD).

STATE OF WISCONSIN **DWD** **JOB CENTER**
A proud partner of the AmericanJobCenter network



UW-MADISON ONLINE UNDERGRADUATE DEGREES



UW-Madison's Online Undergraduate Degree campaign needed to launch in an already-saturated market.

Vendi competitively positioned the prestigious program with a comprehensive digital campaign featuring original video of student stories.

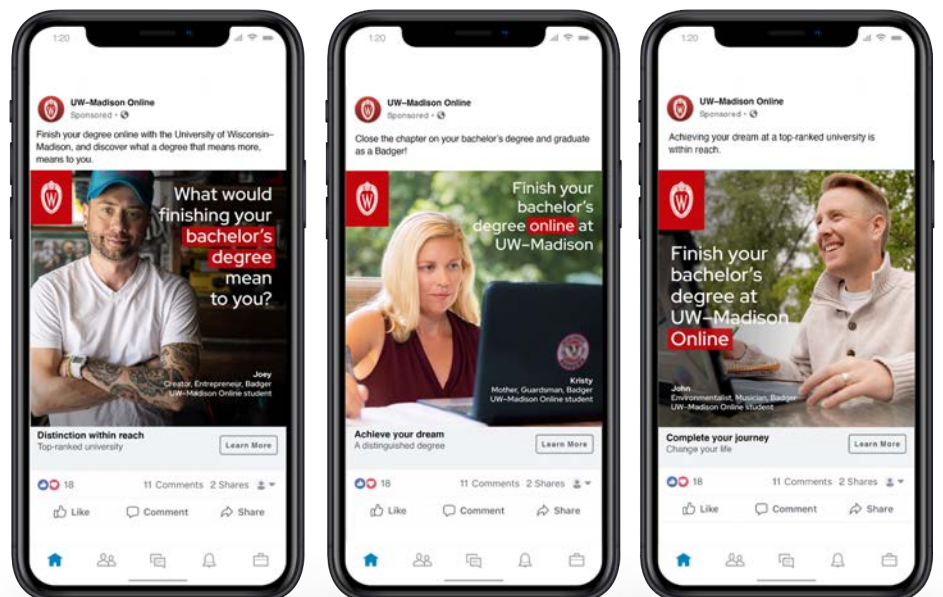
Sharing the life-changing stories of students who returned to their dream of a UW-Madison degree

Almost 50 million adults in the U.S. started a bachelor's degree program but stopped out or dropped out. Though there are many degree-completion options, those who are looking for the online equivalent in academic excellence of a traditional degree program are great candidates for a UW-Madison online degree.

Traveling to multiple locations, Vendi got to know, interviewed and filmed several successful students at their homes and places of work. We sought to understand the barriers they faced their first time in college and how they finally achieved their degree through the UW-Madison Online.

Recruiting through video

Vendi created a suite of student videos ranging from digital video ads to longer-form landing page videos. The students we featured had overcome challenges common to our target audiences, such as family and work demands. The authenticity of those shared experiences resonated with audiences.

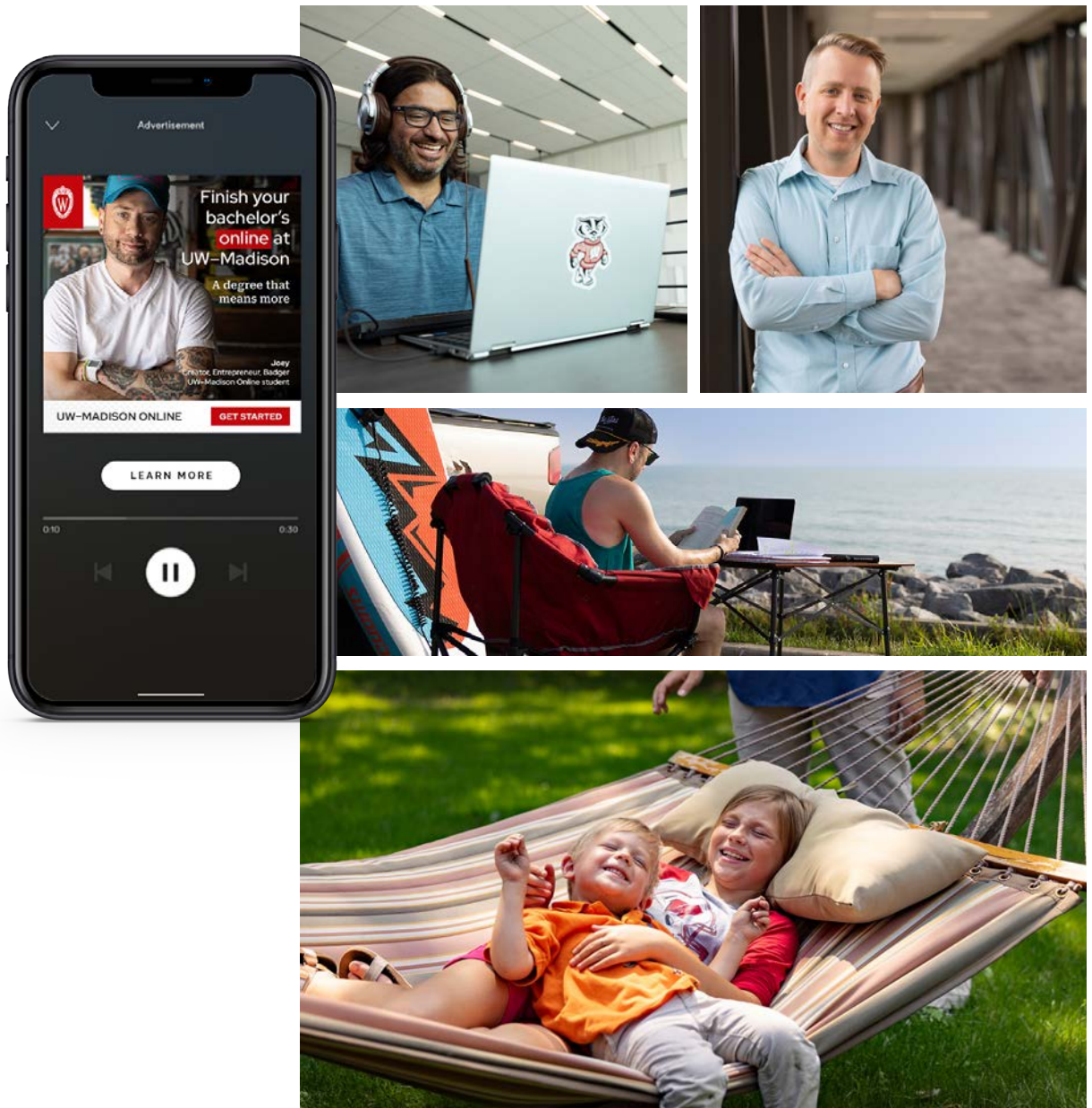


CASE STUDY

Increased conversions and lowered costs

The new digital creative suite for UW–Madison Online has contributed to year-over-year success, including a more efficient social spend with a 92% increase in lead conversions and 119% drop in cost per lead conversions in the first month alone. In particular, the new video ads are generating the most conversions at the lowest cost.

This creative suite also allows for expansion of channels to expand reach and frequency of our target audience, including online video, streaming TV, native and streaming audio.



TAMARACK HEALTH

Northern Wisconsin residents needed quality primary care closer to home.

Vendi embraced and advanced Tamarack Health’s new brand and developed a two-phase campaign with a mix of paid, earned and owned tactics to raise awareness. Now, their share of a competitive healthcare market is growing.



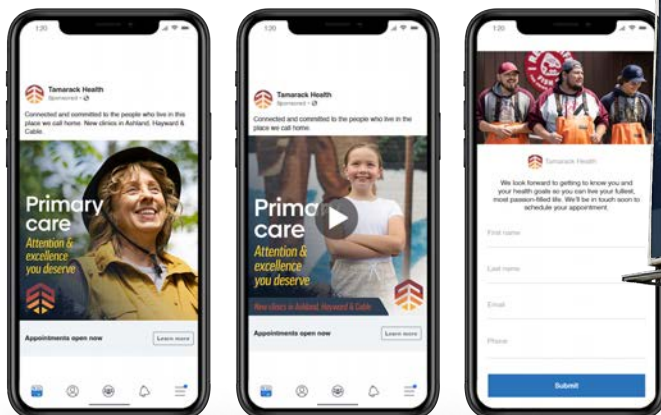
Vendi spreads the word about new primary care in the Northwoods

Tamarack Health was already known for quality healthcare. With 11 locations across northern Wisconsin, their services include things from in-patient care to senior living. When they added new primary care options in Ashland, Cable and Hayward, they needed to let the people “up North” know.

Vendi—no stranger to healthcare marketing—went straight to work crafting a communication and media plan that included a mix of paid, earned and owned tactics. This strategy included a two-phase campaign to build a patient panel for new providers and promote primary care services.

- **Phase I** included introducing the new providers to the communities where they live and work
- **Phase II** promoted the new primary care services in an area where other providers were closing facilities

Now, as the opening of the clinics approaches, new providers’ schedules are quickly filling. The campaign is significantly outpacing industry benchmarks.



SECTION 4

REFERENCES



REFERENCES

**Wisconsin Department of
Workforce Development**

Katie Mueller

*Program and Planning Section Chief, Division of
Employment and Training*

Phone: 608.266.2930

Email: kathryn.mueller@dwd.wi.gov

201 E. Washington Ave.

P.O. Box 7972

Madison, Wisconsin 53703

Duration: 2018–present

Services provided: Creative, Digital,
Marketing, Media, Research, Strategy and Video &
Photography

**University of Wisconsin–
Madison | Professional
Degrees & Certificates**

Angela Rockwell

Marketing Director

Phone: 608.262.1156

Email: angela.rockwell@wisc.edu

821 University Ave.

Madison, Wisconsin 53706

Duration: 2018–present

Services provided: Creative, Digital, Marketing,
Media, Strategy and Video & Photography

REFERENCES

**Ohio Office of Workforce
Development**

Kyle Casey
Bureau Chief - Employment and Business Services

Phone: 614.981.2640
Email: Kyle.Casey@jfs.ohio.gov
161 S. High Stn
Akron, Ohio 44308
Duration: 2022–present

Services provided: Creative, Digital, Marketing,
Media, Strategy and Video & Photography

Encompass Health

Karey Lee
*Regional Vice President, Business Development,
Southeast Region*

Phone: 912.433.5709
Email: karey.lee@encompasshealth.com
9001 Liberty Pkwy.
Birmingham, Alabama 35242
Duration: 2020–present

Services provided: Creative, Digital Marketing
Media, Strategy and Web

SECTION 5

APPROACH



WORK PLAN



OUR APPROACH FOR WEC STRATEGIZE

Immersion

Vendi’s team has conducted research and developed strategies and integrated marketing campaigns for organizations in a variety of industries including state government services. Our brand and marketing strategists leverage proven opportunities to understand, identify, articulate and solidify a comprehensive strategy, starting with discovery.

We will conduct a thorough review of your current external communications (website, marketing and advertising materials, social media accounts, etc.), brand guidelines, strategic plans, previous studies and research, web analytics and prior campaign performance data, if available. We will review brand messaging relative to peers and aspirational brands and programs.

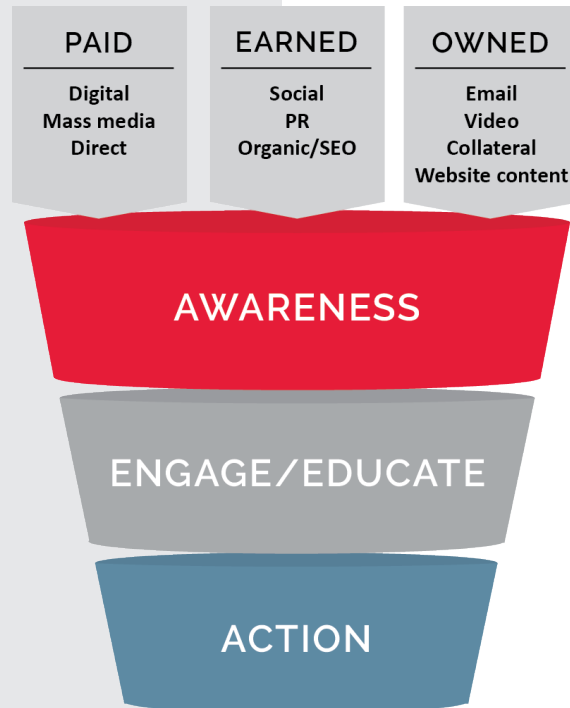
Campaign strategy session

With a team of Wisconsin Elections Commission key stakeholders, Vendi’s marketing and media strategists will lead a remote strategy session and exploration of target audience motivations, needs, influencers and what action we’d like them to take. These insights will inform the development of an integrated marketing plan outlining the strategies and tactics for reaching the target audience.

The session is engaging, interactive, fun and incredibly rewarding. During this session, all stakeholders will have the opportunity to provide insight and input to strengthen the campaign planning process and increase buy-in of the campaign platform.

“I appreciate Vendi’s thought-leadership and expertise. They bring strategic and thoughtful solutions to whatever challenges and curve-balls come their way. They are true partners.”

Alyson Kim
Chief Marketing Officer and Associate Dean, Marketing & Communications
School of Pharmacy
University of Wisconsin–Madison



APPROACH



MARKET

Public information campaign

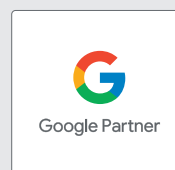
Vendi will develop or refine target audiences to help the team visualize who we're communicating with—their characteristics, beliefs, motivations and needs.

Vendi provides a comprehensive and measurable marketing and communications strategy that allows us to gain share of voice in a competitive attention landscape, minimize spill and tell the Wisconsin Elections Commission story—realizing that multiple touchpoints are required to build resource awareness, influence and encourage action. We consider a broad mix of media channels based on their effectiveness of reaching the target audiences at various stages of the decision-making process, from awareness to consideration.

Vendi's strategic campaign media plan will include:

- Media strategy and rationale
- Earned media and public service announcement pitch and placement plan to leverage unpaid media opportunities
- Channel recommendations
- Flighting recommendations (if possible due to tight timeline) and campaign calendar
- Specific tactics for reaching target audiences
- Estimated reach, frequency and impressions
- Creative asset requirements to execute the plan
- Budget allocation recommendations
- Key performance indicators and benchmarks
- Tracking/measuring methods

Our media team is adept at planning, negotiating and placing cost-effective media that deliver quality impressions, reach, frequency and action. Strategies are customized to public information campaign goals and designed to deliver cost-effective results.



Tactics and technology

- Targeted social campaigns
- Programmatic display
- Streaming audio
- Streaming video
- Website and audience retargeting
- Video and connected TV
- Paid search
- Out-of-home
- Broadcast and cable TV
- Terrestrial radio
- Print
- Trade advertising
- Direct marketing and list acquisition (email/mail)
- Brand lift surveys
- A/B testing
- Geofencing and hyperlocal targeting
- Behavioral, contextual, third-party and private marketplace targeting
- Custom and look-a-like audiences
- Weather-triggered ads
- Cross-device targeting and retargeting
- Salesforce integration
- Meta CAPI implementation
- Foot-traffic attribution
- Basis and StackAdapt DSPs
- Real-time reporting dashboard

APPROACH



CREATE

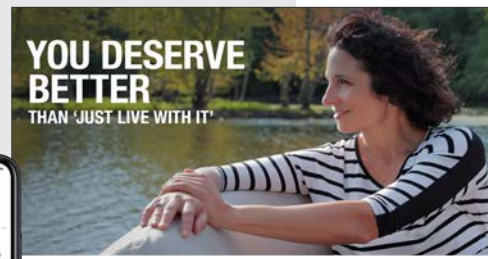
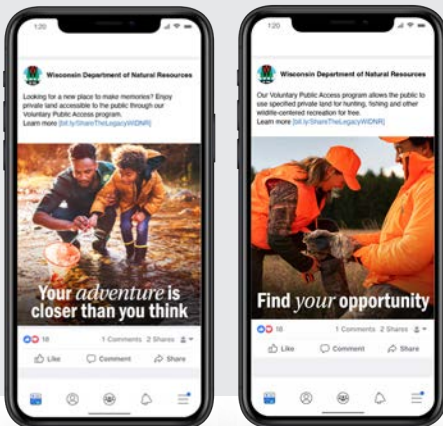
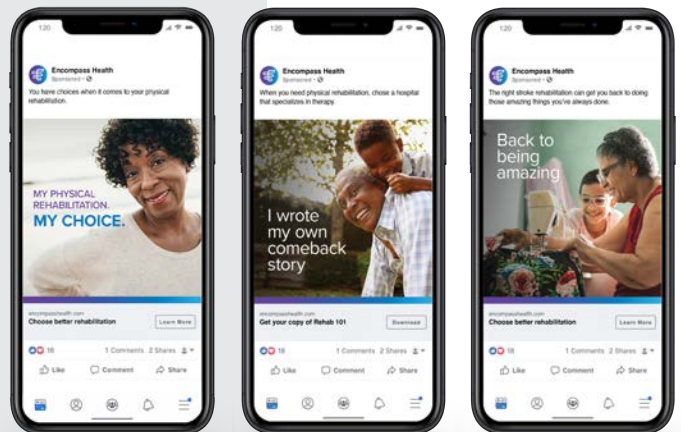
Creative development

Vendi's outstanding team of in-house, experienced creative professionals transforms insights into creative that stands out, engages audiences, inspires action and gets results.

We will partner with WEC to reach Wisconsinites of all kinds. Vendi follows a meticulous, proven process in creative development and execution. While research and discovery drive our strategy, our creative process uncovers the inspiration, ideas and messaging that lead to an effectively executed campaign.

The marketing, media and communications plan will determine the creative assets necessary to execute the plan. These assets may include:

- Social and digital ads
- Motion/animation/video ad assets
- Terrestrial and/or streaming audio
- OOH executions including billboard
- Print ad templates
- News release copywriting
- Photography and videography asset library



There are problems women don't share, even with friends. They just live with it. But thanks to an extraordinary team of specialists, that's changing. Providers at Mayo Clinic Health System's Park Health Clinic in La Crosse are at the forefront of new, highly effective approaches to diagnose and create the best conditions. Many of the surgical techniques are developed here. Many are same-day procedures using Mayo Clinic's advanced technology.

At the heart of the team is the area's only board-certified urogynecologist. He and his team share the changing treatment that restores confidence and freedom. Expect it all from the day after as you are about getting your life back.

Choose extraordinary

Mayo Clinic Health Syst
Call 608-302-3000



APPROACH



TRACK

Launch, optimization and tracking

Campaign results and tracking will be provided via a real-time dashboard that can be accessed by WEC key stakeholders who will have full, 24/7 access to the real-time dashboard and data.

We are available to monitor our clients' in-market performance daily via our digital media platforms and Google Analytics to ensure that campaigns are effectively running, goals and objectives are being met, and to gather insights that fuel campaign optimization. UTM codes are assigned by source, medium, campaign and content to allow for detailed reporting.

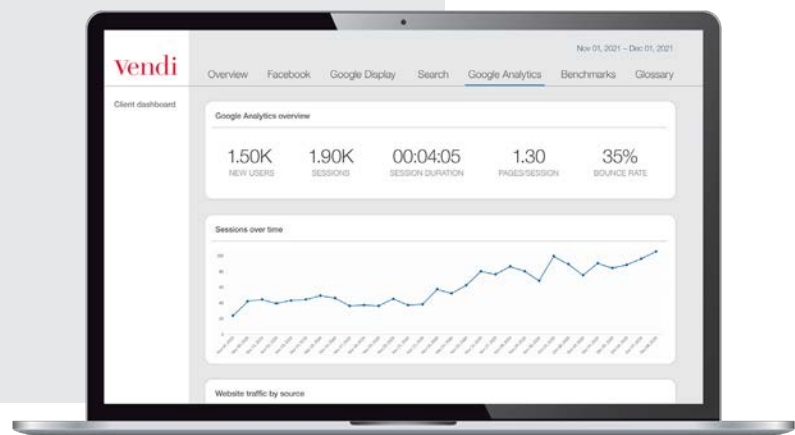
Report metrics could include the following campaign channel data:

- Impressions to evaluate awareness
- Clicks and click-through rate to evaluate engagement
- Cost-per-click and cost-per-lead to evaluate effective use of budget
- Website analytics, such as bounce rate, average session duration, pages per session and goal completions to evaluate engagement and content effectiveness
- Creative highlights to offer insight into top-performing messaging

At the conclusion of the campaign, Vendi will develop a campaign summary report and present it to Wisconsin Elections Commission key stakeholders with insights, findings and recommendations going forward.

“As a data nerd I am geeking out about these 18-month trends and what we’ve done in recruitment and marketing. Overall, this is awesome stuff.”

Dan Roelke
Digital Marketing Manager
College of Engineering
University of Wisconsin–Madison



SECTION 6

SCOPE OF WORK



PRICING

UW–Madison contract

This agreement falls under **#UWMSN-2023-1203-General**.

Contract terms

Our fees are based on an estimate of the time required to complete a project.

All agency services, including the following, are billed at \$150/hour.

- Brand
- Research
- Marketing & creative
- Media
- Inbound
- Web
- Video
- Photography

Any applicable taxes are not included in this proposal.

No media commissions or third-party vendor markups

Vendi does not take any media commissions or mark up any outside services or expenses. Vendi will present—prior to purchase—any necessary outside expenses (such as purchase of stock photography and footage, music and voice-over licensing or outside media expenses) and if approved, bill those expenses at cost.

SCOPE OF WORK

Vendi & WEC

Vendi will provide marketing and advertising strategy, creative development and campaign execution for Wisconsin Elections Commission’s public information campaign. Deliverables include:

Public information campaign

- Conduct campaign strategy session to inform WEC public information campaign positioning, marketing and campaign strategy
 - Pre-session questionnaire
 - Engaging workshop exercises
 - Post-session summary report
- Develop integrated campaign marketing, media and communications strategy and plan
 - Earned, owned and paid tactics
 - Channel recommendations
 - Media recommendations
 - PR recommendations
 - Budget allocations
 - Timeline and calendar
- Develop two unique campaign concepts for WEC to choose from
- Develop campaign positioning and messaging
- Develop campaign creative strategy
- Develop campaign creative assets
 - May include search, social and digital ads, terrestrial and/or streaming audio, print ads, news releases and/or out-of-home
- Perform media campaign builds, negotiation, placement and creative trafficking
- Perform campaign tracking and optimizations (if timeline allows)
- Present campaign summary report
- Perform ongoing account and project management including regular status meetings and reporting

Estimated agency fees

\$37,800

Estimated media expenses

\$22,200

“I appreciate Vendi’s attention to detail.”

Robyn Perrin
Chief Communications Officer
UW–Madison School of Medicine
and Public Health

“My favorite quality of Vendi’s is their ability to translate our vision into reality.”

Eric O’Connor
Chief Growth Officer
American Association of Nurse
Anesthesiology

SECTION 7

TIMELINE



TIMELINE

Anticipated schedule

Throughout the process, Vendi will conduct regular status meetings with WEC key contact(s). Vendi will send meeting agendas and project status reports prior to each meeting.

Project outline

Total timeline: 12–16 weeks, target launch in September

“Thank you to the Vendi team for what we’ve been able to deliver very quickly.”

Johnny Young
Former VP Marketing
Encompass Health

	August	September	October	November
Campaign strategy				
Creative development				
Campaign in market				
Campaign summary				

APPENDIX

ADDITIONAL WORK SAMPLES



AANA

American Association of Nurse Anesthesiology

Without nurse anesthetists, modern medicine would be hurting.

With Vendi's help, AANA is showing the world that CRNAs provide essential patient care, help safely eliminate pain and deserve respect and support.



AANA

American Association of
NURSE ANESTHESIOLOGY

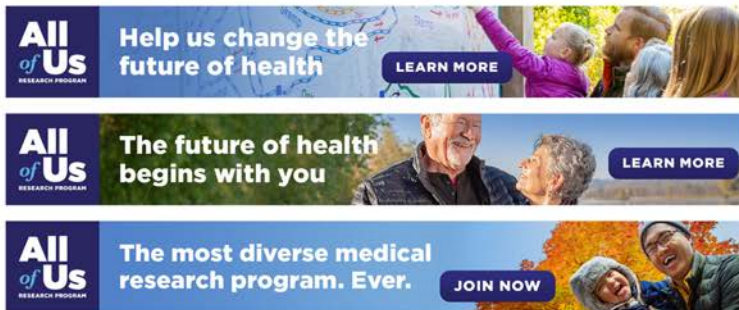


BRAND / CREATIVE / DIGITAL / MARKETING / MEDIA / RESEARCH / VIDEO & PHOTOGRAPHY / WEB

All of Us

Inviting people to talk about their health is a big ask.

Vendi provided the strategy and execution to target likely volunteers for a database that will have a wide-reaching impact on healthcare.



CREATIVE / DIGITAL / MARKETING / MEDIA / STRATEGY / VIDEO & PHOTOGRAPHY / WEB

Co-op Credit Union

Co-op Credit Union wants people to know that members come first.

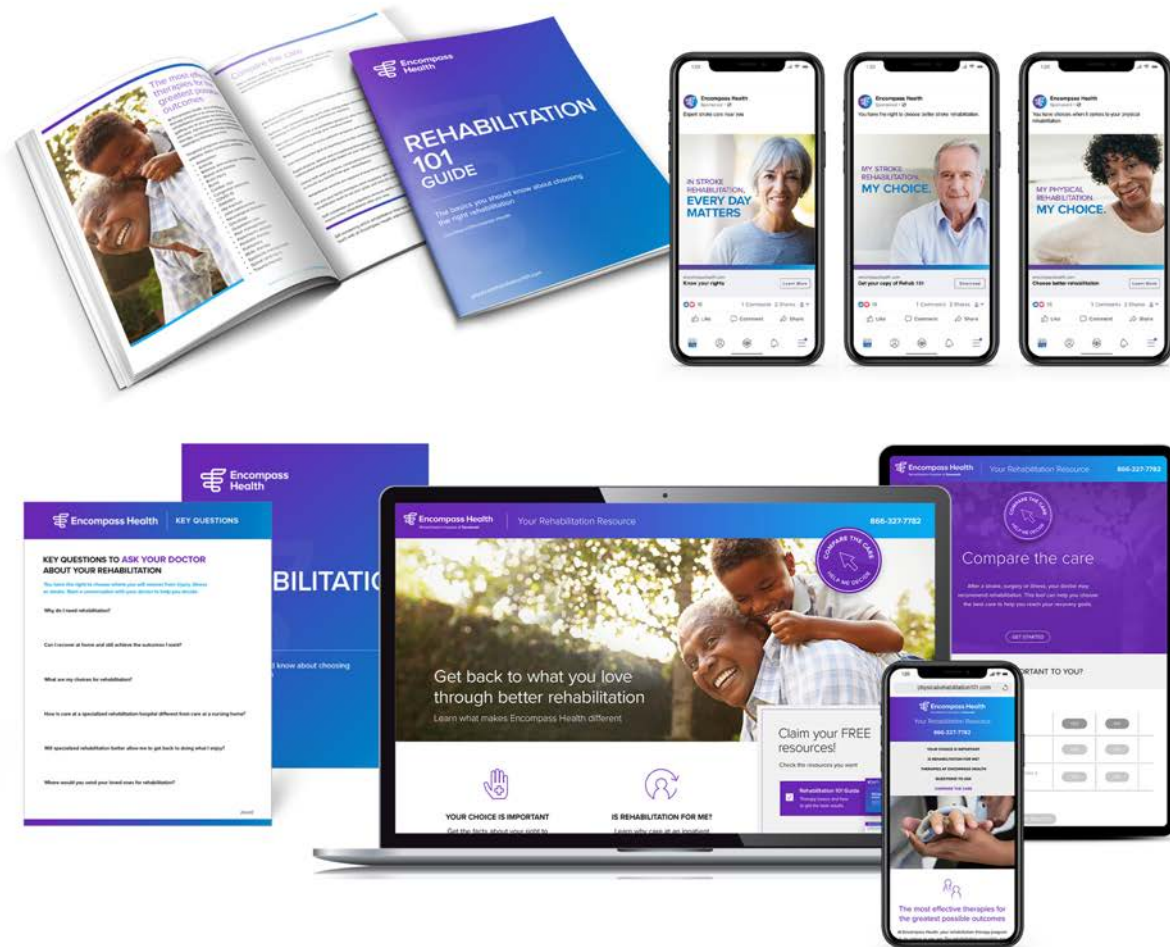
In a field crowded with competitors, Co-op Credit Union needed to find its voice. Vendi helps them deliver a message that resonates and converts new members.



Encompass Health

People thought Encompass Health was just another hospital system.

Vendi helped Encompass Health stand out for what it *really* is—a patient's best choice for advanced rehabilitation and care that brings the greatest possible outcomes.

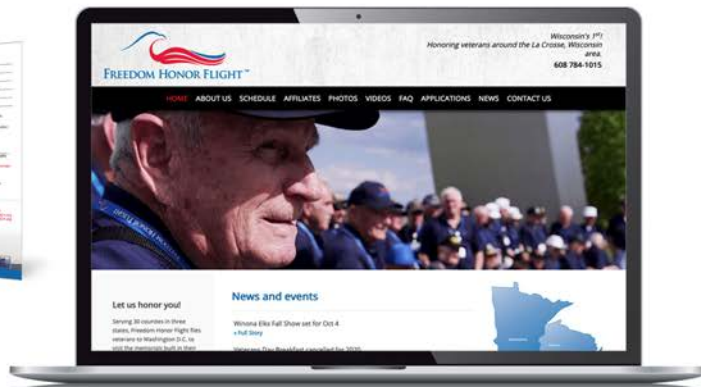


CREATIVE / DIGITAL / MARKETING / MEDIA / RESEARCH / STRATEGY / VIDEO & PHOTOGRAPHY / WEB

Freedom Honor Flight

Freedom Honor Flight needed a lift to get off the ground.

Vendi has been there from the beginning. Through our Vendi Share pro bono program, we created the brand identity, then raised awareness through advertising, social media, PR, video and a website.



Marine Credit Union

Marine believes dealing with money shouldn't be harder than earning it.

Vendi's brand campaign illustrates how that simple approach can improve members' lives.



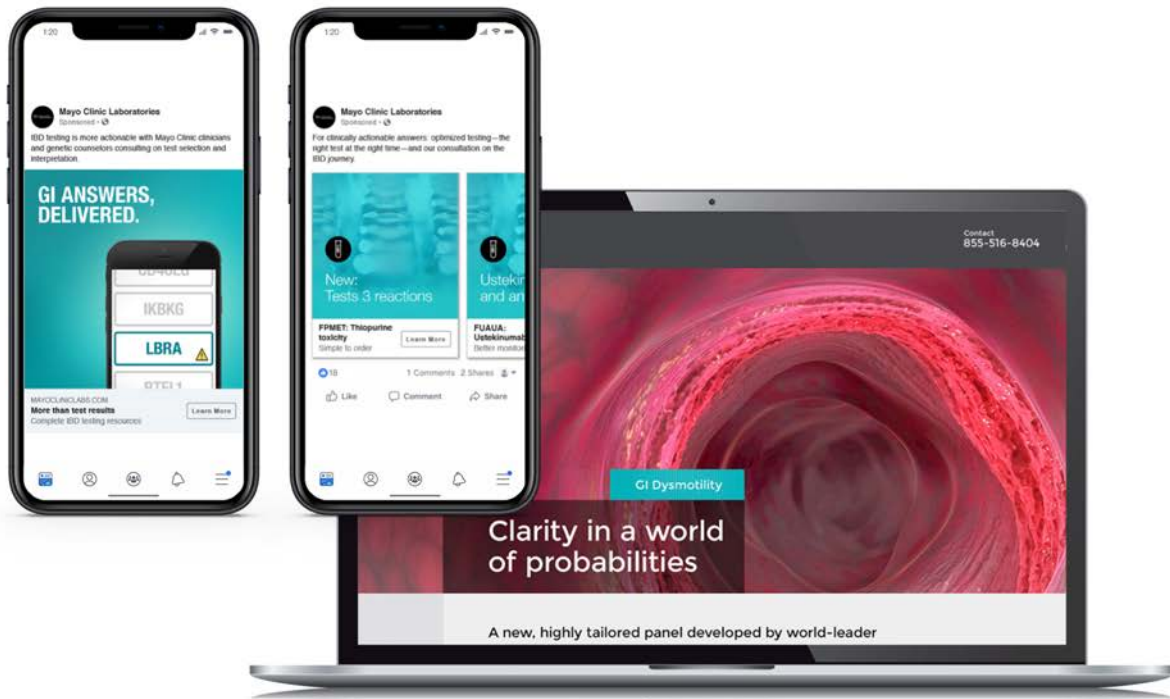
CREATIVE / DIGITAL / MARKETING / MEDIA / STRATEGY



Mayo Clinic Labs

Developing new, life-saving tests meant Mayo Clinic Labs needed greater reach with their communications.

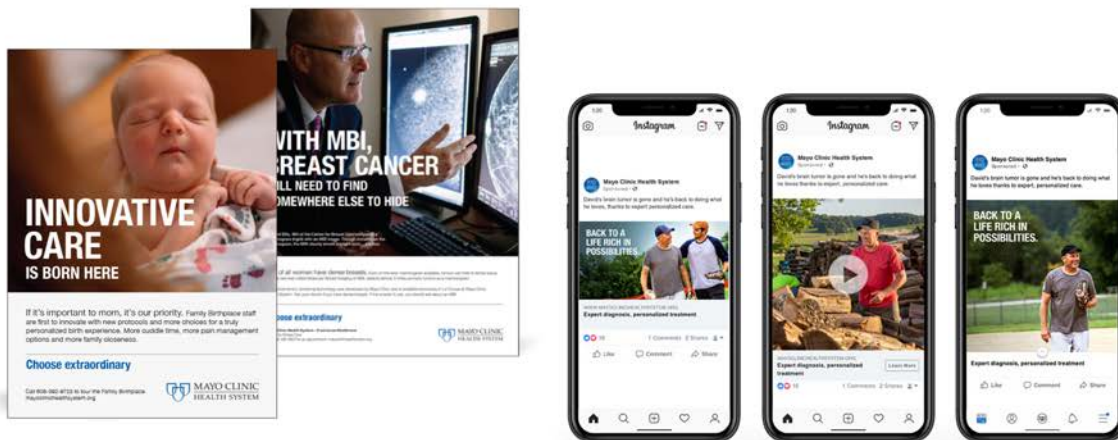
Vendi targeted physicians through digital campaigns that included ad testing to determine best channels, messaging and creative approach.



Mayo Clinic Health System

It's surprising when a world-renowned healthcare brand underperforms in regional markets.

Vendi localized and shared the brand's 'wows' with a campaign that increased calls for appointments 22%.



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Oktoberfest USA

Oktoberfest USA wanted to refresh its brand to invigorate its current audience and expand its draw to include families.

Vendi kept its authentic feel while using modern creative to appeal to an expanded market.



BRAND / CREATIVE / DIGITAL / MARKETING / STRATEGY / WEB

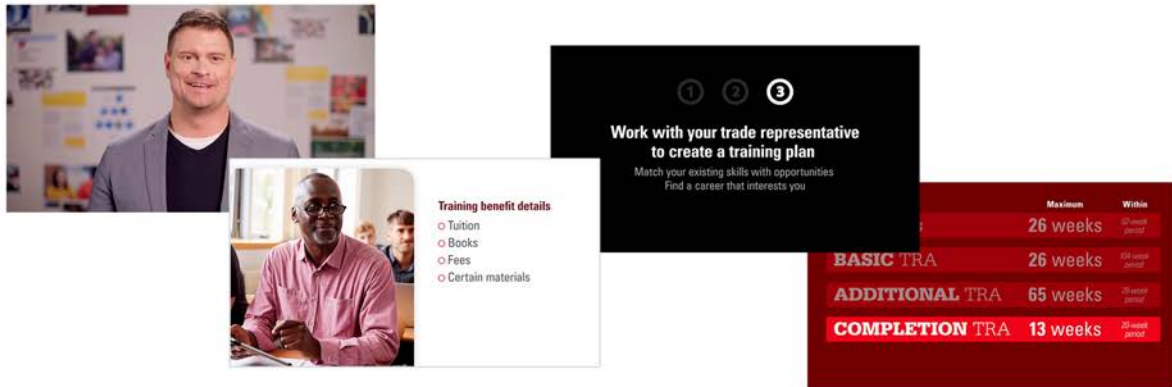


OWD

Ohio Office of Workforce Development

How do unemployed Ohioans get back to work sooner?

With a series of user-friendly, user-focused videos, Vendi is helping Ohio's Office of Workforce Development (OWD) spread the word about its reemployment services and resources, explain complex benefits and inspire more Ohioans to participate.



River Point District

They're turning damaged land on the Mississippi River into a visionary eco-friendly development.

We created the brand, then spread the word. Now developers and investors across the nation know The Point.

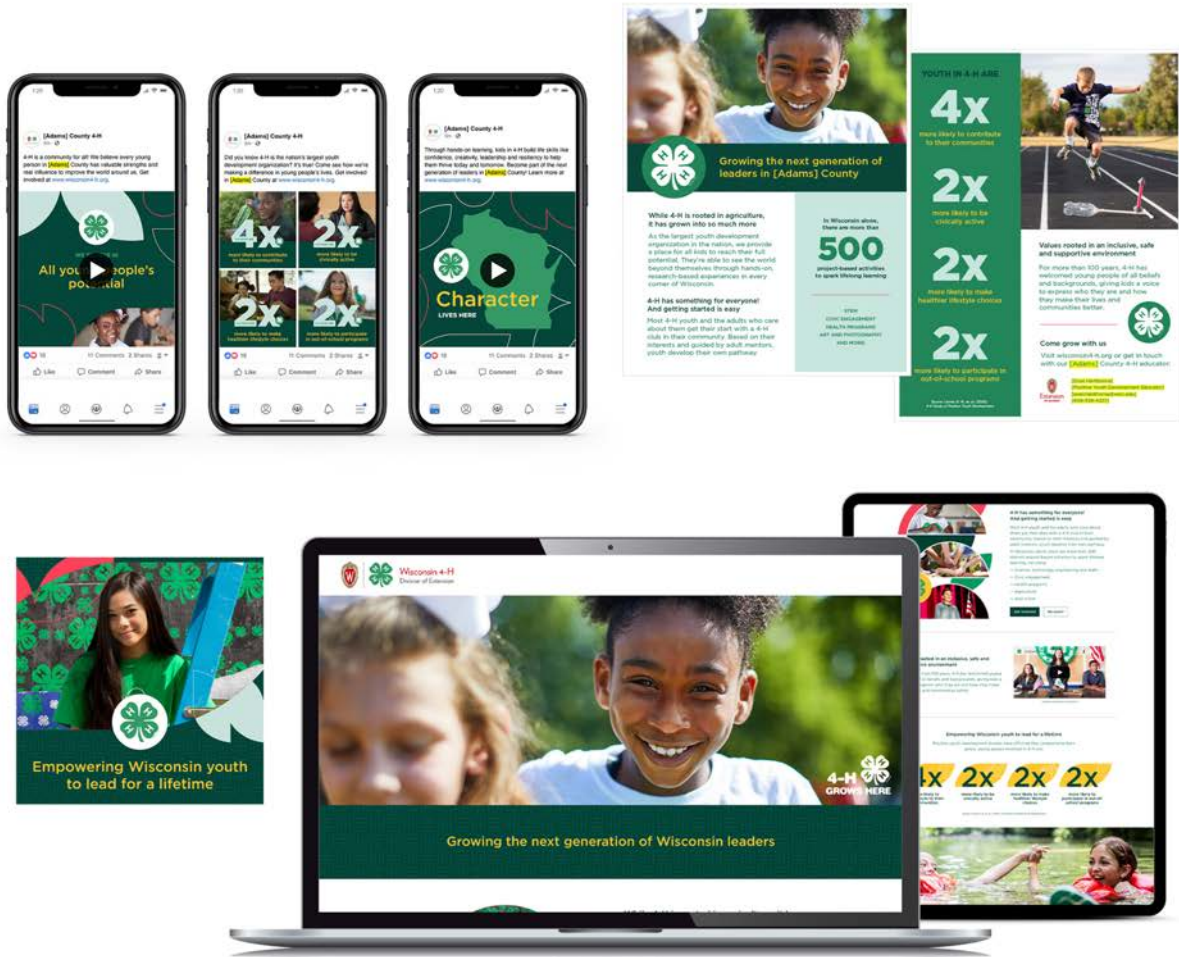


BRAND / CREATIVE / DIGITAL / MARKETING / STRATEGY / WEB

UW–Madison Division of Extension — 4-H

People thought 4-H was only for farm kids.

Vendi partnered with the Wisconsin 4-H Program to share how the organization has changed and inspire a new generation of children to enroll in the program.

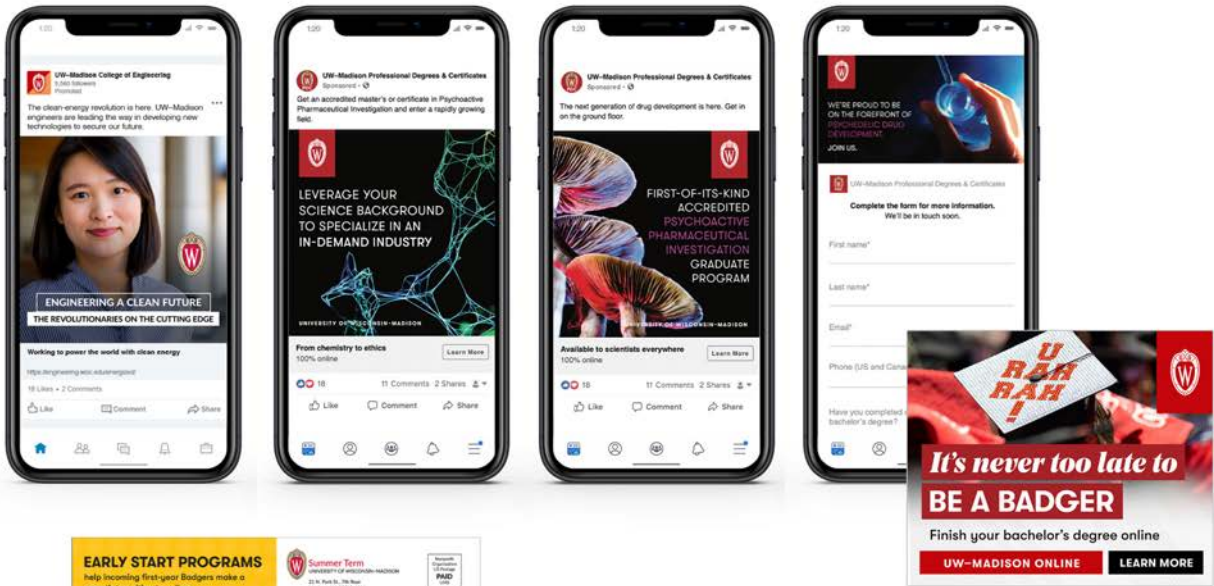


CREATIVE / DIGITAL / MARKETING / MEDIA / STRATEGY / VIDEO & PHOTOGRAPHY

UW-Madison Department of Continuing Studies

New, online graduate programs at this Big Ten university are a timely offering.

Vendi's nationwide recruiting campaigns captured thousands of leads (while lowering the cost per lead) for UW-Madison's life-changing grad degree programs.



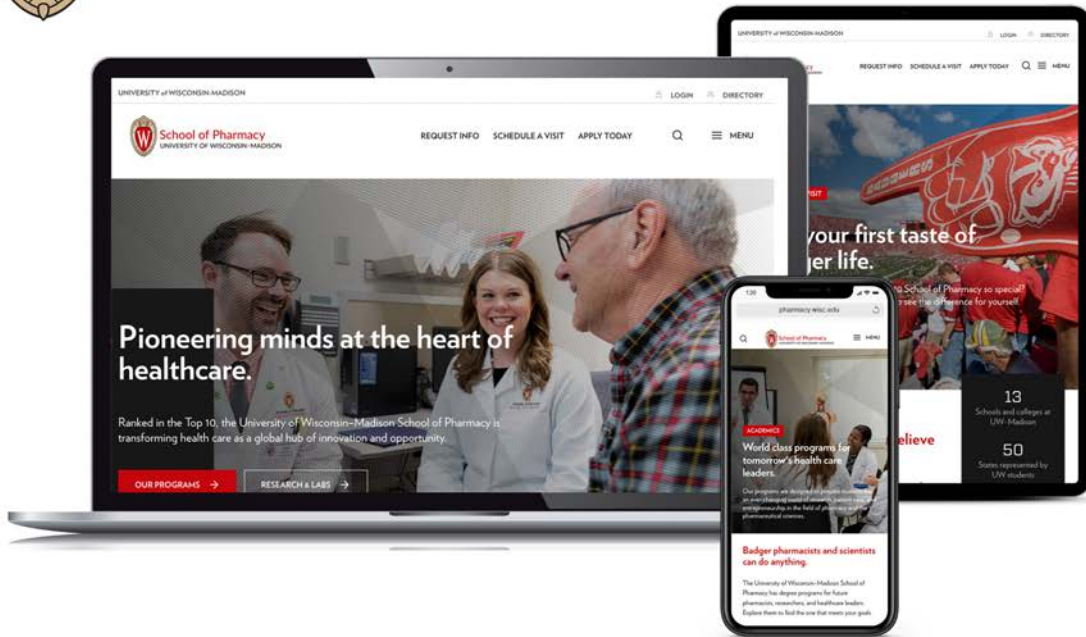
UW–Madison School of Pharmacy

UW–Madison’s School of Pharmacy needed its website to be a stronger recruiting tool.

Vendi solved a host of technical, design and content problems for a site that better represents this top-10 pharmacy school and reflects its commitment to accessibility.



School of Pharmacy
UNIVERSITY OF WISCONSIN-MADISON



CREATIVE / STRATEGY / WEB



UW-Platteville

UW-Platteville considered themselves the best-kept secret of the UW system.

Vendi research uncovered strengths and opportunities, which we voiced through a new brand strategy, logo, website and their first-ever recruiting campaign.



UNIVERSITY OF WISCONSIN
PLATTEVILLE
Opportunity from the start



BRAND / CREATIVE / DIGITAL / MARKETING / RESEARCH / STRATEGY / VIDEO & PHOTOGRAPHY



ViaroHealth

La Crosse-area residents and businesses thought ViaroHealth was an exclusive, expensive healthcare system for members only—or they didn't know it at all.

Renowned healthcare marketing agency Vendi is helping Viaro, a growing downtown La Crosse-Wisconsin healthcare system, show area residents that healthcare can be easier and more affordable for everyone.

You belong at Viaro

It's time to feel better... about healthcare

Plan	Individual	Family	Senior
Basic	\$133	\$109	\$0
Standard	\$72	\$33	\$0
Elite	\$290	\$128	\$0

You belong at Viaro

It's time to feel better... about healthcare

- Primary Care
- Fitness
- Behavioral Health
- Therapeutics

\$58/mo

You belong at Viaro

\$75

You belong at Viaro

Primary care / Therapeutics / Behavioral health / Fitness

VIAROHEALTH

Downtown La Crosse

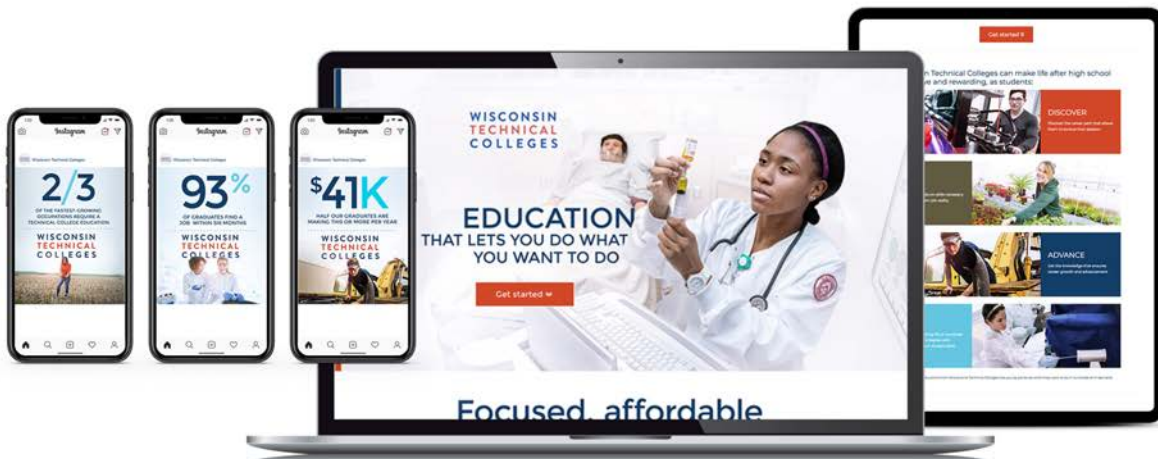
Membership plans start at **\$58/mo**

Dillon Y., La Crosse Member

Wisconsin Technical Colleges

500+ programs, 16 campuses and a statewide passion for helping students.

Vendi's digital marketing campaign shared the news—and more than 4 million impressions later, awareness and enrollment is up.



CREATIVE / DIGITAL / MARKETING / MEDIA / STRATEGY



WisContext

There is no better single source of in-depth news and content about Wisconsin than WisContext.org.

Vendi developed the brand and built a complex visual system that organizes content types on their Drupal website, which we designed and developed too.



BRAND / CREATIVE / DIGITAL / MARKETING / MEDIA / STRATEGY / WEB



Wisconsin Public Radio

Wisconsin Public Radio creates some of the strongest content in the Midwest.

Their ongoing partnership with Vendi makes sure it reaches their audience in innovative ways.



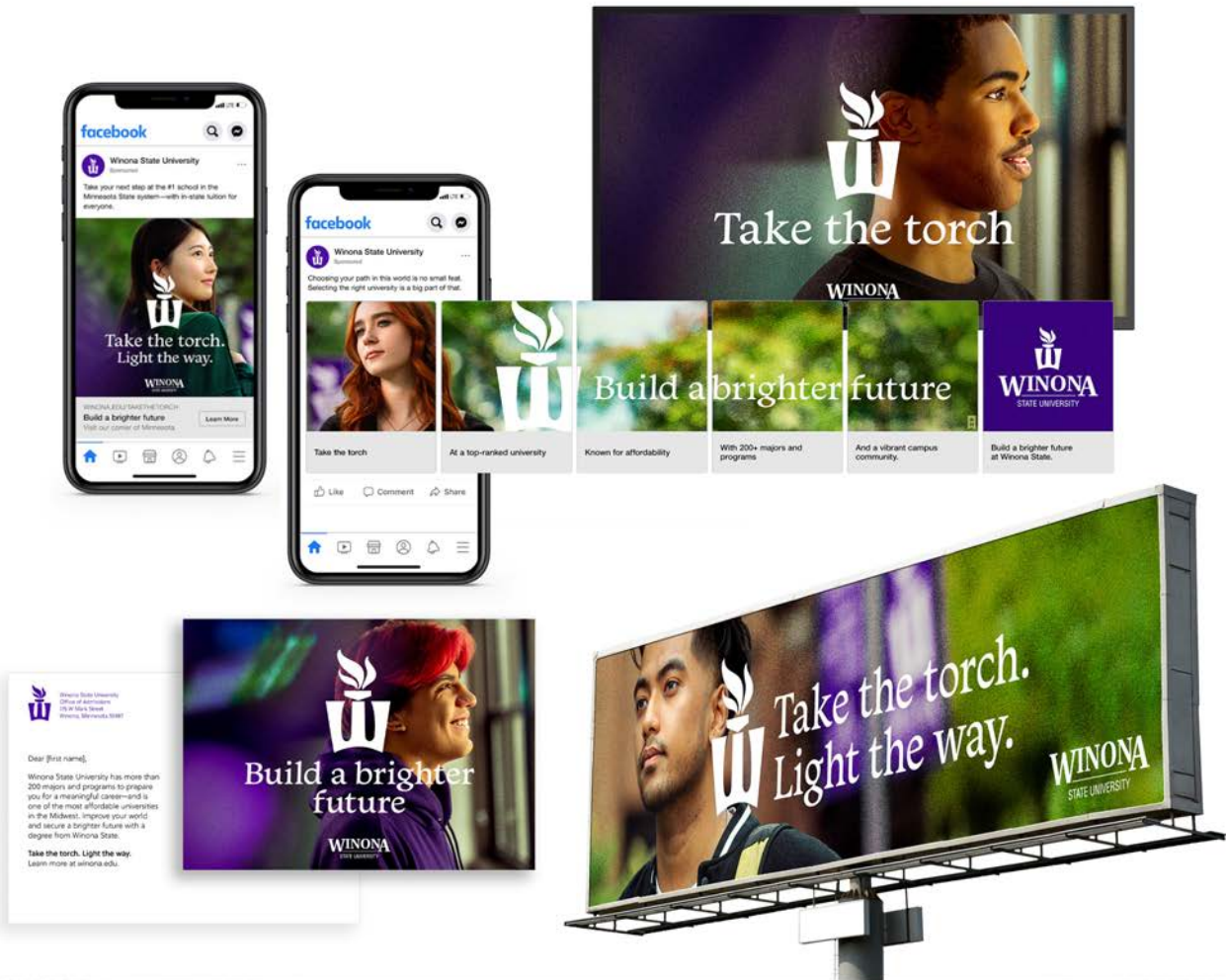
CREATIVE / STRATEGY / WEB



Winona State University

Winona State University needed to increase its visibility, brand awareness and reputation among prospective students and their parents.

Vendi crafted a campaign with a unique look and feel and inspired messaging, then strategically targeted audiences with improved coordination and data tracking. The new campaign led to a 137% increase in search leads and a 32% increase in housing deposits compared to the previous year.



CREATIVE / DIGITAL / MARKETING / MEDIA / RESEARCH / STRATEGY / VIDEO & PHOTOGRAPHY



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

DATE: For the September 11, 2024, Commission Meeting

TO: Commissioners, Wisconsin Elections Commission

FROM: Brandon Hunzicker, Staff Attorney

SUBJECT: EL 4 Election Observer Rule

ATTACHMENTS: Appendix A – Draft Agency Report
Appendix B – Draft EL 4 Rule Order
Appendix C – Clearinghouse Report
Appendix D – Clearinghouse Comments
Appendix E – Written Public Comments
Appendix F – Public Hearing Comments

Introduction: After almost exactly two years and a significant amount of input from members of the Commission’s advisory committee and the public, the Commission may be able to vote on the final text of the election observer rule. The Commission’s task for this agenda item is to review the report in Appendix A and determine whether or not the staff draft, and corresponding changes to the rule text in Appendix B, properly reflect the Commission’s final position on the rule.

On March 20, the Commission approved a draft rule order for its EL 4 Election Observer Rule. Staff submitted the rule for review by the Legislative Council’s Rules Clearinghouse and received 6 pages of detailed comments. On April 24, staff held a public hearing on the draft text. The Commission received 46 written comments and 6 oral comments during the hearing. The Commission must now review and consider all written and oral comments received from the public, as well as all comments received from the Rules Clearinghouse. Importantly, the Commission must also review and approve the agency report to the legislature, which is a comprehensive document describing to the legislature the Commission’s opinion and action in responding to comments. After making any changes to the rule text based on this feedback, the Commission may vote to direct staff to proceed with all remaining rulemaking steps, including submitting the final text to the Governor for approval and, pending approval, to the legislature for final review.

Discussion: The Commission is required to submit a report to the legislature along with the rule documents that the Commission has already approved and the final text of the rule as determined by the Commission during this meeting. The main purpose of the report is to detail any changes made to the rule following any Legislative Council recommendations and comments from the public.

In total, Commission staff received 54 pages of written comments, attached as Appendix E, from the public on proposed EL Ch 4 relating to the conduct of election observers. The Commission also received oral comments during its April 25, 2024, public hearing, and those comments were recorded in minutes, which are attached as

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

Appendix F. All oral and written comments should be reviewed by the Commission prior to approving the final rule language.

Appendix A is the draft agency report to the legislature, and it includes detailed summaries of the Clearinghouse recommendations and statements that the Commission accepted the recommendations or reasons why it did not accept the recommendations, as well as a detailed summary of public comments and the Commission's response to those comments. Staff drafted the report to contain the Commission's final statement on the rule draft following this feedback, but, critically, the Commission must determine whether it agrees with the staff approach. All redlined changes staff made to the draft rule order in response to Clearinghouse and public comments are attached as Appendix B. To avoid repetition, staff will refer directly to these appendices when discussing these changes.

Staff will briefly cover each section of Appendix A during the meeting, but wish to draw the Commission's attention to several specific sections. Each staff entry in Appendix A and corresponding change to the rule text in Appendix B will need to be approved by the Commission. Staff anticipate that most sections can be approved as a whole as part of the recommended motion, but the Commission may also wish to make changes to individual sections or to discuss certain section in greater detail. The sections described below are merely the sections that staff wish to highlight for Commission consideration during this meeting and are not a limit on what can be discussed or changed. In general, the sections described here exclude grammatical and organizational changes, which make up the majority of the redlines present in the document. Staff wish to highlight the following sections of the Agency Report:

- In Section V Under the heading “Comments Relating to Observers Representing Parties or Organizations,” staff made two changes to the rule text, removing the term “trained by” in EL 4.02(17) for being too broad and clarifying in 4.04(1) that an observer need not be affiliated with a political party or other organization.
- In Section V Under the heading “Comments Specific to Election Observation at Board of Absentee Canvasser Locations,” staff changed the term “depositing” in section EL 4.05(3)(b) to “returning” in order to clarify that the prohibition on recording applies to voters and lawful agents, but not to the canvassers.
- In Section VI concerning comment 1.d, staff rejected the comment questioning whether the media section, EL 4.07, belonged in the rule. Staff believe that the description given speaks to the concern and explains why the section does belong in the rule.
- In Section VI concerning comment 4.e, staff rejected the comment in part questioning whether EL 4.05(5), concerning recounts, and EL 4.05(6), concerning central counts (not to be confused with boards of absentee ballot canvasser locations), were sufficiently tied to the rest of the rule. Staff attempted to describe that though certain elements of the rule will not be present in these locations, such as check in tables, all applicable sections of the rule will apply. Regarding recounts, staff added language more clearly differentiating candidates, opposing candidates, interested parties, and counsel from other observers. Those groups have rights within Ch. 9 that do not match the role of observers, and staff believe that the original language was meant to exclude them from the rule, leaving regular observers still regulated by it if present.
- In Section VI concerning comment 5.m and 5.x, staff rejected the recommendation in whole to alter or remove the definition of “member of the public.” Staff believe that this definition properly defines who may observe and who must sign in as an observer, and that altering it would not avoid confusion.
- In Section VI concerning comment 5.w, staff rejected the recommendation to combine all sections dealing with audio and video device recording by observers and attempted to describe the reasoning

behind addressing that issue by location specific exceptions and requirements instead of in one separate section. Staff believe that there is a coherent rationale for this choice and that it will make providing guidance easier.

- In Section VI concerning comment 5.y staff rejected the recommendation to simplify the description of when an observer may remain in a polling place. Staff believe that it is important to describe exactly when the observation time ends and the public meeting time begins, but to also make clear that observers may remain and observe the canvass meeting under the applicable open meeting statutes.
- In Section VI concerning comment 5.ee, staff altered the rule to clarify specifically where media members are excluded from using audio and video devices within observation areas unless they are signed in as observers and following the rules applicable to those locations.

After making any changes to the agency report and rule text during this meeting, staff recommend submitting the report and rule to the governor for approval under Wis. Stat. § 227.185 and notifying the Joint Committee for the Review of Administrative Rules that it has been submitted. If the Governor approves the rule, staff recommend sending the rule and report to the legislature for review under Wis. Stat. § 227.19 and sending a notice of that submission to the LRB.

Recommended Motion: Staff shall finalize the rule order and text in Appendix B and finalize the report to the legislature in Appendix A according to the discussion during today's meeting. Staff shall then submit the proposed report, rule, and associated documents to the governor for approval and notify the JCRAR of the submission. If the rule is approved, staff shall submit the rule and all necessary documents to the Legislature, the Rules Clearinghouse, and with a notice of submission to the LRB for publication. Upon completion of the legislative review process under § 227.19, staff shall file the final rule with LRB under § 227.20.

Report From Agency

**STATE OF WISCONSIN
ELECTIONS COMMISSION**

IN THE MATTER OF RULEMAKING :
PROCEEDINGS BEFORE THE : **REPORT TO THE LEGISLATURE**
ELECTIONS COMMISSION : **CR 24-032**

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS: N/A

III. FISCAL ESTIMATE AND EIA:

The Fiscal Estimate and EIA is attached.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

The basis and purpose of the proposed rule is to create Wisconsin Administrative Code ch. EL 4. The Commission is required to promulgate rules concerning election observers but does not yet have rules in place. Wis. Stat. § 7.41(5). The rule would advance statutory purposes by putting the rules in place and bringing consistency and clear directions to clerks, election inspectors, voters, and observers. With these rules, all parties would have one standard set of instructions for observing elections covering the full process from the sign-in to the location of observers, and election inspector and observer conduct throughout the day. The rules would clarify areas of uncertainty and allow for training that can be used by clerks and observers statewide.

V. SUMMARY OF PUBLIC COMMENTS AND THE COMMISSION'S RESPONSES, EXPLANATION OF MODIFICATIONS TO PROPOSED RULES PROMPTED BY PUBLIC COMMENTS:

The Elections Commission held a public hearing on April 24, 2024. The Commission received 54 pages of written comments during the comment period and 6 oral comments during its April 25, 2024, public hearing, which were recorded in minutes.

Below, the Commission provides a high-level summary of the oral and written public comments. Comments that merely stated unspecified opposition to the rule, or proposed revisions that would be contrary to law, or that were not related to the topic of election observers are not included in the summary below. Likewise, comments offering support of the rule as written, either in general or specifically, are not summarized in detail.

Comments Relating to the Distance and Location of Observation Spaces:

This was the most common public comment received (11 different comments). These comments generally included requests to copy the statutory language of 7.41 to affirm that though observation areas must be between 3 and 8 feet away, they must be positioned

so that observers can readily observe all public aspects of the voting process. Many comments included specific objections to only one observation area, as that may cause issues in polling places that have multiple tables set up throughout a large space with election activity occurring at each one.

Commission Response: The rule draft as written addresses these concerns. The rule contains the statutory language in Section EL 4.03(1)(a), which states that the designated election official must “[e]stablish 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” (statutory language from Wis. Stat. § 7.41(2) italicized). The rule language clearly contemplates that more than one observation area may be necessary in order to ensure that the public may readily observe all aspects of the process. Additionally, Section EL 4.03(1)(b) refers to *each* table at which voters announce their names, voters register to vote, election officials announce the names of absentee voters, and election officials remake ballots. If a polling place is spread out so that one observer area could not be within 3 to 8 feet of each of these tables, additional areas would be required until the rule language is met.

Comments Relating to Observers Representing the Parties or Organizations:

This was the second most common public comment received (6 different comments). These comments generally included requests to further clarify “organizations” that observers can represent as it’s possible an observer could be there independently, but also was trained by a political party. One comment also requested that the rule affirm that observers can be there by themselves without any party or organization affiliation. One comment also included a request not to limit observers representing the same number of organizations if that means that any aspect of voting cannot be fully observed. Two comments also requested to further define “reasonably limit” the number of observers as that is subjective, and the rule should provide that as many interested observers can watch so long as there is space and they are not disruptive.

Commission Response: In response to the comment that Section EL 4.02(17) applies to individuals “trained by” the same organization, and that individuals who merely attend a training may have no further or lasting affiliation with the organization the Commission has deleted the term “trained by.” Representing an organization requires at least some affiliation, and the remaining terms better capture that meaning. Nothing in the rule requires an observer to represent an organization, and Section EL 4.04(1) only requires that an observer print “the name of the organization the observer represents, *if any*” (emphasis added) which clearly shows that a name is only required if the observer is representing an organization, and can otherwise be left blank. To add clarity on this point, the Commission has added a sentence stating that: “[a]n observer is not required to be affiliated with or represent an organization.” If a polling place is large enough to need more than one observation area, it is likely large enough to accommodate at least one individual representing the same organization in each area. However, this would be fact specific, and would likely need to be resolved on a case-by-case bases depending on what is reasonable in the circumstances. The rule text, and the governing statute, represent a compromise between the right of an organization to send observers and the physical limitations of observable locations. The Commission believes that these interests are properly balanced in the text.

Comments Relating to Observation Location in Residential Care Facilities

Another common comment (5 different comments) included requests that the rule affirm that observers have the right to be permitted to observe the voting process even in the private room of a voter residing in a residential care facility who is voting with the assistance of a special voting deputy. One comment specifically argues that because a residential care facility is treated as a polling place under Wis. Stat. 6.875(6)(b), any part of the facility must be observable as a polling place is observable.

Commission Response: The Commission discussed and voted on the language of section EL 4.05(4) several times and considered these concerns in detail. The Commission discussed and determined that a voter in a residential care facility must be able to secure their own privacy, and the privacy of their vote, when voting in their own room. Observers may still observe who votes and who does not vote from the common areas, even if a voter decides to affirmatively close the door.

Comments Relating to Expulsion of Disruptive Observers

Another common comment (4 different comments) received included requests that the rule define “loud” and “boisterous” for disruptive conduct or limit it to the statutory definition in § 7.41. A specific request asked that the rule limit election inspector discretion to eject observers for disruptive conduct, which should in turn be limited to overt acts. Another specific request asked that election inspectors be required to provide a specific provision of law or code that a disruptive observer is violating. A couple of comments expressed apprehension or frustration at what they claim is “unchecked” discretion of election inspectors to eject observers, made worse by the current rule language being very subjective.

Commission Response: Section EL 4.04(6) again must apply to all polling places, and some discretion is required of local election officials. In general, dictionary definitions, as well as common sense, can be used to help determine when behavior is “loud” or “boisterous,” but the circumstance will necessarily be fact specific, and further definition may not help in making a determination based on the specific circumstance. Regarding overt acts, the rule requires first a warning to cease the offending conduct, and then, only if the conduct does not cease, the official may order the observer to leave. The official then must record the “incident” on the inspectors’ statement and provide a copy to the Commission. Therefore, the conduct must be specified, and therefore specific, and the Commission will have the opportunity to monitor whether the removal provision is being abused. An observer could also file a complaint with the Commission if they believe they have been improperly ordered to leave, and the Commission could then examine the factual circumstances as well as the observer’s argument, and potentially issue a corrective order.

Comments Relating to Scope of Observable Activity

A number of comments weighed in on different provisions to generally conclude that the current rule does not permit sufficient election activity to be observed by observers. Three comments included a request that the rule reiterate the public’s right to observe the return of voted by-mail ballots “on any day that absentee ballots may be cast” at the clerk’s

office, instead of during the same hours as issuing and voting of ballots. One comment suggested specifically defining the words “cast” and “vote” in order to accomplish this goal.

Other comments provided more specific requests of the type of activity that should be covered by the observer rule. The most common activity commenters wanted included in observable activity are other types of election administration and processing related to the processing of ballots beyond the tabulation of ballots at central count. Another common request was expanded visual access to absentee ballot certificate envelopes and specifically to the addresses and signatures, including two requests to project them as images so they can be more easily seen. Other commenters wanted greater access to what could be observed with respect to electronic voting equipment, including the deposit of ballots into the tabulator, the data transmission of vote totals, source code of voting machines, and the ability to take pictures of the tape of the final tally results. One comment asserted that observers should have the same observation, access, and recording rights that the rule currently gives to media, both inside and outside of the polling place or voting location. Other comments stated that observers should be able to observe a voter’s ID.

Commission Response: The Commission discussed the meaning of the word “cast” and when the observer rule would apply to clerk’s offices and alternate sites regarding the return of absentee ballots. The Commission debated this issue and voted on the language in the current rule, and believes that the text allows observation within a clerk’s office or alternate site as directed by Wis. Stat. § 7.41(1). The rule text allows the observation of each table at which election inspectors process absentee ballots, and allows, in Section EL 4.03(6), for requests to repeat a name and address. The governing statute clearly explains where the observer areas shall be, and that all other activity remain observable. The current rule protects the right to observe without placing extra burdens on election officials. Observers under this rule have greater and more protected access than media members. Only if a media member signs in as an observer and follows this rule entirely are they allowed into an observer area. Otherwise, a media member must independently coordinate with a designated election official in order to record a limited amount of information, and must remain outside of the observer area, unless they have signed in and are following the observer rule.

Comments Specific to Election Observation at Board of Absentee Ballot Canvasser Locations

A subset of comments related specifically to observer procedures at board of absentee ballot canvassers locations (almost always called “central count” in the comments, though this technically refers to a different type of location). Many commenters had personal experience observing at such locations, and the most common suggestion was expanding the rule to include more observable activity. This includes general requests like being able to observe set up and tear down of the central count location, as well as being able to see when ballots come in and any processing steps that are performed before election inspectors start processing ballots. One comment specifically requested that observers should be permitted to see how many ballots are taken to the tabulators from each ward, and then be permitted to view the electronic number on the tabulators after the ward is done. One comment opposed the restriction on observers taking pictures or

videos of election inspectors depositing ballots or correcting absentee certificate envelopes, and one comment was in favor of this restriction.

Commission Response: Observers will have a greater ability to record information, including pictures and videos, at board of absentee ballot canvasser locations under Section EL 4.05(3)(b). The only prohibition is against filming a voter or lawful agent dropping off or correcting a ballot. To clarify this section, the Commission changed the word “depositing” to “returning” to distinguish activities done by voters and lawful agents, which may not be recorded, from election officials, which may be recorded. Additionally, the start time for observation may begin no later than when the tabulators are zeroed. Observers must be able to observe all opening, announcing, and remaking of ballots within 3 to 8 feet from the table at which the election officials are working, and the remaining activities should still be viewable from those locations under the current rule text.

Comments Concerning Observation and the Use of Electronic Poll Books (Badger Books)

A subset of comments related specifically to observer procedures at polling places using electronic poll books (Badger Books). The comments included requests that the rule better integrate and address how observers may observe the voting process in polling places that use electronic poll books like Badger Books. A comment also suggested that the Commission could define what on an e-poll book an observer would be allowed to observe.

Commission Response: The Commission considered this concern during the drafting process, and the definition “confidential information” in Section EL 4.02(5) balances the right of observers to be within 3 to 8 feet of the tables at which Badger Books are used (they may be used at the check in or the registration tables) with the need to protect the private information of voters, such as birth dates and ID numbers.

Comments Concerning Clerks’ Role in Interacting with Observers

A subset of comments focused on the role of the clerk, or their election inspectors, with respect to interactions with observers. These requests were very specific, so staff have produced a list of them below in lieu of synthesizing them.

- Request to eliminate the requirement for clerks to notify Commission if they cannot accommodate observers within 3 to 8 feet as that makes it sound as if observing is optional or at the discretion of the clerk.
- Several requests to include a parallel section concerning the process if an election official violates the rules to provide specific recourse for observers.
- Request to clarify inconsistent provisions, such as positioning observer areas to limit contact between observers and election officials, but then directing observers explicitly to communicate with election officials in some circumstances.
- Request that the rule require observers to be informed at check in who the designated official in charge is if it’s someone other than the chief inspector or the clerk.
- Request to provide detailed training on the rule, once passed, for all clerks in Wisconsin.
- Request to prohibit observers from interacting with election inspectors or chief inspectors on election day, and should instead be directed to the election day manual if they have

questions because answering observer questions is distracting and disruptive. This request would include an exception for an observer to challenge a voter.

- Request to have observers sign out in addition to signing in so that it is clear when a specific observer was present.

Commission Response: Allowing observers and following these rules would not be optional for clerks and election officials. The requirement to notify the Commission does not excuse a failure to follow the rule or prevent an observer from filing a complaint or the Commission from taking corrective action. The purpose of the section is for the Commission to be made aware of issues so that they may be addressed, and it does not make any requirement optional. If an election official violates a section of the rule, or otherwise abuses his or her discretion, an observer who is an elector of that official's jurisdiction may file a Wis. Stat. § 5.06 complaint with the Commission detailing that allegation and asking the Commission to address it. Minimizing contact does not exclude all communication but merely reduces the chance that observers and officials will get in each other's way during an election. In Section 4.03(2)(b)1. the designated election official must inform observers how they can ask questions during the day, and will necessarily need to introduce themselves. Additionally, all election inspectors' names and titles, including the chief inspector, are public information. The Commission fully intends to create and implement training once the rule takes effect. Observers are required to sign in on election day, and may be removed if they cause a disturbance. Both the governing statute and the rule require a certain amount of interaction. Again, a balance must be struck between allowing observers to ask relevant questions and officials to conduct the election. Election officials are given discretion under this rule to determine the way observers may ask questions. The Commission discussed a sign-in and sign-out possibility, but determined it could be difficult to manage. Clerks may still provide the option of a sign out, and ask observers to mark when they sign out.

Other Miscellaneous Comments

Other specific comments included:

- Request that political parties should be notified of the removal of their affiliated observers and given the option to provide a substitute.
- Request to remove the alternative start of observable activity ("or whenever machines are zeroed out on Election Day") because that could occur much earlier than 7 a.m., and poll workers need to focus on setting up and opening the polls by 7 a.m.

Commission Response: Political parties and organizations may be notified by the removed observer and provide a replacement under the current text, and that could be incorporated into political party or organization trainings. The Commission discussed when precisely election observation should begin, and the consensus was that if the machines have been zeroed observers should be able to observe them.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Comment: 1.a. Clarify that Wis. Stat. § 227.11(2)(a) is a general statute granting rulemaking authority to agencies, rather than just the Commission.

Response: The Commission accepted this recommendation in whole.

Comment: 1.b Clarify or remove the citation of authority that discusses the election manual.

Response: The Commission accepted this recommendation in whole and removed the reference to Wis. Stat. § 7.08(3) from the rulemaking authority section. Though the Commission would be almost certain to update its election manual following promulgation of this rule, that section complements but does not authorize this rulemaking.

Comment: 1.c. Clarify what is meant by “qualified observer” in regard to challenging electors.

Response: The Commission accepted this recommendation in whole and removed the undefined word “qualified” and replaced it with the phrase “an observer who is an elector.” Anyone may be an observer, but only electors (US citizens over 18 who are not otherwise unqualified) may challenge a vote. Some addition to the term observer is warranted in this section because challenging electors is available only to the subset of observers who are also electors as defined in Ch. 6 of the Wisconsin Statutes.

Comment: 1.d. “It is not entirely clear that s. EL 4.07 falls into the realm of regulating election observers, as authorized by s. 7.41 (5), Stats. The provision does not regulate the conduct of an election observer, which is the subject matter of the proposed chapter. The relationship to the regulation of election observers should be explained. For example, is media access viewed as a form of the public’s right to access? Or that the role of media is similar to an observer’s, in observing and reporting on an election?”

Response: The Commission rejected this recommendation in whole. The Commission discussed and voted on this provision to ensure that observers and election officials understand how media fit into the election observation landscape, and this language adds needed clarity concerning when someone is or is not acting as an observer. This rule provision clarifies when a media member is an observer, and thus subject to the benefits and restrictions of this rule, and when they are not. Unless a media member, as described in subsection (3), signs in as an observer and is bound by these rules, which allow close access but limit filming, the media member must be located outside the voting area, and may film a limited amount of information only at the discretion of the municipal clerk. This rule will largely codify the status quo, in which media members contact clerks to determine whether and how they may record information on election day. This section clarifies that media members do not have an exemption to the rule, but may choose to be observers or discuss recording information outside of the voting area with a municipal clerk. This section creates an important line that municipal clerks will need in order to effectively carry out these rules. Requiring a media member to identify him or herself initially allows a designated election official to understand that someone may or may not be acting as an observer, and to follow the proper procedure if they are and to exclude them from the voting area if not.

Comment: 2.a. Add a section describing the factual data and analytical methodologies used in preparing the proposed rule by adding a narrative describing steps taken and sources considered in preparing the proposed rule.

Response: The Commission accepted this recommendation in whole and added this information to the rule order.

Comment: 2.b. Revise the cross-references in the rule to reflect the correct format, including adding “s.” and leaving spaces between sections and subsections, etc.

Response: The Commission accepted the recommendation in whole and updated the references.

Comment: 2.c. Add a chapter title.

Response: The Commission accepted the recommendation in whole and added “Election Observers” as the title of the chapter.

Comment: 2.d. Place the definitions in alphabetical order, change agency names to lowercase, and add missing quotation marks.

Response: The Commission accepted the recommendations in whole.

Comment: 2.e. Spell out “ID” instead of using an abbreviation.

Response: The Commission accepted the recommendation in whole.

Comment: 2.f. Revise the structure of s. EL 4.03 (2) so that the introduction is either a numbered paragraph or clearly introduces and indicates the applicability of pars. (a) and (b).

Response: The Commission accepted the recommendation in whole to change the introduction to a numbered paragraph because the language contained the first step in the check-in process. The section was then titled “Observer check-in process.”

Comment: 2.g. Add an introductory statement to s. EL 4.03 (14) (intro.)

Response: The Commission accepted the recommendation in whole and added, “Following a warning, the designated election official shall, if necessary, carry out the following procedures:.”

Comment: 2.h. Regarding s. EL 4.04(5), add the word “and” before 6.935, make Ch. lowercase, and remove “Wis. Admin. Code.”

Response: The Commission accepted the recommendations in whole.

Comment: 2.i. Regarding s. EL 4.04 (15), revise “ss.” to “s.” due to the disjunctive “or.”

Response: The Commission accepted the recommendation in whole.

Comment: 2.j. Regarding s. EL 4.05 (2) (b), change the format to “par. (a).”

Response: The Commission accepted the recommendation in whole.

Comment: 2.k. Regarding s. EL 4.05 (4) (f), change the format to “par. (d).”

Response: The Commission accepted the recommendation in whole.

Comment: 2.l. Regarding s. EL 4.06, remove the designation for sub. (1).

Response: The Commission accepted the recommendation in whole.

Comment: 4.a. Add s. 5.25 (4) (a) as a related statute as it is cited in s. EL 4.02 (1).

Response: The Commission accepted the recommendation in whole.

Comment: 4.b. Add a description of the different requirements for observers for SVD voting and for recounts.

Response: The Commission accepted the recommendation in whole.

Comment: 4.c. Regarding s. EL 4.02 (9), cross reference the definition of election official given by statute.

Response: The Commission accepted the recommendation in whole and added “has the meaning given in s. 5.02 (3m), Stats.”

Comment: 4.d. Regarding s. EL 4.04 (13), fix the cross reference and abbreviate “subsection.”

Response: The Commission accepted the recommendations in whole. The correct cross reference was sub. (15).

Comment: 4.e. “In s. EL 4.05 (5) and (6), it is not entirely clear which of the requirements from ss. EL 4.03 and 4.04 apply to election officials and observers in a recount. For example, s. EL 4.05 (5) (c) requires the designated election official to establish at least one observation area but it is not clear whether the siting requirements are the same as for polling places. It is unclear whether observers need to sign in, acquire a badge or name tag, are subject to removal, etc. Consider either specifying that all of the rules in ss. EL 4.03 and 4.04 apply “except as provided in” the relevant sections that are site-specific, or cross-referencing in s. EL 4.05 (5) and (6) the rules that do apply.”

Response: The Commission rejected this recommendation in part and accepted it in part. The word observer is used in both sections, and therefore all sections applying to

observers apply in those locations to the extent the elements of the rule are present. Section EL 4.05(6), like 4.05(1)–(4) is merely adding specifications for the central count location to the overall observer rule. Some aspects of the rule would not apply because elements of the statute and rule are not present. For example, a central count location (as distinguished from a board of absentee ballot canvassers location for which key elements are present) will not have any tables at which voters sign in or register to vote, or at which election officials announce names, and thus there would be no locations subject to the 3 to 8 foot rule because there would be no tables from which to measure. The rule would therefore simply require that all public aspects of the process be observable. All elements of the rule which are present, such as having a sign-in sheet, would need to be carried out. As for recounts under Section 4.05(5), subsection (b) excludes those parties named in Chapter 9 from the entirety of this observer rule, but any other individual would be bound by the rule. To address this comment, the Commission removed “the limitations of” and added “however, they must state to the designated election official that they are either the petitioner, an opposing candidate, an interested person, or counsel for any such individual.” This language should create a clearer line and explain who is and who is not covered by these provisions.

Comment: 4.f. Regarding s. EL 4.07 (3), change “this rule” to “this chapter.”

Response: The Commission accepted the recommendation in whole.

Comment: 5.a, c, d, e, f, j, l, n, p, q, s, z, bb, dd, ff. These recommendations involve minor points such as active and passive voice, punctuation, capitalization, word choice, and paragraph structure.

Response: The Commission accepted the recommendations in whole.

Comment: 5.b. Revise the third paragraph of the plain language analysis to fix errors and clarify that the rule concerns procedures for election officials, rather than the conduct of election officials.

Response: The Commission accepted the recommendation in whole.

Comment: 5.g. Choose either the word “voter” or the word “elector,” and then standardize the use of the term within the rule.

Response: The Commission accepted the recommendation in whole. The Commission opted to use the generic word “voter” as that word would likely contribute more to reader understanding without losing meaning. It is also the more common word used in the Commission’s various training and guidance documents. The Commission kept the word “elector” in s. EL 4.05 (5) because the word elector there is being used in a technical sense to refer to someone who is eligible to vote but who may not be registered to vote.

Comment: 5.h., u., aa. Change sections that use passive voice to active voice.

Response: The Commission accepted the recommendation in whole and revised many sections to use active voice.

Comment: 5.i. Move the definition of “accessibility reviewer,” and its exclusion from the definition of “observer” to the section that defines “observer.”

Response: The Commission accepted the recommendation in whole.

Comment: 5.k. Change the definition of clerk to reference the statutory definition.

Response: The Commission accepted the recommendation in whole.

Comment: 5.m., 5.x. “In the definition of ‘member of the public,’ consider deleting the material relating to a candidate or a registered write-in candidate and creating a separate section stating that a candidate or registered write-in candidate may not serve as an observer at a polling place where he or she appears on a ballot. Alternatively, it may not be necessary to define “member of the public.” “Consider placing the prohibition on candidates and write-in candidates being election observers at the end of s. EL 4.04.”

Response: The Commission rejected this recommendation in whole and believes that this language is best kept in the definition section. This language carries out the statutory prohibition against a candidate being an observer and also adds that election officials are excluded from the definition, meaning that an election official may carry out their duties without being classified as an observer. This is particularly important for accessibility reviewers who are recording whether or not selected polling places are meeting their accessibility requirements. The Commission intends to including training that will reinforce who is an election observer and who is not using this definition, and believes that keeping this information together as part of the definition of “member of the public” is the clearest way to do so.

Comment: 5.o. Regarding s. EL 4.03 (1), move the subsection down to better track the timeline for election officials, and eliminate passive voice.

Response: The Commission accepted the recommendation in whole and eliminated passive voice as well as moving along with a general reordering of EL 4.03 as recommended in 5.r. below.

Comment: 5.r. Combine s. EL 4.03 (4), (6), and (7) for greater clarity.

Response: The Commission accepted the recommendation in whole and generally reorganized section 4.03 to follow a chronological order.

Comment: 5.t. Rewrite s. EL 4.03 (14) (c) to assign the duty to offer an opportunity to sign a written order to a specific person, and to clarify the language.

Response: The Commission accepted the recommendation in whole.

Comment: 5.v. Clarify the language and fix the grammar of s. EL 4.04 (9).

Response: The Commission accepted the recommendation in whole.

Comment: 5.w. “The proposed rules relating to audio and video recordings are confusing and seemingly inconsistent. Consider placing all of the requirements and restrictions on audio and video recordings into a separate section of ch. EL 4 by creating a separate section that encompasses ss. EL 4.04 (12), 4.05 (1) (b), (3) (b), (5) (d), and (6) (b), and 4.06.”

Response: The Commission rejected this recommendation in whole. Section EL 4.04(7) contains a general prohibition against creating and transmitting photo, video, or audio recordings, which are qualified or lifted by the subsections of Section EL 4.05 dealing with specific locations. Section EL 4.04(12) contains a general rule against “live” audio or visual communication device use which is distinct from the other cited sections, and is intended primarily to limit disturbances, primarily extra noise, which is distracting for other observers, voters, and election officials. The referenced sub sections of Section 4.05 were considered individually by the Commission and apply to those specific types of locations due to important differences in the locations. The key difference is the presence of voters and voted ballots which may be visually tied to a specific voter, and the limitation is designed to prevent identifying how a voter voted, intimidating a voter by recording their actions, or identifying a confidential voter. Locations for which these concerns are not present (recounts and central count) lift the prohibition, locations for which the concerns are limited (board of absentee ballot canvassers) lift the prohibitions except when individuals are returning ballots or correcting envelopes, locations for which the concerns are present up until a specific time name that time (polling places), and locations for which the concerns are always present (municipal clerk offices and alternate sites and residential care facilities) contain no additional qualification, and the general prohibition in Section EL 4.04(7) always applies. Restrictions on audio and video vary based on location, and are best placed within the location specific sections of Section EL 4.05.

Comment: 5.y. “Section EL 4.05 (1) (a) could be simplified to state that an observer may remain at a polling place until all election-related activities are concluded. The reference to the open meetings law is confusing and may not be necessary. Additionally, the term “Election Day” should not be capitalized.”

Response: The Commission rejected this recommendation in part, and it accepted it in part concerning capitalization. The Commission believes that this section requires this level of detail and that it clarifies an important and potentially confusing transition. The Commission does not believe that this rule or Wis. Stat. § 7.41 applies to the canvassing of the votes once the election inspectors become canvassers after voting has concluded, even though those activities are entirely election related. However, many of the same people who were observers may wish to remain at the location to observe the public meeting of the board of canvassers. This rule, and Commission guidance following it, needs to clarify when this transition occurs even if, in practice, an observer might not need to be aware of the difference because they may simply remain where they are and continue to observe the public meeting.

Comment: 5.cc. Consolidate s. EL 4.05 (4) (f) and (d).

Response: The Commission accepted the recommendation in whole.

Comment: 5.ee. “In s. EL 4.07 (1), what does it mean to “use video and still cameras outside of the voting area”? Does this mean that the recording equipment must be placed outside of the voting area, but may capture videos or images of actions within the voting area, so long as there is no disruption or interference, or recording of confidential information? Or does it mean that the physical placement of equipment and the images of actions must both be outside the voting area? It may be helpful to differentiate between the location of physical equipment and the location of the actions being captured.”

Response: The Commission accepted this recommendation in whole and added the words “place” and “only” to clarify that the equipment itself must be placed outside of the voting area if the individual is not signed in as an observer. Such equipment may capture anything except what is described, which may include some things in the voting area, such as election officials sitting at tables, but not others, such as voters handing their IDs to those officials.

VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS: N/A

DRAFT ORDER OF THE WISCONSIN ELECTIONS COMMISSION CREATING RULES

The Wisconsin Elections Commission proposes an order to **create** Chapter EL 4, relating to the conduct, regulation, and accommodation of election observers.

Analysis Prepared by the Wisconsin Elections Commission

1. Statutes Interpreted: Sections 5.02(6m), 5.25(4)(a), 5.35(4), 5.85, 7.41, 6.82, 6.87(5), 6.875(6)(c)1., 6.875(7) 6.34(3), 5.35(5), 7.37(2), 6.86(1)(b), 6.855, 6.88, 9.01(3), 7.52(1)(a), Stats.

2. Statutory Authority: Sections 7.41(5), 5.05(1), 5.05(1)(f), 7.08(3), 227.11(2)(a), Stats.

3. Explanation of Agency Authority:

Section 7.41(5), Stats., requires the Commission to promulgate rules concerning the conduct of election observers and their interactions with election officials.

Section 5.05(1), Stats., established the statutory authority and framework for regulation and administration of elections. It specifically states: “[t]he elections commission shall have the responsibility for the administration of chs. 5 to 10 and 12 and other laws relating to elections and election campaigns, other than laws relating to campaign financing.”

Section 5.05(1)(f), Stats., allows the Commission to “Promulgate rules under ch. 227 applicable to all jurisdictions for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns, other than laws regulating campaign financing, or ensuring their proper administration.”

~~Section 7.08(3), Stats., requires the Commission has authority to prepare and publish an election manual, that can be “easily understood by the general public explaining the duties of the election officials, together with notes and references to the statutes as the commission considers advisable.”~~

Section 227.11(2)(a), Stats., authorizes ~~the commission~~ an agency to promulgate rules interpreting the statutes administered by the agency.

4. Related Statutes or Rules:

Because election observers will observe in person and absentee voting processes, many elections statutes are related. The most directly related statutes are sections 6.875(7), 7.52(1)(a), which directly extend the ability to observe the voting process to voting with Special Voting Deputies and processing of absentee ballots at a board of absentee ballot canvassers location, respectively. Section 9.01(3) explains the ability to observe at a recount. Section 5.25 (4) (a) requires all polling places to be accessible to individuals with disabilities.

5. Plain Language Analysis:

The Commission intends through this order to promulgate its required rule on election observers. The rule intends to clarify and bring uniformity to election observation for the benefit of voters, election officials, and observers. The rule will clarify ~~the~~ who is able to observe elections, define the rights and limitations of what election observers may do, differentiate election observers from election inspectors, and create a more stream-lined and accessible set of instructions for election observers to follow during the election process.

Section EL 4.02 defines terms relevant to observing elections, which should allow the process to proceed from known standards.

Section, EL 4.03 ~~then address the conduct of election officials, explaining how they may limit the number of observers, check in and provide information to observers, establish observation areas so that observers can election processes, make observation areas accessible, warn observers, and remove observers from the location.~~ establishes procedures for election officials so that they may designate areas for observers to observe election processes, make observation areas accessible, limit the number of observers, check in and provide information to observers, warn observers of disruptive or disallowed conduct, and remove observers from the location.

Section EL 4.04 describes the conduct of observers, explaining how to check in as an observer, move between observable locations, ask questions, challenge voters, take or not take images, and the general decorum expected of individuals observing voting.

Section EL 4.05 details requirements specific to the different kinds of locations that may be observed, namely polling places, clerk offices or alternate sites, and board of absentee ballot canvassers locations. Additionally, this section covers the observation of Special Voting Deputy served facilities, which is restricted to two individuals and is governed by s. 6.875 (7), Stats., and recounts, which is district from observing voting processes and is governed by s. 9.10 (3), Stats.

Section EL 4.07 explains opportunities for media members to arrange with election officials times for reporting on voting.

6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:

The Federal Government does not implement a specific approach to election observing and it instead vests broad power to the states to decide individually how to conduct their elections.

7. If Held, Summary of Comments Received During Preliminary Comment Period and at Public Hearing on the Statement of Scope:

The Commission held a virtual open session meeting on the statement of scope on January 17, 2023. Eleven members of the public attended the public meeting, many of whom commented on negative experiences they had as an ~~e~~Election ~~o~~Observer. The comments included concerns on how to coordinate ~~e~~Elections ~~o~~Observers from certain parties and concerns on the recommended amount of space that ~~e~~Election ~~o~~Observers should be positioned away from voters. Additionally, some of the comments suggested that the Commission assemble an advisory committee of key stakeholders to share insights concerning the ~~e~~Election ~~o~~Observers scope statement. Additionally, a number of observers commented that they were not allowed to use chairs or bathrooms that were available in the location. Some suggested that observers be allowed to go to the polling place prior to the election to give feedback on the layout of the polling place set up. Generally, the comments were in favor of the Commission addressing the issues presented in rulemaking.

8. Comparison with Similar Rules in Adjacent States:

Illinois, Michigan, Iowa, and Minnesota all have different terms for their versions of election observers, and all have processes outlined in statute that differ from section 7.41, Stats.

Rather than election observers Illinois has “Poll-Watchers.” The qualifications and credentials needed to be a Poll-Watcher in Illinois are laid out in the state’s statutes as well as their rights and limitations, ~~and- While there are strict qualifications to becoming a Poll-Watcher in Illinois, that is not the case in Michigan.~~

Anyone, other than a candidate for elective office, can serve as a Poll-Watcher and may observe elections in Michigan. Michigan differentiates its Poll-Watchers from what it calls Election Challengers. Michigan details its rules and parameters in a document provided by the Michigan Bureau of Elections and ratified by the State of Michigan’s Secretary of State. ~~Contrary to the previously covered states,~~

~~Minnesota does not authorize poll watching.~~ Minnesota sets out in statute how to become an appointed Election Challenger in addition to the rights, limitations, and appointment process to becoming one.

~~Lastly, and w~~With a method similar to the state of Michigan, Iowa has its poll-watching parameters set in both statute and a guide prepared by the Office of the Iowa Secretary of State. This guide provides a corresponding Iowa statute that solidifies each of the suggested actions for poll-watchers as law. The guide labels a poll-watcher as a person who has official permission to be at the polling place on election day or in the room where absentee ballots are counted before the polls close. If a poll-watcher is acting as a challenger however, Iowa requires a different set of requirements to be allowed to challenge.

9. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen:

~~N/A The Commission’s proposed rule is based on information obtained during two advisory committee meetings. The Commission held a preliminary hearing on January 17, 2023, and gathered initial thoughts from members of the public, which focused on observers being able to see and hear and having access to chairs and restrooms. After the hearing, the Commission decided to form an advisory committee made up of clerks, poll workers, observers, political party representatives, and election-related organizations. The first advisory committee meeting was held on March 8, 2023, and Committee members provided comments on specific terms within the governing statute, 7.41, as well as comments concerning accommodations, challenges, and other observable locations. It also allowed members to present any additional comments. On April 28, 2023, the Commission voted to create a draft based on the first advisory committee meeting, including competing language for the commission to consider in cases for which the Commission received conflicting recommendations from the committee. The second advisory committee meeting was held on June 29, 2023, and discussed the Commission’s initial draft and provided line by line feedback. The draft was revised with conflicting elements still present for the Commission’s consideration. After the second meeting, the Commission met several times to discuss the draft language and to make changes to the document.~~

10. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report:

N/A

11. Effect on Small Business (initial regulatory flexibility analysis):

N/A

12. Agency Contact Person:

Brandon Hunzicker
brandon.hunzicker@wisconsin.gov

P.O. Box 7984, Madison, WI 53703-7984
608-267-0714

13. Place where comments are to be submitted and deadline for submission:

Written comments may be emailed to brandon.hunzicker@wisconsin.gov. While email is preferred, comments can also be mailed to P.O. Box 7984, Madison, WI 53703-7984. The deadline to submit comments concerning the Economic Impact Statement is March 11, 2024. An upcoming notice of a public hearing will contain a deadline for comments concerning the rule text.

RULE TEXT

SECTION 1. Chapter EL 4 is created to read:

CHAPTER EL 4

ELECTION OBSERVERS

Formatted: Centered

EL 4.01 Right to vote. Nothing in this chapter shall be construed to distract, disrupt, obstruct, slow, or prevent a qualified ~~elector-voter~~ from casting a lawful ballot or registering to vote.

EL 4.02 Definitions. In this chapter:

(1) ~~“Accessibility reviewer” means an individual authorized by the Commission who monitors compliance with s. 5.25(4)(a), Stats. An accessibility reviewer is not an observer under this chapter.~~

(2) ~~“Chief inspector” means the chief inspector at a polling place, under appointed pursuant to s.7.30~~
~~_____ (6)(b), Stats.~~

(24) ~~“Clerk” has the same meaning as “municipal clerk” means the municipal clerk, or the executive director of a municipal board of election _____ commissioners,~~ under s. 5.02(10), Stats.

(32) ~~“Commission” means the Wisconsin eElections cC~~ommission.

(45) ~~“Communications media member” means an individual who communicates to the designated election official that the individual seeks to record or report information outside the voting area.~~

Except as provided in s. EL 4.07(3), a communications media member is not an observer under this chapter.

~~(56)~~ “Confidential information” means information that is not part of the public aspects of the voting process, including an operator’s license or identification card number issued by the Wisconsin Department of ~~T~~Transportation, a birth date, a ~~S~~Social ~~S~~Security number or any portion thereof, accommodation information on a voter registration form, information concerning a confidential ~~elector~~voter, guardianship information, a voted ballot, and a communication by a voter to a person rendering voting assistance under ss. 6.82, 6.87_(5), or 6.875.(6).(c).1., Stats. Confidential information does not include the type of document that is submitted for photo identification as defined by s. 5.02 (6m) Stats. or for a proof of residency ~~document~~ as defined by s. 6.34.(3) Stats., but includes the information provided thereon.

~~(67)~~ “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.

~~(78)~~ “Electioneering” has the meaning given in s. 12.03_(4), Stats.

~~(89)~~ “Election official” ~~has the meaning given in s. 5.02 (3m), Stats. means an individual who is charged with any duties relating to the conduct of an election.~~ An individual authorized by the ~~C~~Commission to conduct any election related activities is an election official in this chapter.

~~(94)~~ “Inspector” or “election inspector” means an individual appointed pursuant to s. 7.30, Stats., to conduct an election.

~~(104)~~ “Member of the public” means an individual, excluding an election official, a candidate appearing on the ballot at that observable location, or a registered write-in candidate for an office voted on at that observable location.

~~(112)~~ “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.

(123) “Observe” means to see or hear and does not include physically handling election related materials or materials provided by the voter.

(134) “Observer” means a member of the public who has signed in as an observer at an observable location and is present at an observable location to observe an election or the absentee ballot voting process. An accessibility reviewer is an individual authorized by the commission who monitors compliance with s. 5.25 (4) (a), Stats., and an accessibility reviewer is not an observer under this chapter.

(145) “Organization” means an 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.

(156) “Posting and distribution of election-related material” has the meaning given in s. 12.035, Stats.

(167) “Public aspects of the voting process” means the election activities that take place at an observable location during those hours specified in this chapter as permitting observation, except for inspection of confidential materials as defined in sub. (6).

(178) “Representing the same organization” means individuals who were deployed, assigned, ~~trained by,~~ or who identify as representing the same organization.

(189) “Voting Area” is that area at an observable location where ~~electors-voters~~ receive, prepare, or deposit their ballots, or where ~~electors-voters~~ cast their votes on a voting machine.

EL 4.03 ~~Conduct of Procedures for~~ election officials.

(1) The designated election official shall do all of the following:

(a) 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. The designated election official shall position an observer area to minimize contact between observers and voters and election officials.

~~_____ (b) Ensure that an observation area is not less than 3 feet nor more than 8 feet from any of the
_____ following:~~

- ~~_____ 1. Each table at which voters announce their names and addresses to be issued
_____ voter numbers or at which election officials announce the name of absentee voters.~~
- ~~_____ 2. Each table at which voters may register to vote.~~
- ~~_____ 3. Each table at which election inspectors remake any ballots.~~

~~_____ (c) Ensure that an observation area is accessible to observers with disabilities and includes
_____ sufficient space for mobility equipment, chairs, or other disability aids brought by an observer.
Due to physical limitations or the orderly administration of elections, or both, 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 and the designated election official
shall document the actions taken and the reasons why. The designated official may use a copy of an
inspectors' statement or other incident log to comply with this subsection.~~

~~(2) OBSERVER CHECK-IN PROCESS~~

~~_____ (a) The designated election official shall maintain an observer log and shall require a member of
_____ the public intending to exercise the right to observe an election under s. 7.41, Stats., to enter the
_____ required information under s. EL 4.04_(1) into the observer log and shall ensure that the photo ~~ID~~
_____ identification presented reasonably resembles the observer and the name entered.~~

~~(ba) After completing the log, the designated election official shall offer to an observer ~~shall be~~
~~offered~~ a summary of the rules governing election observers at the observable location, and ~~be~~
inform ~~an observer ed~~ of ~~all of~~ the following:~~

- ~~1. To whom at the observable location the observer may direct questions during the day.~~s~~~~
- ~~2. How the observer may move between observation areas throughout the day.~~s~~ ~~and~~~~
- ~~3. The location where a ballot may be remade, if applicable.~~

~~(c)~~ After the requirements of pars. (a) and (b) have been met, the designated election official shall provide an observer with a sticker, badge, or other item that identifies an individual as an observer and distinguishes observers from election officials and direct an the observer shall then be directed to an area of the observable location established by the designated election official as an observation area.

~~(d)~~ The designated election official shall return aAn observer log ~~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.~~

~~(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 an observer area to minimize contact between observers and voters and election officials.~~

~~(7) An observation area shall be accessible to observers with disabilities and shall include sufficient space for mobility equipment, chairs, or other disability aids brought by an observer.~~

~~(3)~~ The designated election official shall permit an observer access to any available chair within the observable location and with the same access to restrooms available to election officials at the observable location.

(4) 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 due to physical limitations or the orderly administration of elections, or both. If the designated election official acts under this subsection, the designated election official shall limit observers from all organizations in a uniform manner and shall document the actions taken and the reasons therefore on a copy of an inspectors' statement or other incident log.

~~(5)~~ The designated election official of any observable location that is unable to accommodate the observation areas as described in sub. ~~(14)~~ shall record the reason the requirements were not met and shall send a copy of that record to the ~~c~~Commission within 60 days of the election for which the observable location was active.

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

~~(7)~~~~0~~ In a manner established by the designated election official, election officials shall allow an observer to observe absentee ballot certificate envelopes that have been set aside to be rejected.

~~(8)~~~~4~~ An election official shall permit an observer 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-voters~~ under s. 5.35(5) Stats., and does not interfere with the conduct of the election under s. 6.45(1m), Stats.

~~(9)~~~~2~~ No election official may permit an observer to handle an original version of any official election document.

~~(10)~~~~3~~ No election official may permit an observer to observe any confidential information.

~~(11)~~~~4~~ If an observer violates a provision of this chapter or any applicable election statute, the designated election official shall, verbally or in writing, warn an observer one time to cease the offending conduct. Following a warning, the designated election official shall, if necessary, carry out the following procedures:

(a) If an observer does not cease the 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 ~~c~~Chief ~~i~~nspector or municipal clerk, the designated election official shall notify the ~~c~~Chief ~~i~~nspector or municipal clerk.

(b) If the offending observer who is ordered to depart under par. (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 consistent with s. 7.37(2), Stats. 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., ~~the designated election official shall offer~~ an election official representing the opposite political party than the designated election official, if ~~he or she is~~ available ~~timely~~ on a timely basis, ~~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, ~~an election official the incident shall be recorded~~ ~~record the incident~~ and the designated election official shall, within 60 days of the incident, provide to the ~~c~~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) A 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 and 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. An observer is not required to be affiliated with or represent an organization. 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 observable location pursuant to s. 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 may direct 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 pursuant to s. EL 4.03(2)(a)1.

(5) Any challenges brought by a ~~An qualified~~ observer who is an elector shall direct any challenges for cause against a voter ~~for cause shall be directed~~ to an election official in accordance with ss. 6.925, 6.93, and 6.935, Stats., and cCh. EL 9 ~~Wis. Admin. Code.~~

(6) No observer may engage in any loud, boisterous, or otherwise disruptive behavior, that, in the discretion of the designated election official, threatens the orderly conduct of the election or interferes with voting or registration.

(7) No observer may create or transmit photographs, videos, or audio recordings of any observable location except as expressly permitted by this chapter.

(8) An observer shall keep conversation to a minimum and shall conduct whatever conversation is necessary at a low enough volume to minimize distraction to electors-voters and election officials.

(9) No observer may engage in electioneering, as defined in s. 12.03, Stats., or the posting or distribution of any election-related material as defined in s. 12.035, Stats.

(10) No observer may display the name or likeness of, or text related to, a candidate, party, or referendum position appearing on the ballot, or display text which describes, states, or implies that the observer is an election official.

(11) No observer may engage in any conversation concerning a candidate, party, or question appearing on the ballot.

(12) 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.

(13) 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 sub~~section~~ (153), 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 does not constitute a violation of this section.

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

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

EL 4.05 Location specific requirements.

(1) POLLING PLACE.

(a) ~~The designated election official shall permit~~ An observer ~~shall be allowed~~ to observe beginning at 7 a.m. or whenever machines are zeroed out on ~~e~~Election ~~d~~Day, whichever is earlier, and ending at 8 p.m. or when the last voter who was in line to vote at or before 8 p.m. has finished voting. After 8 p.m., or after the last voter who was in line has voted, whichever is later, an observer may remain at the polling place to observe canvassing under Wisconsin's open meetings law. If any observer is allowed access outside of the time frame provided herein, all observers shall be allowed the same access.

(b) No observer may 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) ~~The designated election official shall permit~~ ~~A~~ an observer ~~shall be permitted~~ to observe the in-person issuing and voting of absentee ballots under s. 6.86(1)(b), Stats., during the hours such activities may occur at a municipal clerk's office whose office is located in a public building, or at an alternate absentee ballot site under s. 6.855, Stats. ~~This chapter does not cover~~ ~~the~~ return of voted by-mail absentee ballots to a municipal clerk's office or alternate site by the ~~US-United States Postal Service~~ ~~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.

(b) ~~The designated election official shall permit an observer~~ ~~An observer shall be permitted to~~ observe the initial enclosing and securing of an absentee ballot required under s. 6.88, Stats., that is received under par. ~~(2)~~ (a).

(3) BOARD OF ABSENTEE BALLOT CANVASSERS.

(a) ~~The designated election official shall permit~~ ~~an observer~~ 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 may create or transmit photographs, videos, or audio recordings of the observable location. However, an observer may not create or transmit any photographs, videos or audio recordings of any individual ~~depositing~~ ~~returning~~ an absentee ballot or correcting, under s. 6.87(9), Stats., — an absentee ballot certificate envelope.

(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) ~~The designated election official shall permit~~ 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) ~~The designated election official shall permit~~ an observer ~~shall be permitted~~ to observe the process of absentee ballot distribution in the common areas of the home or facility, but shall not permit an observer to enter a voter's private room. A voter may opt to close his or her door or otherwise secure his or her voting privacy

(e) The ~~s~~Special ~~v~~Voting ~~d~~Deputies may not permit any person other than a ~~s~~Special ~~v~~Voting ~~d~~Deputy or relative of the ~~elector-voter~~ assisting the ~~elector-voter~~ in marking the ballot to hear any discussion regarding the electoral choices of the ~~elector-voter~~. ~~s~~Special ~~v~~Voting ~~d~~Deputies must enforce the voter's constitutional right to cast a secret ballot, just as the individual is entitled to in other absentee or polling place settings.

~~(f) An observer shall not be permitted to enter a voter's private room, however, the observer shall be permitted to observe such voting from a common area in accordance with sub. (4)(d). The voter may elect to close their door or otherwise secure their voting privacy.~~

(5) RECOUNT.

(a) ~~The designated election official shall permit an observer~~ ~~An observer shall be permitted~~ to observe during all hours when a recount is occurring.

(b) The petitioner, all opposing candidates, interested persons and their counsel, as described in s. 9.01 (3), Stats., are not subject to ~~the limitations of~~ this chapter, however, they must state to the designated election official that they are either the petitioner, an opposing candidate, an interested person, or counsel for any such individual.

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(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) ~~The designated election official shall permit~~ an observer ~~shall be permitted~~ to observe all counting of ballots occurring at a central counting location.

(b) An observer may create or transmit photographs, videos, or audio recordings of the observable location.

4.06 Post-observation practices.

(+) 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 such action is disruptive or interferes with the administration of the election.

4.07 Communications Media.

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(1) A communications media member shall identify him or herself and any organization the communications media member represents to the designated election official upon arriving at the observable location. At the discretion of the designated election official, a communications media member may ~~place and~~ use video and still cameras ~~only~~ outside of the voting area, provided the ~~_____~~ cameras are not ~~_____~~ used in a manner that allows the recording of any confidential ~~_____~~ information, including voted ~~_____~~ ballots, or that disrupts or interferes with voting or the orderly ~~_____~~ conduct of the election.

(2) The designated election official may limit the amount of time any communications media member may use video and still cameras. ~~The designated election official shall uniformly apply~~ ~~_____~~ aAny limitations, rules, and regulations imposed on ~~_____~~ communications media members ~~shall~~ ~~_____~~ be uniformly applied.

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(3) A communications media member may act as an observer, but when so doing is subject to the provisions of this ~~rule~~chapter.

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SECTION 2. EFFECTIVE DATE. This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2), Stats.



Wisconsin Legislative Council

RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Anne Sappenfield
Legislative Council Director

Margit Kelley
Clearinghouse Assistant Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE **24-032**

AN ORDER to create chapter EL 4, relating to the conduct, regulation, and accommodation of election observers.

Submitted by **ELECTIONS COMMISSION**

03-21-2024 RECEIVED BY LEGISLATIVE COUNCIL.

04-10-2024 REPORT SENT TO AGENCY.

MSK:PH

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]
Comment Attached YES NO
2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]
Comment Attached YES NO
3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]
Comment Attached YES NO
4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]
Comment Attached YES NO
5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]
Comment Attached YES NO
6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]
Comment Attached YES NO
7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]
Comment Attached YES NO



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CLEARINGHOUSE RULE 24-032

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]

1. Statutory Authority

a. In the agency’s analysis for the proposed rule, the agency identifies s. 227.11 (2) (a), Stats., as one of the statutes that provides rulemaking authority to the agency. The authority cited in s. 227.11 (2) (a), Stats., grants authority to all agencies, including the Wisconsin Elections Commission, to promulgate rules interpreting statutes administered by each agency. Consider clarifying that the statute is a general grant of authority that is not limited to the commission. For example, rather than stating “authorizes the commission”, the description could be revised to state that the provision “authorizes an agency”.

b. In the agency’s analysis for the proposed rule, the relevance of citing s. 7.08 (3), Stats., as a source of statutory authority is unclear. The proposed rule does not make reference to an election manual. Consider explaining the relevance of this rule to an election manual or deleting this citation.

c. The provision relating to challenging an elector, s. EL 4.04 (5), mentions that a challenge may be brought by a “qualified observer”. That term is not defined and there is nothing in the statutes or in ch. EL 9 that requires an observer to be “qualified” in order to challenge an elector. Does the agency mean an observer who has met the basic standards of conduct in s. 7.41, Stats., and s. EL 4.04? Or an observer who has signed the election log and shown photo identification under s. EL 4.04 (1)? The agency should review the use of the term “qualified observer” and clarify its meaning.

d. It is not entirely clear that s. EL 4.07 falls into the realm of regulating election observers, as authorized by s. 7.41 (5), Stats. The provision does not regulate the conduct of an election observer, which is the subject matter of the proposed chapter. The relationship to the regulation of election observers should be explained. For example, is media access viewed as a form of the public’s right to access? Or that the role of media is similar to an observer’s, in observing and reporting on an election?

2. Form, Style and Placement in Administrative Code

a. In the agency's analysis for the proposed rule, an entry should be inserted to describe the factual data and analytical methodologies used in preparing the proposed rule. The description should provide a narrative summary of the steps taken and sources considered in preparing the proposed rule.

b. Throughout the proposed rule, the agency should review and update the format of cross-references to statutes and rules. In particular, a number of cross-references to statutes and other sections in the Elections Commission rules should be revised to include the abbreviation "s.". Also, in citations to statutes and rules, spaces should be inserted between each unit within a reference. For example, in s. EL 4.03 (2) (intro.), the format for the reference to "EL 4.04(1)" should be revised to "s. EL 4.04 (1)".

c. In the rule text, a chapter title should be added for the proposed chapter. [s. 1.10 (2) (a) 2. and (b) 1., Manual.]

d. The following comments apply in s. EL 4.02:

(1) The definitions should be placed in alphabetical order. In particular, the definitions for "chief inspector" and "clerk" should appear before "commission".

(2) In sub. (6), the agency name "Department of Transportation" should not be capitalized. Also, "Social Security" should not be capitalized. [s. 1.06 (2), Manual.]

(3) In sub. (11), a quotation mark should be inserted before the word "Member".

e. In s. EL 4.03 (2) (intro.), the abbreviation "ID" should be spelled out.

f. The structure of s. EL 4.03 (2) should be revised. Either the introduction should be revised to introduce and indicate the applicability of pars. (a) and (b), or the introduction should itself be numbered as a paragraph. [s. 1.11 (2) and (5), Manual.]

g. In s. EL 4.03 (14) (intro.), add an introductory statement to indicate the applicability of the subunits. The introductory statement should end in a colon and include a phrase such as "any of the following:". [s. 1.11 (2) and (3), Manual.]

h. The following comments apply in s. EL 4.04 (5):

(1) The word "and" should be inserted before the reference to "6.935".

(2) The abbreviation "Ch." should be revised to lowercase "ch.".

(3) The source designation "Wis. Admin. Code" should be removed. [s. 1.15 (2) (a) 2., Manual.]

i. In s. EL 4.04 (15), the plural abbreviation "ss." should be revised to the singular abbreviation "s.". [s. 1.15 (2) (d), Manual.]

j. In s. EL 4.05 (2) (b), the format for the cross-reference at the end of the sentence should appear as "par. (a)".

k. In s. EL 4.05 (4) (f), the format for the cross-reference should appear as "par. (d)".

l. In s. EL 4.06, the designation for sub. (1) should be removed as there are no other subsections in the provision.

4. Adequacy of References to Related Statutes, Rules and Forms

a. In the agency's analysis for the proposed rule, consider adding s. 5.25 (4) (a), Stats., as a related statute or rule, as it is cited in s. EL 4.02 (1).

b. Under the analysis for the proposed rule, in the agency's description of related statutes or rules, consider explaining the different statutory requirements for observers of special voting deputies and observers for recount procedures.

c. In s. EL 4.02 (9), consider cross-referencing the existing definition for "election official" given in s. 5.02 (3m), Stats.

d. In s. EL 4.04 (13), the cross-reference to sub. (13) is referencing back to itself. Is this instead intended to cross-reference to sub. (15)? Also, the word "subsection" should be revised to the abbreviation "sub."

e. In s. EL 4.05 (5) and (6), it is not entirely clear which of the requirements from ss. EL 4.03 and 4.04 apply to election officials and observers in a recount. For example, s. EL 4.05 (5) (c) requires the designated election official to establish at least one observation area but it is not clear whether the siting requirements are the same as for polling places. It is unclear whether observers need to sign in, acquire a badge or name tag, are subject to removal, etc. Consider either specifying that all of the rules in ss. EL 4.03 and 4.04 apply "except as provided in" the relevant sections that are site-specific, or cross-referencing in s. EL 4.05 (5) and (6) the rules that do apply.

f. In s. EL 4.07 (3), it appears the cross-reference to "this rule" should be revised to require a communications media member to comply with "this chapter". [s. 1.15 (2) (c) (Examples Table), Manual.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the agency's plain language analysis for the proposed rule, the third sentence of the first paragraph has a typographical error: remove the word "the" after "clarify".

b. In the agency's plain language analysis for the proposed rule, the third paragraph could be rewritten to correct typographical errors and to clarify that the rule establishes procedures for election officials, rather than addresses the conduct of election officials. Section 7.41 (5), Stats., requires the commission to promulgate rules relating to the conduct of election observers, not officials. For example, the description could be phrased as:

Section EL 4.03 establishes procedures for election officials so that they may designate areas for observers to observe election processes, make observation areas accessible, limit the number of observers, check in and provide information to observers, warn observers of disruptive or disallowed conduct, and remove observers from the location.

c. In the agency's plain language analysis, the description for s. EL 4.07 should be updated to revise the plural word "Sections" to the singular "Section".

d. In the agency's summary of comments received during the preliminary comment period, the phrase "Election Observer" is capitalized; it is not capitalized elsewhere in the proposed rule.

e. In the agency's comparison of neighboring states' rules, the description could be rewritten so that each state has its own paragraph.

f. Throughout the text of the proposed rule, the word "Commission" should not be capitalized. While the word "Commission" is capitalized in the proposed rule, other Ethics Commission administrative rules do not capitalize the phrase. In administrative rules, an agency name should not be capitalized. Compare, for example, current rule s. EL 12.01 (1). [s. 1.06 (2), Manual.]

g. The text of the proposed rule in some instances uses the term "elector", and in some instances "voter". Consider whether reader understanding would be improved by using one term consistently, particularly for consistency within a provision. For example, in s. EL 4.04, subs. (5) and (13) refer to a "voter", but subs. (8) and (15) refer to an "elector".

h. The text of the proposed rule uses passive voice in several instances, which can cause ambiguity. Consider rewriting the rule to ensure that each provision assigns a particular action or requirement to a specific actor. For example, s. EL 4.03 (2) (a) could be written to say "The designated election official [or an election official] shall offer to an observer a summary of the rules . . .". Additional instances are noted below, but consider reviewing the rule in its entirety to ensure that the rule uses the active voice.

i. Consider moving the definition of "accessibility reviewer", and its exclusion from the definition of "observer", to the section that defines "observer".

j. In the definition of "chief inspector", consider revising the word "under" to the phrase "appointed pursuant to".

k. The definition of "clerk" is confusing and not entirely consistent with the statutes. Consider changing the definition to read: "'Clerk' has the same meaning as 'municipal clerk' under s. 5.02 (10), Stats.'".

l. In the last sentence of the definition of "confidential information", consider changing "a proof of residency document" to "proof of residency", to avoid redundancy.

m. In the definition of "member of the public", consider deleting the material relating to a candidate or a registered write-in candidate and creating a separate section stating that a candidate or registered write-in candidate may not serve as an observer at a polling place where he or she appears on a ballot. Alternatively, it may not be necessary to define "member of the public".

n. Consider changing the title of s. EL 4.03 to "Procedures for election officials".

o. In s. EL 4.03, sub. (1) could be moved to a later subsection so that the rule tracks the timeline for election officials more closely. Additionally, the provision could be rewritten for clarity and to eliminate the passive voice. For example, the provision could be phrased as:

A 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 due to physical limitations or the orderly administration of elections, or both. If a designated election official acts under this subsection, he or she shall limit observers from all organizations in a uniform manner. The designated official shall document the actions taken and the reasons therefore on a copy of an inspectors' statement or other incident log.

p. In s. EL 4.03 (2) (a) (intro.), revise the passive voice to active voice. Second, the phrase “of all” should be inserted before “of the following:”. Third, subs. 1. and 2. should each be revised to end in a period. [s. 1.11 (2) and (3), Manual.]

q. In s. EL 4.03 (1) (b), revise the passive voice and consider moving the last sentence to a separate subsection.

r. In s. EL 4.03 (4) to (9), the duties of the designated election official in establishing observation areas are mixed with other rights and duties relating to observers. Consider combining subs. (4), (6), and (7) and creating an introduction. For example, the provisions could be combined under sub. (4) along the following lines:

(4) Except as provided in sub. (9) [would need to be renumbered], the designated election official shall do all of the following:

(a) Establish at least one observation area to ensure observers may readily observe all public aspects of the voting process during the election without disrupting the voting process. To the extent practicable, the official shall position an observation area in a manner that minimizes contact between observers, voters, and election officials.

(b) Ensure that an observation area is not less than 3 feet nor more than 8 feet from any of the following:

1. 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.
2. Each table at which electors may register to vote.
3. Each table at which election inspectors remake any ballots.

(c) Ensure that an observation area is accessible to observers with disabilities and includes sufficient space for mobility equipment, chairs, or other disability aids brought by an observer.

s. In s. EL 4.03 (14) (a), both instances of the term “Chief Inspector” should not be capitalized.

t. Section EL 4.03 (14) (c) could be rewritten to assign the duty to offer an opportunity to sign a written order to a specific person. Additionally, the language is confusing. Consider revising to read something like:

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., the chief inspector or municipal clerk shall offer the opportunity to sign the written order to an election official representing the opposite political party than the designated election official, if he or she is available on a timely basis, and to note any concurrence or disagreement with that order. Failure of that election official to sign the written order, or the unavailability of an

official to review the order in a timely fashion, does not affect the enforceability of that order.

u. Section EL 4.03 (14) (d) could be rewritten to assign the duty to record an incident to the designated election official or to another person.

v. Consider changing the language in s. EL 4.04 (9) to something like: “No observer may engage in electioneering, as defined in s. 12.03, Stats., or post or distribute any election-related material as defined in s. 12.035, Stats.”.

w. The proposed rules relating to audio and video recordings are confusing and seemingly inconsistent. Consider placing all of the requirements and restrictions on audio and video recordings into a separate section of ch. EL 4 by creating a separate section that encompasses ss. EL 4.04 (12), 4.05 (1) (b), (3) (b), (5) (d), and (6) (b), and 4.06.

x. Consider placing the prohibition on candidates and write-in candidates being election observers at the end of s. EL 4.04.

y. Section EL 4.05 (1) (a) could be simplified to state that an observer may remain at a polling place until all election-related activities are concluded. The reference to the open meetings law is confusing and may not be necessary. Additionally, the term “Election Day” should not be capitalized.

z. In s. EL 4.05 (2) (a), the agency name “Postal Service” should not be capitalized.

aa. In s. EL 4.05 (2) (a) and (b), (4) (b) and (d), (5) (a), and (6) (a), consider changing each instance of the phrase “An observer shall be permitted to” to either “An observer may” or “An election official shall permit an election observer to”.

bb. In s. EL 4.05 (4) (e), each instance of the term “Special Voting Deputies” and “Special Voting Deputy” should not be capitalized.

cc. Consider eliminating s. EL 4.05 (4) (f) and rewriting (4) (d) to state “An observer shall be permitted to observe the process of absentee ballot distribution in the common areas of the home or facility, but may not enter a voter’s private room. A voter may opt to close his or her door or otherwise secure his or her voting privacy.”.

dd. In s. EL 4.07 (title), a period should be inserted at the end of the title.

ee. In s. EL 4.07 (1), what does it mean to “use video and still cameras outside of the voting area”? Does this mean that the recording equipment must be placed outside of the voting area, but may capture videos or images of actions within the voting area, so long as there is no disruption or interference, or recording of confidential information? Or does it mean that the physical placement of equipment and the images of actions must both be outside the voting area? It may be helpful to differentiate between the location of physical equipment and the location of the actions being captured.

ff. In s. EL 4.07 (2), consider rewording the last sentence to the active voice.

Wisconsin Elections Commission
Public Hearing on Wed., April 24, 2024, 1pm

Comments from Sandy Juno, Election Integrity, 616 Dauphin St., Green Bay, WI 54301

ACTION: Request to add definitions for “Voting” and “Casting a Ballot” to observer rules

7.41 Public's right to access.

(1) Any member of the public may be present at any polling place, in the office of any municipal clerk whose office is located in a public building on any day that absentee ballots may be cast in that office..., or at an alternate site under s. [6.855](#) on any day that absentee ballots may be cast at that site for the purpose of observation of an election and the absentee ballot voting process, except a candidate whose name appears on the ballot at the polling place or on an absentee ballot to be cast at the clerk's office or alternate site at that election. The chief inspector or municipal clerk may reasonably limit the number of persons representing the same organization who are permitted to observe under this subsection at the same time. Each person permitted to observe under this subsection shall print his or her name in and sign and date a log maintained by the chief inspector or municipal clerk for that polling place, office, or alternate site.

“Voting” definition - a formal indication of a choice between two or more candidates or courses of action, expressed typically through a ballot.

“Casting a ballot” definition - to vote in an election.

Our concern is about public accessibility to observe the return of all absentee ballots in the clerk's office from the period that absentee ballots are issued until 8pm on election day. The area of concern is the definitions of “voting” and “casting a ballot.” Our interpretation “voting” a ballot is the elector's selection of preferred candidates and referenda; and “casting a ballot” is the culmination of the voting process whereas the Clerk/poll worker has received the ballot either in person from the elector or assignee, or by mail, and the ballot is available for processing and tabulation. We feel these are two distinct and separate processes.

For example,

- An elector could “vote” a ballot by making candidate or referenda selections and can choose to either “cast his/her ballot or not.” If the “ballot is cast,” it is available for processing and tabulation. If the “ballot isn't cast,” it is not available for processing and counting.
- Likewise, an elector could choose to “vote” a blank ballot. If the “ballot isn't cast,” it is not available for processing and tabulation. If the blank “ballot is cast,” it's available for processing and tabulation.

Currently, the interpretation of WEC/Clerk's is that “voting a ballot” and “casting a ballot” are one in the same. As you can see from the above examples these are two distinct activities.

Therefore, the casting of absentee ballots is currently limited to In-person absentee voting (IPAV) and at polling locations on election day. This violates election observers' opportunities to witness the "casting of all ballots." Observers must be accommodated to fully observe the complete "casting of ballots" for the full absentee voting period through 8pm on election day. Partial witnessing is not in compliance with election transparency and observing rules.

Therefore, I am requesting that definition for "Voting" and "Casting a ballot" be added to the observer rules to clarify the two district activities and provide statewide guidance on observing activities.

Thank you for giving this your consideration.

Sandy Juno
920.819.9046
junosandra@yahoo.com

Mr. Hunzicker,

On behalf of the Republican National Committee, and pursuant to the Notice of Hearing concerning the permanent rule to create Wis. Admin Code Ch. EL 4 (Clearinghouse Rule 24-302), below are written comments concerning the foregoing rule (also, a copy of the comments are attached hereto). Please do not hesitate to contact me with any questions.

Comments

4.03(1) – This rule and section gives discretion to election officials/clerks to limit the number of observers representing an organization who are present at any one time at an observable location. It isn't clear, however, that the election official must allow sufficient observers representing an organization to observe all public aspects of voting. For example, if the ballot table, registration table, and ballot return areas are located in opposite areas and several feet away, the election official cannot limit observers in a way that does not allow sufficient observation of those separate areas. This proposed rule should be clarified to reinforce that the election official cannot limit the number of observers representing an organization in a way that does not allow such organization an ability to have observers present, and within 3-8 feet, of all public aspects of the voting process.

4.03(4) – This rule and section specifically indicates that observation areas should be 3-8 feet from registration, ballot, and remaking of ballot tables. However, it doesn't mention anything about return/deposit of ballot or witness certification of ballot. This proposed rule should be clarified to indicate that all public aspects of the voting process are observable, which would include ballot return/deposit or witness certification of a ballot.

4.03(9) – This rule and section indicates that an election official who is unable to accommodate the observation areas in (4) must record the reason the requirements are not met and send a copy to WEC within 60 days of the election. This makes it seem as if the public's right to observe are optional or, at the very least, may be limited if the election official provides explanation long after the election has concluded. However, that is not the case and the statutes are clear that the public has an absolute right to observe the public aspects of voting. Furthermore, there is no such process defined in statute. If anything, this rule should reiterate the election officials' obligation to provide observation areas that comply with the statute and that any potential issue or concerns with meeting those requirements should be addressed before the election and/or immediately, during the election, to ensure observer access.

4.03(14) – This rule and section pertains to the process when an observer violates the rules. Again, these proposed rules primarily emanate from Wis. Stat. § 7.41 and the public's absolute right to observe public aspects of the voting process. As such, the proposed rules should be primarily concerned with protecting those rights to observe the voting process. While it is understandable to include such a section concerning the process if an observer violates the rules, the proposed rules should also include a provision concerning the process if an election official violates the rules and the importance of immediately rectifying such violations to afford observers the access they are entitled to. Additionally, the proposed rule should also provide that a political party should be notified of the removal of an individual who identified as an observer

for that political party and the opportunity to provide a substitute observer for the corresponding location—particularly when the political party has no other observers at the location where the observer was removed.

4.04(6) – This rule and section indicates that no observer may engage in any loud, boisterous, or otherwise disruptive behavior that the election official believes threatens the orderly conduct of the election or interferes with voting or registration. This proposed rule, however, could be interpreted broader than the prohibition in Wis. Stat. § 7.41 indicating that if an observer commits an overt act that “disrupts the operation of the polling place,” the chief inspector may remove the observer. In particular, the inclusion of vague and subjective terms as “loud” and “boisterous” could lead to removal of observers for conduct that does not meet the standard in § 7.41, such as directing questions to the designated election official per 4.04(4) or challenging a voter per 4.04(5). To be consistent with the directive in the statute, this proposed rule should be limited to prohibit observers from behavior that disrupts the orderly conduct of the election or interferes with voting or registration.

4.04(7) – This rule and section states that observers are prohibited from creating or transmitting photos, videos, or audio recordings of any observable location except as expressly permitted by this chapter. As far as I can tell, the proposed rules only allow observers to take photos or videos when polls are closed, or during canvassing or at central count—although I think it would be better to specifically indicate those exceptions here as well. But, what about certain election violations, such as electioneering?

It would be better to have an exception that states that observers may do so during voting hours and outside voting areas, as long as voters are not present or to document electioneering. If nothing else, observers should have no less rights than the media, as set forth in proposed rule 4.07.

4.04(11) – This rule and section states that no observer may engage in any conversation concerning a candidate, party, or question appearing on the ballot. However, if an elector requests assistance from an observer pursuant to § 6.82(2)(a), the observer may have to converse about what is on the ballot. Perhaps this is rectified through subsection (15), but I suggest including an express cross reference. Furthermore, this should make clear that the prohibition only applies inside an observable location.

4.04(12) – This rule and section states that no observer may use a communication device (not defined) inside an observer area to make an audio or video communication. See the note, above, regarding 4.04(7). It would be better to have an exception that states they may do so during voting hours and outside of voting areas, as long as voters are not present or to document electioneering. Also, if media may be allowed to take photos or videos inside an observable location, but outside of the voting area (see 4.07), why are observers provided less rights to do so? Observers should have no less rights than the media.

4.05(2)(a) – This rule and section states, among other things, that the return of voted by-mail absentee ballots to a clerk’s office or alternate site by the US postal service 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. The statute does not use the language “issue and voting of absentee ballots,” but, rather, the statute states “on any day that absentee ballots may be cast at that site.” The language used in the statute should also be utilized here, which is not limited to just days in which absentee ballots are issued and voted.

It also raises the question: what if a voter returns a mail in ballot, in person, to the clerk during the day before or on Election Day? Do observers have a right to be present, either via 7.41 or simply due to their right to be present in a public building? The public would benefit from a rule that reiterates the public’s right to observe such activities.

4.05(3)(b) – Although it indicates that an observer may create or transmit photos, videos, or audio recordings of the observable location at central count/municipal board of absentee ballot canvassers, this rule and section excludes individuals depositing an absentee ballot or correcting an absentee ballot certificate envelope. There is no reason for such exclusion. First, use of “individuals” in relation to correcting an absentee ballot certificate envelope is misplaced. Only the voter and the original witness may correct the envelope. Likewise, only the voter, or an agent of the voter if he or she is disabled, may return/deposit the absentee ballot. The rule should indicate the same and utilize the precise language, rather than the broad term of “individuals.”

Furthermore, there is no reason to exclude such items from an observer’s right to take photos or videos since the canvass is open to the public pursuant to Wis. Stat. § 7.52. At most, the exception should only be limited to photos or videos that might depict information on a ballot or information that may display how an elector voted. Beyond that, however, observers should not be limited to their ability to take photos, videos, or recordings at central count.

4.05(4)(f) – This rule and section states that an observer shall not be permitted to enter a voter’s private room at a residential care facility and are only permitted to observe from a “common area.” Furthermore, it states that the voter may elect to close their door or otherwise secure their voting privacy.

This effectively could foreclose much of any ability for observers to observe the voting process in such facilities and, moreover, could increase the risk of SVDs soliciting, pressuring, or encouraging residents to deny observers the ability to observe the voting process in any meaningful way at such facilities. There is no statute that makes such an exception to an observer’s right to observe the public aspects of voting, which includes voting at residential care facilities. In order to be consistent with the statute, this rule should affirm that observers have the right to be permitted to observe such voting process. However, in order to provide privacy to certain voters, the rule should specify, first, that a member of the public has a right to observe the public aspects of the voting process of residents at such facilities and, second, that if a voter requests that an observer not be physically present in his or her room, the observer should be allowed to at least stand in the doorway of the room so that both the voting and the observer process remain intact.

4.04(5)(c) – This rule and section states that the election official shall establish at least one area in which observers may observe the proceedings during a recount. This is vague and could be interpreted to dramatically limit observers’ ability to observe the recount. As we know,

depending on the municipality, several tables may be needed for purposes of a recount and the public and political parties are entitled to observe each table and all steps of the recount. Wis. Stat. § 9.01(1)(b)11. The proposed rule should make clear that the election official shall establish enough areas to ensure that all steps of the recount process are viewable to observers, which may require more than one area for observers.

4.07(1) – This rule and section states that a media member may, at the discretion of an election official, use video and still cameras outside of the voting area, provided the cameras are not used in a manner that allows the recording of confidential information, including voted ballots, or that disrupts or interferes with voting or the orderly conduct of the election. While there is no objection to this rule, generally, it is important to point out that the media is given greater rights than observers in this regard (see 4.04(12)). As noted above, for purposes of an observer’s ability to take videos or photos, observers should have at least the same rights as the media.

Thank you for your time and consideration of the above comments.

Kindest regards,

KURT A. GOEHRE

Partner/Attorney

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Dear Brandon,

Please accept this letter containing my concerns regarding rules WEC are making for Poll Observers and Election Officials.

I plan to make a public comment during the 4/24/24 WEC meeting via Zoom which is limited to 4 minutes and my concerns are quite complex.

I have strong concerns regarding the wording in section EL 4.03 Conduct of election officials. The wording is still too ambiguous.

My concerns following the specific section are in **RED**

Sincerely,

John Harry Landwehr

Caledonia, WI

262 497 7670

(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.

WI State Legislators need to provide a definition of the phrase “Enable observers to readily observe all public aspect of the voting process” To an observer, “readily observe” means to have the ability, and the right to visually inspect all aspects of the public voting process; which includes but not limited to: Voter’s signatures, address, along with witness signature and address information appearing on every ballot certificates if requested. Since information appearing on the Ballot Certificate is required to vote, this information must be recognized by the Election Officials as being part of the “Public Aspect of the Voting Process” and must be subjected to visual observation from a distance information can be analyzed for accuracy.

The wording “Disrupting the Election Process” provides the opportunity for dishonest Election Official to prevent an Observer from having readily access to all aspects of the public voting process by simply claiming any request by the Observer is disrupting the voting process. This is how Election Observers will be prevented from performing their civic duty from Election Officials that choose to obstruct Election Observers from performing duties related to “Observing all aspects of the public voting process.” Defining such a basic and easily understood term is necessary because some Election Officials have separated Observers with glass partitions only to place brown paper on the glass to prevent any visual access to the Public Voting Process.

Election Observers want to simply observe: “all aspects of the public voting process” to verify each ballot processed is a legal ballot that meets all legal aspects as listed in WI and Federal Election Laws. Election Observers want to insure a fair and secure election by verifying that each ballot is cast by a voter that is a legal registered and is a legal resident in the municipality they are casting a ballot to elect a person to any elected office.

Observers intentions is not to disrupt the voting or tabulating process. Observers only responsibility is to verify the information appearing on each ballot certificate or verbally presented to Election Workers by perspective voters meets all legal aspects relating to eligibility of each perspective voter as defined in WI and Federal Election laws. Nothing more, nothing less.

The process in which all mail-in ballots are received, sorted, delivered to election workers, processed, tabulated and placed in secured storage all process that are part of the “Public Voting Process” and Election Observers must be allowed to have “Readily Access” to each process of the “Public Voting Process”.

There should not be a specific distance identified between Poll Workers and Poll Observers because information written on Mail-In Ballots cannot be analyzed sufficiently or observed readily from 3 feet away.

There is a simple solution: Take a digital image of all Ballot Certificates.

As mail-in ballots are processed by Poll Workers, ballots are placed in a stack which individual certificates are removed to be individually processed by Poll Workers. The stack of ballots can be placed under a camera where an image to be taken and projected on a large monitor to allow Observers to easily view information provided by the Voter and the Witness. This is done as the previous ballot is being processed by Poll Workers.

While Poll Workers are reading the name and address of the voter and assigning a tracking number to the first Ballot Certificate on the stack, the second ballot certificate can be analyzed by Poll Observers. It takes Poll Workers over 30 seconds to read aloud the name and address of a voter and write a tracking number on the certificate. This is sufficient time (30 seconds or more) for Poll Observers to analyze signatures, date, address and witness information to verify all voter and witness information is complete and the appearance of the lettering does not look suspicious in nature.

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.

Not providing a specific distance allows dishonest Election Officials to keep Election Observers at a greater distance than lettering on Ballot Certificates can be readily analysed. WI Election Law 7.41 Sections 1 and 2 provide a legal description for the distance required for Poll Observers to perform their duty; “Poll Observers “SHALL” have readily access of all aspects of the public voting process.” This legal explanation does not include a specific distance or “RANGE”. WI Election Law 7.41 clearly requires that Poll Observers “Shall” be able to visually view lettering on Ballot Certificates, because lettering on the Ballot Certificate is absolutely considered an aspect of the “Public Voting Process” because voter and witness information is required by WI Election Law to be legible on all Ballot Certificates so the ballot can be processed legally so voters can cast votes in accordance to WI and Federal Election Laws. Poll Observers ability to easily visually analyze lettering on Ballot Certificates is a “right” for all Poll Observers. This can easily be accomplished by projecting an image of the certificate on a monitor for Observers to analyze written lettering. Because Poll Workers “Shall have readily access to all aspects of the public voting process”, Poll Observers must be positioned behind Poll Workers that take personal information from citizens casting ballots in person. This is the only way for Poll Observers to have readily access as voters say their name and present a valid ID. Positioning Poll Workers behind the Citizen presenting identification blocks the view of the Poll Observer and prevents the Poll Observer from analyzing the ID presented because the Poll Observer cannot see the ID.

Election Official use of “Electronic Signature Pads” is illegal. This does not allow the voter to sign a legal document with their recognizable signature. Nobody signs an electric signature pad the same way they sign a signature on a piece of paper. The two signatures never look

alike; and so signatures on a ballot which are used to determine if a ballot is fraudulent cannot be used if a signature is not on paper and only on an electronic signathre pad. Electronic Signature pads are an illegal method to verify the authenticity of a voter's name and ID.

(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 an observer area to minimize contact between observers and voters and election officials. (7) An observation area shall be accessible to observers with disabilities and shall include sufficient space for mobility equipment, chairs, or other disability aids brought by an observer. (8) The designated election official shall permit an observer access to any available chair 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) In a manner established by the designated election official, election officials shall allow an observer to observe absentee ballot certificate envelopes that have been set aside to be rejected. (11) An election official shall permit an observer 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. (12) No election official may permit an observer to handle an original version of any official election document. 8 (13) No election official may permit an observer 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, verbally or in writing, warn an observer one time to cease the offending conduct. (a) If an observer does not cease the 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. (b) If the offending observer who is ordered to depart under par. (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 consistent with s. 7.37(2), stats. 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 available timely on a timely basis, 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. 9 (1) A 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 and 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 observable location 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 may direct 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 pursuant to s. EL 4.03(2)(a)1. (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) No observer may engage in any loud, boisterous, or otherwise disruptive behavior, that, in the discretion of the designated election official, threatens the orderly conduct of the election or interferes with voting or registration. (7) No observer may create or transmit photographs, videos, or audio recordings of any observable location except as expressly permitted by this chapter. (8) An observer shall keep conversation to a minimum and shall conduct whatever conversation is necessary at a low enough volume to minimize distraction to electors and election officials. (9) No observer may 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. 10 (10) No observer may display the name or likeness of, or text related to, a candidate, party, or referendum position appearing on the ballot, or display text which describes, states, or implies that the observer is an election official. (11) No observer may engage in any conversation concerning a candidate, party, or question appearing on the ballot. (12) 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. (13) 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 is not an election official. A brief wave or greeting to an individual known to the observer does not constitute a violation of this section. (14) An observer may communicate with the designated election official and any other election officials at the discretion of the designated election official. (15) Nothing in this chapter shall be construed to prevent an observer from assisting an elector in accordance with ss. 6.82, 6.87(5), or 6.875(6)(c)1., Stats., provided that the elector requests the observer's assistance.

EL 4.05 Location specific requirements. (1) POLLING PLACE. (a) An observer shall be allowed to observe beginning at 7 a.m. or whenever machines are zeroed out on Election Day, whichever is earlier, and ending at 8 p.m. or when the last voter who was in line to vote at or before 8 p.m. has finished voting. After 8 p.m., or after the last voter who was in line has voted, whichever is later, an observer may remain at the polling place to observe 11 canvassing under Wisconsin's open meetings law. If any observer is allowed access outside of the time frame provided herein, all observers shall be allowed the same access. (b) No observer may 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., 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 by the US Postal Service 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. (b) An observer shall be permitted to observe the initial enclosing and securing of an absentee ballot required under s. 6.88, Stats., that is received under par. (2)(a). (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 may create or transmit photographs, videos, or audio recordings of the observable location. However, an observer may not create or transmit any photographs, videos or audio recordings of any individual depositing an absentee ballot or correcting, under s. 6.87(9), Stats., an absentee ballot certificate envelope. (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 12 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. (e) The Special Voting Deputies may not permit any person other than a Special Voting Deputy or relative of the elector assisting the elector in marking the ballot to hear any discussion regarding the electoral choices of the elector. Special Voting Deputies must enforce the voter's constitutional right to cast a secret ballot, just as the individual is entitled to in other absentee or polling place settings. (f) An observer shall not be permitted to enter a voter's private room, however the observer shall be permitted to observe such voting from a common area in accordance with sub. (4)(d). The voter may elect to close their door or otherwise secure their voting privacy. (5) RECOUNT. (a) An observer shall be permitted to observe during all hours when a recount is occurring. (b) The petitioner, all opposing candidates, interested persons and their counsel, as described in 9.01(3), Stats., are not subject to the limitations of this chapter. (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. 13 (a) An observer shall be permitted to observe all counting of ballots occurring at a central counting location. (b) 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 such action is disruptive or interferes with the administration of the election. 4.07 Communications Media (1) A communications media member shall identify him or herself and any organization the communications media member represents to the designated election official upon arriving at the observable location. At the discretion of the designated election official, a communications media member may use video and still cameras outside of the voting area, provided the cameras are not used in a manner that allows the recording of any confidential information, including voted ballots, or that disrupts or interferes with voting or the orderly conduct of the election. (2) The designated election official may limit the amount of time any communications media member may use video and still cameras. Any limitations, rules, and regulations imposed on communications media members shall be uniformly applied. (3) A communications media member may act as an observer, but when so doing is subject to the provisions of this rule. SECTION 2. EFFECTIVE DATE. This rule takes effect

on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2), Stats

July 14, 2023

Wisconsin Election Commission Advisory Committee

Dear Brandon,

Please accept this letter, and the accompanying proposal, as the public comments of True the Vote, Inc. with respect to the proposed rules governing Conduct, Regulation, and Accommodation of Election Observers (“Rule 4”), currently under consideration by the Wisconsin Elections Commission Advisory Committee. This document is being submitted within the July 14, 2023 time frame allowed by the Commission. Kindly confirm receipt.

We wish to offer the following specific comments on the proposed Rule 4, which would, if adopted in current form, be contrary both to Wisconsin’s Constitution and to relevant statutes, as well as internally inconsistent, viz.:

- Violation of both the United States and Wisconsin Constitutions: The rule, as proposed, creates due process concerns by committing, to the unchecked discretion of election officials, the ability to impose potentially criminal penalties, on observers. In addition, EL 4.04(11) places an undue burden on free speech.
- Contrary to Wisconsin Statutes: The proposed language in EL 4.03(17) goes beyond the statutory authority of Wisconsin Stats. 7.41(3) and 7.41(5) regarding which officials have the authority to remove an observer. In addition, Wisconsin Stat. 7.41(5) grants authority to regulate *conduct at*, but not *access to*, polling places, whereas the proposed rule purports to control access not only to the election location, but also to information, to which observers should have access under the law.
- Novel definitions: the definitions of “Confidential information” under proposed EL 4.01(6) and “Public aspects of the voting process” under proposed EL 4.01(17) are circular and improperly create new categories of information that may be hidden from public view, contrary to Wisconsin Stat. 7.41(2).

In light of the foregoing problems with the proposed Rule 4, we offer, as a workable alternative, the attached substitute proposal, which we believe does not conflict with statutes or individual constitutional rights. It also meets the objectives set forth nearly 10 years ago by the Government Accountability Board (“GAB”) when, on July 21, 2014, it approved guidance governing election observers—which procedures have actually been referenced, including in elections training materials, across Wisconsin since that time. Indeed, such guidance is still included on the WEC website as of today’s date. If the substitute proposal looks familiar, that is because it is virtually identical to the Rule 4 procedures that have been used by municipal clerks and election officials for the past decade. We believe that to be a good base to work from.

Accordingly, we offer the accompanying substitute proposal, and urge that it be adopted in lieu of the constitutionally-, statutorily-, and logically problematic proposal currently under consideration.

Please contact me with any questions or comment.

Best,

Kenneth Dragotta
True the Vote

CHAPTER EL 4

ELECTION OBSERVERS

SECTION 1. EL 4 is created to read:

EL 4.01 Definitions.

(1) In this chapter:

(a) “Commission” means the Wisconsin Elections Commission.

(b) “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.

(c) “Clerk” means the municipal or county clerk, the executive director of the board of election commissioners, or the official designated by the clerk or director to carry out the election responsibilities under this chapter.

(d) “Communications media” has the meaning given in s. 13.62(5r), Stats.

(e) “Electioneering” has the meaning given in s. 12.03(4), Stats.

(f) “Inspector” or “election inspector” means any individual appointed pursuant to s. 7.30, Stats., to conduct an election at a polling place.

(g) “Member of the public” means any individual, excluding a candidate appearing on the ballot at that polling place or a registered write-in candidate for an office voted on at that polling place or other location.

(h) “Observer” means any member of the public who is present at any polling place, or in the office of any municipal clerk whose office is located in a public building on any day that absentee ballots may be cast in that office, or at an alternate site under s. 6.855, Stats., on any day that absentee ballots may be cast at that site, for the purpose of observation of an election or the absentee ballot voting process.

(i) “Public aspects of the voting process” means the election activities that take place at a polling place, or other observation location, that include the opening of a polling place prior to the commencement of voting, waiting in line to vote by electors, the election day registration process, the recording of electors under s. 6.79, Stats., the elector’s receipt of a ballot, the deposit of the ballot into the ballot box, a challenge to an elector’s right to vote, the issuing of a provisional ballot, and the counting and reconciliation process.

EL 4.02 Observers at the polling place.

(1) Any member of the public intending to exercise the right to observe an election under s. 7.41, Stats., shall notify the chief inspector of that intent upon entering the voting area of a polling place. An observer shall sign the election observer log. An observer shall present photo identification to an election inspector and also legibly list the observer's full name, street address and municipality, and the name of the organization or candidate the observer represents, if any, on the log. The chief inspector shall make available to each inspector a summary of the rules governing election observers. The inspector shall verify by marking on the log that the observer's name listed on the log matches the photo identification, and shall attach the log to the Inspectors' Statement, GAB 104. 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. The chief inspector shall provide the observer with a tag or badge which reads "Election Observer." An observer shall wear this tag or badge at all times when inside the polling place.

(2) If necessary due to physical limitations, the chief inspector may reasonably limit the number of observers representing the same organization or candidate.

(3) The chief inspector shall direct the observer to an area of the polling place designated by the chief inspector as an observation area.

(4) The observation area shall be situated to enable observers to readily observe all public aspects of the voting process during the election without disrupting the voting process. The observation area shall be reasonably sized and shall be not less than 3 feet nor more than 8 feet from the table at which electors are announcing their name and address to be issued a voter number, and not less than 3 feet nor more than 8 feet from the table at which a person may register to vote. If observers are unable to hear the electors stating their name and address, the poll workers shall repeat the name and address. If space constraints prevent the polling place from accommodating an observation area within the 3 – 8 feet distance, the municipal clerk and chief inspector shall record on the Inspectors' Statement the actual location of the observation area and the reasons why it could not be located within the 3 – 8 feet distance. The municipal clerk shall, within seven days of the election, provide to the board, the portion of the Inspectors' Statement which documents the reasons why the observation area could not be located within the 3 – 8 feet distance.

(5) Before remaking any ballot, election inspectors shall announce to observers that the ballot is being remade and the reason for doing so. Election inspectors shall also inform observers at the time that absentee ballots are inserted into ballot boxes or tabulating equipment.

(6) Observers should comply with the chief inspector's lawful commands or may be subject to removal from the polling place pursuant to s. 7.41(3), Stats.

(7) All observer questions and challenges should be directed to the chief inspector or to the chief inspector's designee.

(8) Upon receiving a challenge to a voter's ballot at the polling place, the chief inspector shall follow the challenge procedure in ch. EL 9. The challenge shall be recorded on the Challenge Documentation Form, EL-104c or EL-104cs.

(9) No observer may engage in any loud, boisterous, or other overtly disruptive behavior that disrupts the orderly conduct of the election or interferes with voting.

(10) While in the polling place, observers should 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 to the election inspectors and any other election officials.

(11) Observers shall be permitted to view the poll lists, excluding the confidential portions of the lists maintained under ss. 6.36(4) and 6.79(6), Stats., as long as doing so does not interfere with or distract electors under s. 5.35(5), Stats.

(12) No observer may be permitted to handle an original version of any official election document.

(13) No observer may engage in electioneering as defined in s.12.03, Stats.

(14) No observer may use a cellular telephone or other wireless communication device inside the voting area to make a voice call. Text messaging and other non-audible uses of such a device are permissible.

(15) The chief inspector may order that conversation be minimized if it is disruptive or interferes with the orderly conduct of the election.

(16) Nothing in this subchapter shall be construed to prevent any observer from assisting an elector under s. 6.82, Stats., provided that the elector requests the observer's assistance, and the assistance meets the other requirements of s. 6.82, Stats., and the observer qualifies to provide assistance under that statute.

(17) No observer may wear any clothing or buttons having the name or likeness of, or text related to, a candidate, party, or referendum group appearing on the ballot, or that is intended to influence voting at an election, or having text which describes, states, or implies that the observer is a governmental official or has any authority related to the voting process.

(18) No observer may use any video or still camera inside the polling place while the polls are open for voting.

(19) After the polls close, candidates are allowed to be present and the prohibition of video and still cameras does not apply unless it is disruptive or interferes with the administration of the election.

(20) The chief inspector shall:

(a) Warn an observer to cease offending conduct when:

1. The observer commits an overt act that violates a provision of this section which actually disrupts the operation of the polling place.

2. The observer violates s. 12.03(2) or 12.035, Stats.

(b) Order an observer to depart the polling place when an observer does not cease offending conduct following a warning under sub. (a). If the offending observer declines or otherwise fails to comply with the chief inspector's order to depart, the chief inspector shall take lawful action to implement the order, including summoning local law enforcement to remove the offending observer. In the event that a chief inspector orders an observer to leave the polling place, the chief inspector shall contemporaneously provide a written explanation to the observer which includes the reason for the order and the signatures of the chief inspector as well as another inspector representing the opposite political party of the chief inspector, if available. The chief inspector shall have sole authority to order the removal of an observer, but the other inspector may note his or her concurrence or disagreement with the decision on the Inspectors' Statement.

(21) If an observer is removed from a polling place pursuant to subsection (20) above, the municipal clerk shall, within seven days of the incident, provide to the commission a copy of the portion of the Inspectors' Statement which documents the incident. Board staff shall submit a summary to the board of all reported incidents in which observers were removed from the polling place or other locations pursuant to this chapter.

EL 4.03 Observers at the municipal clerk's office.

(1) Observers shall be permitted to be present at the municipal clerk's office, provided the clerk's office is located in a public building, or an alternate site for absentee voting designated under s. 6.855, Stats., on any day that absentee ballots may be cast in the office.

(2) Observers shall conform their conduct to the requirements of s. EL 4.02. The municipal clerk shall exercise the authority of the chief inspector under s. EL 4.02 to regulate observer conduct.

(3) The clerk shall establish observation areas to allow observers to readily view all public aspects of the absentee voting process without disrupting the voting process. The observation area shall be reasonably-sized and shall be not less than 3 feet nor more than 8 feet from the table at which electors are announcing their name and address to be issued a voter number, and not less than 3 feet nor more than 8 feet from the table or counter at which a person may register to vote. If space constraints prevent the municipal clerk's office from accommodating an observation area within that distance, the municipal clerk shall document the actual location of the observation area and the reasons why it could not be located within the 3 – 8 feet distance. No observer is allowed behind the counter in the clerk's office. The municipal clerk shall, within seven days of the election, provide to the board, the portion of the Inspectors' Statement which documents the reasons why an observation area could not be located in compliance with the 3 – 8 feet distance requirement.

(4) All observer questions should be directed to the clerk or to the clerk's designee.

(5) If any observer engages in any loud, boisterous, or other overtly disruptive behavior that actually disrupts the orderly conduct of the election or interferes with voting, the clerk shall issue a warning as set forth in s. EL 4.02(20)(a) and, if the observer does not cease the offending conduct, order the observer's removal as set forth in s. GAB 4.02(20)(b).

(6) No observer may use any video or still camera inside the clerk's office while voting is in progress.

EL 4.04 Observers at the central counting location.

(1) In a municipality using a central counting location under s. 5.86, Stats., observers shall be permitted to be present at the central counting location.

(2) Observers shall conform their conduct to the requirements of s. EL 4.02. The municipal clerk shall exercise the authority of the chief inspector under s. EL 4.02 to regulate observer conduct.

(3) The clerk shall establish observation areas to allow observers to readily view all public aspects of the counting process. The observation area reasonably-sized and shall be not less than 3 feet nor more than 8 feet from the table at which the counting is taking place without disrupting that process. If space constraints prevent the location from accommodating an observation area within that distance, the municipal clerk shall document the actual location of the observation area and the reasons why it could not be located within the 3 – 8 feet distance. The municipal clerk shall, within seven days of the election, provide to the board, the portion of the Inspectors' Statement which documents the reasons why the observation area could not be located within the 3 – 8 feet distance.

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

(5) If any observer engages in any loud, boisterous, or other overtly disruptive behavior that actually disrupts the orderly conduct of the count, the clerk shall issue a warning as set forth in s. EL 4.02(20)(a) and, if the observer does not cease the offending conduct, order the observer's removal as set forth in s. GAB 4.02(20)(b).

(6) Observers shall be permitted to use a video or still camera inside the central count location unless in doing so it actually disrupts the administration of the election.

(7) All observer questions and challenges should be directed to the clerk or the clerk's designee.

EL 4.05 Observers at absentee ballot canvass.

(1) In a municipality using a central absentee ballot canvass location under s. 7.52, Stats., observers shall be permitted to be present at the canvass location.

(2) Observers shall conform their conduct to the requirements of s. EL 4.02. The board of absentee ballot canvassers shall exercise the authority of the chief inspector under s. EL 4.02 to regulate observer conduct.

(3) The board of absentee ballot canvassers shall establish observation areas to allow observers to readily view all public aspects of the canvassing process. The observation area shall be reasonably-sized and not less than 3 feet nor more than 8 feet from the table at which the canvassing is taking place. If space constraints prevent the location from accommodating an observation area within that distance, the municipal clerk shall document the actual location of the observation area and the reasons why it could not be located within the 3 – 8 feet distance. The municipal clerk shall, within seven days of the election, provide to the board, the portion of the Inspectors' Statement which documents the reasons why the observation area could not be located within the 3 – 8 feet distance.

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

(5) If any observer engages in any loud, boisterous, or other overtly disruptive behavior that actually disrupts the orderly conduct of the count, the board of absentee ballot canvassers shall issue a warning as set forth in s. GAB 4.02(20)(a) and, if the observer does not cease the offending conduct, order the observer's removal as set forth in s. GAB 4.02(20)(b).

(6) Observers shall be permitted to use a video or still camera inside the absentee canvass location unless it actually disrupts the administration of the absentee ballot canvass.

(7) All observer questions and challenges should be directed to the member of the board of absentee ballot canvassers designated to receive questions and challenges.

EL 4.06 Observers at absentee voting in certain homes, facilities, and complexes.

(1) 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.

(2) The conduct of any observer shall conform to the requirements of s. GAB 4.02. The special voting deputies shall exercise the authority of the chief inspector under s. GAB 4.02 to regulate observer conduct.

(3) The special voting deputies shall establish observation areas to allow observers to readily view all public aspects of the absentee voting process without disrupting the voting process. The observation area shall reasonably-sized and be not less than 3 feet nor more than 8 feet from the location at which electors are marking their ballots. If space constraints prevent the facility from

accommodating an observation area within that distance, the special voting deputies shall document the actual location of the observation area and the reasons why it could not be located within the 3 – 8 feet distance. Notwithstanding the 3 – 8 feet distance requirement, the observation area shall not be situated to permit observers to hear any conversation between the elector and an individual who is assisting the elector in marking the ballot.

(4) If any observer engages in any loud, boisterous, or other overtly disruptive behavior that actually disrupts the orderly conduct of the absentee voting process, the special voting deputies shall issue a warning under s. EL 4.02(20)(a) and, if the observer does not cease the offending conduct, order the observer's removal under s. EL 4.02(20)(b).

(5) No observer may be permitted to use a video or still camera inside the voting location.

(6) All observer questions should be directed to the special voting deputies.

EL 4.07 Observers at a recount.

(1) Pursuant to s. 9.01(1)(b)11., Stats., the recount of any election shall be open to any interested member of the public, including candidates and their counsel.

(2) Observers shall conform their conduct to the requirements of s. EL 4.02. The board of canvassers shall exercise the authority of the chief inspector under s. EL 4.02 to regulate observer conduct.

(3) The board of canvassers may limit observers to a designated area, but the observers shall be positioned so that they can see the poll lists and each individual ballot as it is counted. If there is not enough room for all observers to view the ballots as they are being counted, visual preference shall be given to the candidates or their representatives.

(4) If any observer engages in any loud, boisterous, or other overtly disruptive behavior that actually disrupts the orderly conduct of the count, the board of canvassers shall issue a warning as set forth in s. EL 4.02(20)(a) and, if the observer does not cease the offending conduct, order the observer's removal as set forth in s. EL 4.02(20)(b).

(5) Observers shall be permitted to use a video or still camera inside the recount location unless it actually disrupts the administration of the election.

(6) All observer questions and challenges should be directed to the member of the board of canvassers designated to receive questions and challenges.

(7) The observation area and conduct of observers at a recount may be more specifically governed by a recount plan adopted by the board of canvassers consistent with the public's right to observe the recount process and the ability of election officials to conduct the recount.

EL 4.08 Communications media observers.

(1) Observers from communications media organizations shall identify themselves and the organization they represent to the chief inspector upon arriving at the polling place. The inspector shall record that information on the Inspectors' Statement, EL-104.

(2) Communications media observers shall be permitted to use video and still cameras provided the cameras are not used in a manner that allows the observer to see or record how an elector has voted and provided the cameras do not disrupt or interfere with voting or disrupt the orderly conduct of the election. The Board 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 Board.

EL 4.09 Polling place accessibility assessments.

(1) This section applies to disability advocates and other individuals authorized by the board to assess the compliance of a polling place with s. 5.25(4)(a), Stats.

(2) When practical, groups and individuals observing under this section shall notify the clerk at least 24 hours in advance of their intent to assess polling place accessibility.

(3) Disability advocate observers shall be allowed out of the designated observation area to take accessibility measurements to ensure compliance with polling place accessibility requirements unless it is disruptive or interferes with the administration of the election.

(4) Disability advocate observers shall be allowed to take photos and video to document compliance with the accessibility requirements unless it is disruptive or interferes with the administration of the election.

(5) Disability advocate observers shall be allowed to wear shirts or name tags identifying themselves as disability advocate observers.

(6) Election officials, including poll workers, shall facilitate the work of disability advocate observers in making accessibility assessments.

April 24, 2024

Dear Commissioners and Commission Staff,

Thank you for the opportunity to submit comments on the proposed rule governing the conduct of election observers. As currently drafted, EL-4 strikes a thoughtful, practical balance that acknowledges the importance of transparency for observers while protecting the paramount right of eligible voters to easily cast their ballots with privacy and without intimidation. The draft rule also recognizes that, in a state with as decentralized an election system as ours, it is critical to grant our local election administrators discretion to be able to determine what will best suit the needs of their communities.

We would like to begin by thanking the Commission for the opportunity to participate in the Poll Observer Rulemaking Advisory Committee over the past year. We were grateful to have a seat at the table for this important conversation and for the opportunity to nominate members to the committee with a diverse set of experiences and expertise with Wisconsin elections. Thank you in particular to the WEC staff who worked hard to coordinate and moderate the committee meetings and guide the draft rule through each step of the process.

Turning to the substance of the draft rule itself, we would like to highlight a few notable decision points where we believe the Commission made the right choice for voters, election officials, and observers alike. *First*, we strongly agree with draft rule 4.05(4)(f) that prohibits observers from entering a voter's private room during Special Voting Deputy (SVD) visits. In a residential care facility, voters' rooms are their homes; this draft language protects these voters' privacy and, just as importantly, their dignity. *Second*, draft rule 4.05(2)(a) appropriately limits observable hours during in person absentee voting to times in which absentee ballots are being issued and voted. This limitation appropriately tracks the language of Wis. Stat. 7.41, which limits the public's right of access to "any day that absentee ballots may be cast at that" office or site. *Third*, we agree with the Commission's decision in draft rule 4.03(4) regarding placement of the observation area to hew to the statutory text, rather than to artificially prioritize where the observation area should be placed. This preserves needed discretion for election administrators to arrange their polling place in the way that will best serve their voters' needs within the sometimes limited confines of the buildings available to them as polling places.

If we could suggest one change, we would prefer to uniformly apply the language of draft rule 4.04(7), which prohibits observers from taking photographs, videos, or audio recordings. Specifically, we do not think observers should be allowed to engage in these behaviors at Central Count locations, as is permitted by draft rule 4.05(6)(b). As the Commission is well aware, absentee voting in Wisconsin and our Central Count sites in particular have been the



targets of significant scrutiny and political posturing from major statewide and national figures. As has also been widely reported, there has been significant turnover among election workers because of threats and intimidation.¹ Given these heightened political sensitivities around Central Count, we worry this could subject poll workers at those locations to intense and intimidating scrutiny and potential harassment.

Thank you again for the opportunity to participate in this process. We look forward to seeing the new rule pass and, as we have always done, will work diligently to train WisDems election observers to scrupulously adhere to the new rule to ensure a smooth process for voters and a productive relationship with election officials.

Respectfully submitted,

/s/ Caroline Hutton
Caroline Hutton
Voter Protection Director
Democratic Party of Wisconsin

¹ See, e.g., Rubin Edlin and Lawrence Nordin, “Poll of Election Officials Shows High Turnover Amid Safety Threats and Political Interference,” *Brennan Center for Justice* (April 23, 2023), available at <https://www.brennancenter.org/our-work/analysis-opinion/poll-election-officials-shows-high-turnover-amid-safety-threats-and>. Indeed, we note, with great sadness that such measures are necessary, that Administrator Meagan Wolfe has had to receive increased security to guarantee her safety amidst threats of violence. See Anya Van Wagendonk, “Wisconsin elections chief Meagan Wolfe receives increased security,” *Wisconsin Public Radio* (April 15, 2024), available at <https://www.wpr.org/news/wisconsin-elections-commission-meagan-wolfe-increased-security>.

To: Members of the Wisconsin Election Commission and Staff
From: Lisa Hassenstab, Disability Rights Wisconsin, lisah@drwi.org
Re: Comments on WEC Election Observer Rule
Date: April 24, 2024

Thank you for the opportunity to share written comments on the Wisconsin Elections Commission Election Observer Rule. Disability Rights Wisconsin (DRW) appreciated the opportunity on the advisory committee for this rule and is pleased to support the rule as presented for consideration. DRW affirms the value of this rule's intent to "clarify and bring uniformity to election observation for the benefit of voters, election officials, and observers". Key in this from DRW's perspective is ensuring equity and access for participants in the election process, including observers, who have disabilities. This proposed rule includes a number of practices to ensure this equity and access, and DRW believes adequate implementation of these practices will be beneficial for all participants in the electoral process.

Of primary note:

EI 4.02 Definitions

(1) "Accessibility reviewer" means an individual authorized by the Commission who monitors compliance with s. 5.25(4)(a), Stats. An accessibility reviewer is not an observer under this chapter.

This is an important distinction as accessibility reviewers have a different role than observers. Accessibility reviewers must be able to move around the polling place, speak with election workers, and take photographs.

EL. 4.03 Conduct of Election Officials

(7) An observation area shall be accessible to observers with disabilities and shall include sufficient space for mobility equipment, chairs, or other disability aids brought by an observer.

(8) The designated election official shall permit an observer access to any available chair within the observable location and with the same access to restrooms available to election officials at the observable location.

DRW supports this language for observation areas to be accessible to observers with disabilities and for observers to be able to access available chairs and restrooms. DRW is concerned by reports that some polling places have denied observers the use of a chair and access to restrooms.

EL 4.05 Location specific requirements

(4) Absentee Voting in Residential Care Facilities and Retirement Homes

c. Observers shall comply with any requirements imposed on visitors by a facility served by special voting deputies.

DRW strongly supports this language. Resident safety must come first. Some facilities have reported that observers or SVDs have been unwilling to comply with facility requirements that are in place to protect the health and safety of vulnerable residents, which is unacceptable.

d. 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) The Special Voting Deputies may not permit any person other than a Special Voting Deputy or relative of the elector assisting the elector in marking the ballot to hear any discussion regarding the electoral choices of the elector. Special Voting Deputies must enforce the voter's constitutional right to cast a secret ballot, just as the individual is entitled to in other absentee or polling place settings.

(f) An observer shall not be permitted to enter a voter's private room, however the observer shall be permitted to observe such voting from a common area in accordance with sub. (4)(d). The voter may elect to close their door or otherwise secure their voting privacy.

DRW strongly supports this language, which allows for resident rights and voter privacy to remain intact. While the common areas are considered a polling place, a resident room specifically is not a polling place. No election observer needs to nor should have access to the private residence of a voter, especially a bedroom.

We thank Commissioners and staff for your consideration of these comments and for the focus on ensuring a clear and supportive environment for voters, election officials, and observers.

Comments on Proposed Rule Wis. Admin Code Chapter EL 4

Introduction

The Center for Election Confidence (CEC) submits these comments to the Wisconsin Election Commission (WEC) to highlight the critical role election observers play in securing and ensuring confidence in the electoral process. CEC encourages WEC to reconsider aspects of the proposed rule prior to finalizing it or, in alternative, withdrawing it entirely as current standards are entirely capable of safeguarding elections, election workers, voters, and observers.

The role of observers cannot be understated. Since states adopted the Australian electoral system in the early to mid-1800s, observers have played an integral role in the process. As early as 1934, Dr. Joseph Harris noted that “[i]t is generally believed that the honesty of elections is safeguarded by having at the polls representatives of the several political parties as official watchers and challengers.”¹

According to the Lawfare blog and the Stanford-MIT Healthy Elections Project, observers “are a cohort of people who watch over the U.S. voting process by reporting on inconsistencies, flagging election violations, and challenging the authenticity of voters. These [observers] have significant roles and responsibilities that play a major role in elections nationwide.”²

Nearly every state permits observers in some capacity, though the regulations on them vary widely.³ Most state laws focus on the ability of the public to “view some parts of the election process” with a number of states providing “broad access to view the election process so long as [observers] are not disruptive.”⁴

This comment shall start with the text of the relevant law, then move on to the Rule itself.

Wisconsin Election Law Promotes Public Observation of the Electoral Process

While the proposed Rule cites a few statutes as those it is seeking to interpret, one stands above the rest: Wis. Stat. § 7.41. In that statute, entitled “Public’s right to access,” the Wisconsin Legislature protected the right of the public to “be present at any polling place, in the office of any municipal clerk whose office is located in a public building on any day that absentee ballots may be cast in that office, or at an alternate site under s. 6.855 on any day that absentee ballots

¹ Joseph P. Harris, Ph.D, *Election Administration in the United States*, Brookings Institution Press, 1934, p. 232. Available online at <https://www.nist.gov/itl/election-administration-united-states-1934-joseph-p-harris-phd>.

² Jacob McCall, Mathew Simkovits, Haley Schwab, *Election Observation: Rules and Laws*, Lawfare, October 19, 2020, <https://www.lawfaremedia.org/article/election-observation-rules-and-laws>.

³ See generally, National Conference of State Legislatures, *Policies for Election Observers*, Updated Nov. 7, 2022, <https://www.ncsl.org/elections-and-campaigns/policies-for-election-observers>.

⁴ Id.

may be cast at that site for the purpose of observation of an election and the absentee ballot voting process.” § 7.41(1).

To achieve that purpose, the Legislature both provided elections officials certain authority while limiting its exercise to specific situations. To ensure that officials can fulfill their responsibilities, the chief inspector or municipal clerk “may restrict the location of any individual exercising the right under sub. (1) to certain areas within a polling place, the clerk’s office, or alternate site” provided by law. *Id.* at (2). Importantly, that observation area “shall be not less than 3 feet from nor more than 8 feet from the table at which electors announce their name and address to be issued a voter number at the polling place, office, or alternate site and not less than 3 feet from nor more than 8 feet from the table at which a person may register to vote at the polling place, office, or alternate site.” *Id.*

To prevent officials from placing the observation area too far away from the election or absentee voting process, frustrating the purpose of the law, the statute requires officials to position it in such a way that “any election observer [may] readily observe all public aspects of the voting process.” *Id.*

To further limit officials’ discretion, they may only order individuals removed if they commit “*an overt act* which does any of the following: (a) *Disrupts the operation* of the polling place, clerk's office, or alternate site under s. 6.855. (b) Violates s. 12.03 (2) or 12.035.” § 7.41 (3) (emphasis added).

While the public has a statutory right to observe the electoral process, the right has some limitations, all of which are designed to protect voters’ privacy. Any observer, therefore, cannot “view the confidential portion of a registration list ... or a poll list.” § 7.41(4). To ensure observers can fulfill their responsibilities, the Legislature requires officials to disclose to observers, “upon request, the existence of such a list, the number of electors whose names appear on the list, and the number of those electors who have voted at any point in the proceedings.” *Id.*

The Proposed Rule Conflicts with State Election Law

The proposed Rule often fails to give effect to the Legislature’s purpose for enacting § 7.41. By failing to give effect to the text and purpose for the law, the Rule will hamper the public’s right to observe elections. Because the proposed Rule often conflicts with the law, the Rule should be revised to ensure that officials cannot, under its guise, unlawfully deprive the public of its rights to observe the electoral process.

In EL 4.03(4), the Rule restates the law with respect to the size and location of observation areas but omits a critical phrase from the law. Specifically, after describing the location as “not less than 3 feet nor more than 8 feet from each table at which electors announce their names and addresses,” the law – but not the Rule – adds that the observation areas “shall be so positioned to permit any election observer to *readily observe all public aspects of the voting process.*” § 7.41(2) (emphasis added).

The Legislature added this provision to override “an existing [Government Accountability Board] rule that allowed observers to be between 6 and 12 feet from the location where voters were announcing their presence and registering to vote.” *One Wisconsin Institute, Inc. v. Thomsen*, 198 F.Supp.3d 896, 944 (W.D. Wis. 2016), *rev’d on other grounds, Luft v. Evers*, 963 F.3d 665 (7th Cir. 2020). According to the court, the Legislature was motivated to change the

standard because “a select group of election observers complained that officials were invoking the GAB’s rule to keep them too far away to be able to hear and see events at polling places.” *One Wisconsin*, 198 F.Supp.3d at 944.

The Legislature, then, adopted the law to ensure that elections and the processing of absentee ballots is a process open to the public and that the public has certain rights to meaningfully observe the process. And, in so doing, it partially limited the discretion of officials with respect to the conduct of the election.

The proposed Rule, though, threatens to return Wisconsin to the pre- § 7.41 standards, as it could lead to officials imposing the very limits cited by the court as the motivation for the law. By proposing standards conflicting with state law and providing county and local election officials broader discretion than the Legislature intended, the Rule may lead officials to implement different standards for public observation, violating United States constitutional protections requiring “equal treatment and fundamental fairness” in the administration of election law standards. When states lack uniform standards, those inconsistencies fail to “sustain the confidence that all citizens must have in the outcome of elections.”⁵

The Rule permits an election official, for example, to “order an observer to depart from an observable location” if he or she violates the Rule, “or any applicable election statute” for the ill-defined offense of “offending conduct.” EL 4.03 (14). While the Rule later states that “no observer may engage in any loud, boisterous, or otherwise disruptive behavior, that *in the discretion of the designated election official*, threatens the orderly conduct of the election or interferes with voting or registration,” the phrase “offending conduct” does not appear in the statute and appears to exceed the authorities granted by the law. *See* EL 4.04(6) (emphasis added). The Rule also requires observers to “keep conversation[s] to a minimum and shall conduct whatever conversation is necessary at a low enough volume to minimize distraction[s] to electors and election officials.” *Id.* at (8).

While some discretion may be necessary when determining disruptive behavior, the law requires more while providing an adequate remedy for actual disruptions. It allows appropriate election officials to “order the removal of any [observer] committing an *overt act*” which “*disrupts the operation of the polling place, clerk’s office, or alternate site*” established by law or who engages in prohibited electioneering as defined by Wis. Stat. §§ 12.03(3) or 12.035. § 7.41(3) (emphasis added). The coupling of an overt act with the disruption of operations balances the public’s right to observe the electoral process with officials’ “authority to protect voters from *unruly* observers.” *One Wisconsin*, 198 F.Supp.3d at 945.

The Rule could lead to the partisan removal of observers. It recognizes that an official, affiliated or appointed by one political party, may issue an order to remove an observer affiliated with the opposing political party or a candidate of the opposing political party. EL 4.03(14)(c). When the election official exercises this authority to remove an observer, he or she must provide “an election official representing the opposite political party ... the opportunity to sign the written order, and to note any concurrence or disagreement with that order,” yet any disagreement is moot as it “does not affect the enforceability of that order.” *Id.*

The nature of politics reveals why this is a problem: without any form of limiting or controlling language, an official may remove members of the public, under the guise of “disrupting the

⁵ *See Bush v. Gore*, 531 U.S. 98, 109 (2000).

operation of the polling place,” based solely upon the perceived support for a candidate or political party. To remedy this, WEC ought to clarify that such removal must be based on overt acts disrupting the operation of the polling place rather than association with a candidate or party and that the mere presence of the observer can never constitute “offending conduct.”

The Proposed Rule is Internally Inconsistent or Ambiguous

Various provisions of the Rule conflict with one another or are otherwise ambiguous. For example, EL 4.03(6) provides that officials “shall position an observer area to minimize contact between observers and voters and elections officials,” while permitting observers to “direct questions to the designated election official or other election officials” and to challenge “a voter for cause” pursuant to various laws. EL 404(4), (5). Putting aside the issue that an official could also consider such questions as “disruptive behavior that ... threatens the orderly conduct of the election,” if the observation area is placed to minimize the contact, the placement may make it very difficult, or impossible, for observers to exercise their statutory rights. WEC should revise the Rule to make it clear both that the observation areas should be placed in a way to facilitate necessary interactions between the appropriate official and observer and that the observer is not disrupting the operation of the polling place when exercising his or her statutory rights.

Various definitions in the rule, including those of “organization” and “representing the same organization” are ambiguous and fail to account for the legitimate roles of political parties and nonpartisan organizations training members of the public. Those definitions are inconsistent with the law’s text and purpose. According to the Rule, an organization is “an organization represented by an observer at an observable location ... and shall not be construed to be limited to political parties, candidates, or campaigns.” EL 4.02(15). Just a few paragraphs later, the Rule defines the phrase “representing the same organization” as “individuals who were deployed, assigned, trained by, or who identify as representing the same organization.” *Id.* at (18).

First, the Rule should not use the term “organization” to define “organization.” Is an organization a state political party, a local political party, a campaign, a nonprofit organization, a civic association, or other collection of people instituted for specific purposes?

Second, political parties, candidates, and campaigns often rely on observers trained by common organizations, though the members of the public may exercise their rights for differing reasons or causes. The Democratic or Republican Parties train members of the public to observe the electoral process, as do nonpartisan organizations. Those members of the public, in turn, may be friends with candidates for state representative, state senator, candidates for county or local office, or even involved in their local political parties. Independent of each other, these individuals may want to observe the election in a specific county on behalf of their friends. Because the definitions exclude individuals “trained by ... same organization,” strict application of the Rule could eliminate all but one or two members of the public per county or precinct and would frustrate the “the right that observers have to be present at the polls” should those individuals participate in trainings offered by the parties or nonpartisan organizations. *See One Wisconsin Institute*, 198 F.Supp.3d at 945 (emphasis added).

Political parties and nonpartisan organizations, furthermore, often incorporate the law and existing regulations into their training. When members of the public attend the training, they are better prepared to follow the rules and fulfill their critical functions to promote confidence in the

electoral process. The current text of the rule would disincentivize training, leading to a less educated and prepared public.

The definitions conflict with the law, as the latter emphasizes that “[a]ny member of the public may be present at any polling location,” excepts a “candidate whose name appears on the ballot” from the definition of “the public,” but then allows the relevant election official to “reasonably limit the number of persons representing the same organization.” § 7.41(1). Ambiguously defining “organization” and limiting training opportunities unreasonably limits the public’s exercise of its statutory rights.

CEC would recommend revising the language of both EL 4.02(15) and (18) to reflect that political parties and nonpartisan organizations may train members of the public to observe elections and the absentee ballot voting process. The Rule should reflect that political parties and nonpartisan entities may benefit officials and the operation of the polling place through the education and training of the public.

Conclusion

Observers have played, and will continue to play, a critical role in ensuring confidence in the electoral process. The Rules, as currently proposed, will create confusion, create the opportunity for perceived or actual disparate treatment of observers, and fail to account for the Wisconsin Legislature’s reason for adopting § 7.41. Several of the provisions are contrary to existing law while other provisions unnecessarily conflict with each other. CEC would recommend ensuring that the provisions cited in the Comment reflect the plain text of the statute, the intent of the Legislature in promoting the public observation of the process, and the roles political parties and nonpartisan organizations share ensuring that observers are well-trained.

Respectfully submitted this 24th day of April, 2024,

By: *Electronically signed by Lane Ruhland*

Lisa L. Dixon, Executive Director
Center for Election Confidence, Inc.

Lane Ruhland
Ruhland Law and Strategy, LLC

TO: Legislative Members of the Joint Committee for Review of Administrative Rules,
Wisconsin Elections Commissioners and Staff

FROM: Jay Heck, Executive Director of Common Cause in Wisconsin

DATE: April 24, 2024

RE: Statement from Common Cause Wisconsin on Wisconsin Election Commission Rule on
Election Observer, Rule EL 4

Common Cause Wisconsin (CC/WI) supports the Wisconsin Elections Commission (WEC) Draft Election Observer, Rule EL 4, which establishes much needed clear rules and standards for election observers. Founded in 1970, CC/WI is the state's largest non-partisan citizens political reform advocacy organization with more than 8,000 members and activists in every county in Wisconsin.

Common Cause Wisconsin has recruited volunteer observers over many years and for several election cycles to be able to have our members observe and monitor the election process at polling locations throughout the state. Members of CC/WI have long been eager to have an opportunity to be part of the Wisconsin Election Protection programs in many different capacities, but they have particularly emphasized the value and importance of being trained as nonpartisan election observers by the League of Women Voters of Wisconsin for Election Day.

Common Cause Wisconsin was an active participating member of the WEC Election Observer Advisory Committee to assist with the development of the draft rule. It is the position of CC/WI that election observers need clear rules in order to carry out their tasks at polling locations, and the legislative approval of the Draft Election Observer Rule EL 4 will help protect voting rights while informing observers to be able to better cooperate with election officials. The rule seeks to benefit observers but will also preserve and enhance access to the election process, and help improve transparency, security, and confidence in Wisconsin's elections.

Common Cause Wisconsin supports Draft Election Observer Rule EL 4 in establishing clear rules and standards for observers at the state's thousands of polling places. The rule strikes a careful and important balance between the election officials being able to carry out their jobs, an observer's access and ability to be able to view the voting process, and a voter's right to privacy and confidentiality while casting a ballot.

The rule is also comprehensive and responsive to the many points of concern members of the advisory committee named specifically at the meetings. These areas include the use of recording equipment, how observers can interact with voters and election officials while in the polling place, respecting a voter's right to privacy and the handling of confidential information, an observer's role when working with Special Voting Deputies, the safety and authority of election officials and chief inspectors, and maintaining an open and transparent process that is observable. The rule ensures the basic needs of election observers are met, such as access to restrooms, access to the voting process without interfering with election officials and voters, and receiving disability-related accommodations.

Common Cause Wisconsin recognizes the challenging task the WEC staff had in compiling comments, first-hand accounts, and feedback of the advisory committee with various nonpartisan organizations and active political parties in the state who often work with election observers. WEC staff and commissioners spent many hours facilitating the advisory committee, considering outside input from individuals and organizations, and having honest discussions about how to improve the role of the election observer. The commissioners should be commended for finding common ground in the submitted draft of this rule in areas they initially had disagreements. As a result, this rule reflects fairness with clear, applicable expectations of election observers.

Observers, voters, and election officials rely on clear information from the WEC and the legislature. Common Cause Wisconsin supports Draft Election Observer Rule EL 4 and requests that the Joint Committee for Review of Administrative Rules move to pass this rule as written (with discussion and consideration of the Clearinghouse Rule 24-032 Wisconsin Legislative Council comments that offer clarifying suggestions)¹. Establishing clear rules and standards for election observers across the state will help improve citizen confidence in the voting process and help observers in their important role of witnessing the election process.

1

https://docs.legis.wisconsin.gov/code/misc/chr/lc_filed/2024/032/cr_24_032_lc_clearinghouse_document_032_p_h.pdf



612 W. Main Street, #200
Madison, WI 53703

Phone: (608) 256-0827
www.lwwwi.org



Date: April 24, 2024

To: Wisconsin Elections Commission

From: The League of Women Voters of Wisconsin

Re: Public Comments for Wisconsin Elections Commission Regarding Draft Rule Chapter EL 4 - Election Observers

Thank you for the opportunity to submit public comments on behalf of the League of Women Voters of Wisconsin regarding Draft Rule Chapter EL 4 - Election Observers. The League has conducted our nationally recognized nonpartisan election observer program in Wisconsin for over 10 years. As one of the organizations with the largest nonpartisan election observer programs, we have a vested interest in the administrative rule governing the roles and responsibilities of both election observers and officials. The League has closely monitored this administrative rule-making process and would like to express our support for the rule as drafted.

We would like to begin by acknowledging the diligent effort put into drafting the language of this administrative rule. We commend the WEC staff for dedicating their time to crafting this rule and for actively seeking and incorporating feedback from the public as well as an advisory committee made up of over 25 stakeholders from across the political spectrum. We especially want to recognize Staff Attorney Brandon Hunzicker for skillfully facilitating the advisory committee meetings, which served as a model for civil dialogue. Staff members were respectful, ensured everyone's voice was heard, and effectively applied feedback from the committee to improve the draft rule.

We appreciate the robust dialogue among committee members and believe it has significantly enhanced the rule. Some key aspects of the currently drafted rule that we support and would like to highlight include:

- Clear definition of communications media.
- Requirement for election officials to announce to observers when a ballot is being remade and the reason for doing so.
- Allowance for observers to view rejected absentee ballot certificate envelopes.

- Protections for observers to have access to chairs and bathrooms as well as ensuring reasonable accommodations for observers with disabilities.
- Respect for the privacy of voters assisted by Special Voting Deputies, particularly in their private rooms or private living spaces in residential care facilities. Every voter deserves to cast their vote with dignity and respect, irrespective of age, zip code, or disability status. Voters served by Special Voting Deputies are entitled to the same right to privacy all voters can expect to maintain while voting in their private residences.
- Required documentation and reporting in the case an observer is removed from the polling place. This requirement is a crucial aspect of the rule that protects both observers and election officials while ensuring proper procedures are followed.

We believe that this administrative rule, as currently written, establishes clear and consistent guidelines for election officials and observers. It strikes a necessary balance between transparency for observers and the ability of election officials to carry out their duties effectively. Most importantly, it prioritizes voters' rights to vote without intimidation or interference. Adopting this rule is a crucial step in ensuring a smooth and intimidation-free voting experience for Wisconsinites.

Thank you for your consideration.

Ardis Cerny <ardiscerny@gmail.com>

EL 4.03 (2)(b) and (4)

There are multiple ballot table and registration tables at a polling place. As required in state law observers are to observe all aspects of the voting process. There should be an observation area at each of the registration tables and the ballot tables. If the observation areas were placed 3 feet instead of 8 feet there would be room to make this accommodation. In Milwaukee at the Capitol Dr. polling place there were 8 tables all lined up. The observation areas were at either end thereby making it impossible to observe the 6 tables in between.

There should at least be observing areas between each table.

EL 4.03 (9)

I have found while observing that the election officials purposely limit the observer areas, they do not want to be bothered with us. They have a negative attitude toward us. But being positioned in places too far away to see and to hear ends up being a farce and a waste of time. We have every right to be there and should be shown that respect.

EL 4.03 (11)

How do we observe the poll lists when Badger Books are in use? Do we ask the poll worker to show us their screen as to the names of those who have voted and those that have not? According to statute each ward is required to have a paper poll book to view as to who has voted and who has not. Where are they???

Speaking of Badger Books, where does it say in statute that the citizen is required to hand over their ID to the poll worker and have it scanned? Statute says that the citizen is required to "present" their ID for identification purposes only. The poll worker is supposed to look at the ID and ascertain that the person holding it is one and the same. The Badger Books have many problems and this is a big one! Nor will I ever sign an electronic pad.

EL 4.05 (3)

I am very confused by the title "Board of Absentee Ballot Canvassers." After 14 years of observing I have never heard this term mentioned at a polling location. I have seen it in state statute but have never seen it implemented at a polling place. Is anyone actually doing this?

EL 4.05 (6)(a)

At central count an observer should be able to view every table from 3 feet away. No one is voting here and the 3 feet would take care of the problem of not having enough room.

Observers should also be able to observe and told how many ballots are being taken to the tabulators from each ward and then view the electronic number on the tabulator machines after the ward is done.

Please if you have any questions feel free to call me.

Ardis Cerny

262-510-4401

Ardis Cerny <ardiscerny@gmail.com>

EL 4 .03 (3)

I was questioning the ID being scanned into the Badger Voter machine. What information is on the black tape on the backside of my ID? I do not want that information in your machines. If you were hacked someone would get my private information.

I also made a comment that I will not sign the electronic signature pad. I do not want you or anyone else to have access to my signature if your machines are hacked. If I refuse to sign the pad will the clerk deny me a ballot? Would I then be forced to sue my community and the WEC?

One other question. I understand that for all mail-in ballots the citizen is supposed to include a copy of their request for the absentee ballot when mailing it into my clerk. So if I am observing the opening of mail-in ballots and a copy of the request is not included can I contest that ballot? This should also be included in the new draft.

Thank you,

Ardis Cerny
262-510-4401

Molly J. Koranda <molly_koranda@yahoo.com>

EL 4.05 (1) (a) An observer shall be allowed to observe at 7 a.m. or whenever machines are zeroed out on Election Day, whichever is earlier,

I am asking that the commission delete "or whenever machines are zeroed out on Election Day, whichever is earlier."

As an experienced Chief Inspector in the City of Madison, I know that the hour between 6 am and 7 am on Election Day requires every election worker's full attention preparing the polling place and reviewing any issues of the day. My most important duty during that hour was to power up the tabulator, ensuring the proper date, time, wards, and candidate names and it tied up 2 people until properly completed. It arrives "zeroed out" and the initial tapes will all show "zeroed out." The screen will show "zero." That could take place at 6:15 am or 6: 55! If the observer is concerned, he can look at the tabulator at 7:00 am and see the zero.

If by chance there is a problem with the equipment and will not show zero, I will be on the phone with City Hall, emergency measures will be taken, such as using the emergency slot, and the observer is welcome to witness those activities after 7 am.

Thank you for your consideration.

Molly J. Koranda

2602 Arbor Drive Apt 117

Madison, WI 53711

(608) 215-1111

Peter <pmbmap123@gmail.com>

In your consideration of proposed changes to WEC Rule 4, please clarify the rights of public observers to observe data transmission of all electronic vote tabulation totals through the proprietary tabulation equipment, through the digital connections to our county clerks through their election management software, through the media feeds and thru any systems monitoring this or any election data by NGO and

Federal agencies.

I disagree with the changes WEC wishes to make to Rule 4 as they violate the full rights of election observers. Adding that having the voting machines/systems count the votes is another violation of election observers rights as observers cannot see the votes being counted. And WEC along with the machine vendors, ES&S and Dominion in particular, refuse to show their source code. However, I have seen Dominion's source code and have access to it. It allows unauthorized third parties access to the machines sitting in clerks' offices. This has now been proven by Dominion Voting's own emails, which I can produce upon request. Those emails from Dominion prove their Serbian programmers were accessing Dominion voting machines sitting in election clerks' offices in the USA. Dominion software is expressly written to allow votes to be flipped - this is taking place in the optional adjudication software package. In the ES&S machines, it is taking place in the "blank ballots" secondary electronic file folder. And asking - why are there two (2) electronic files that the electronic images can be placed into once the paper ballots are scanned? WEC never certified having two (2) electronic files, it is nowhere at all in Meagan Wolfe's memos to the six Commissioners when they voted. It is not in Meagan Wolfe's written "approvals" of the voting systems she sent to all 1,924 municipal clerks. Would you have two boxes with locks on them for paper ballots to go into? No. Having two (2) electronic files the images of the paper ballots go into exactly highlights why the voting machines are black boxes no one can see inside to observe. WEC is denying statutory and constitutional rights, backed by centuries of case law, to effectively observe our elections. Observers cannot see the votes being counted. Observers cannot see the votes being tabulated. Because WEC has illegally, unconstitutionally "certified" black boxes no one can possibly observe the election process.

This includes but is not limited to, any Dept. of Homeland Security monitoring of elections, of election data and transmission thereof. The same for Albert Sensors, Falcon Software Services, CIS, CISA, EI-ISAC, MS-ISAC, CrowdStrike. The same for Homeland Security Operations Centers - in particular for Wisconsin, the SOC unit(s) of the DHS found in Madison, WI by the airport and also in Milwaukee at 310 E Knapp St, Milwaukee, WI 53202. Or other places in the country the DHS has a SOC office/location monitoring Wisconsin's elections.

Election observers are an important part of election transparency and trust. As elections are now virtually 100% digital and all election data now flows through proprietary digital paths on its way to canvass and final WEC certification, it is imperative that the public be allowed to observe these digital data paths as well as observing the handling and tabulation of paper ballots.

Monitoring the tabulation of ballots at polling places and central count facilities is only a small part of election observation. As sophisticated, proprietary and invisible systems are now used to move vote tabulations from local polling places and central count facilities to county clerks and then to WEC staff, it is critical to election integrity that the entire vote tabulation and aggregation process be open and transparent to the public at all times.

In 2016 and, again, in 2020, serious and credible allegations of foreign interference with vote tabulation and aggregation were made in Wisconsin. Since 2016, no effort has been made to investigate, audit or examine any of the digital systems used to administer and certify our elections. While subsequent superficial investigations pointed to maladministration in certain local voting and tabulation procedures, no serious investigation or audit of the digital processing, tabulation and aggregation of vote totals has occurred.

If WEC does not adopt rules for full transparency, it will clearly be in violation of HAVA, of US Supreme Court and Wisconsin State Supreme Court rules. Similar in concept to how Green Bay City election clerk Celestine Jeffries was called out by Brown County Court for violating election observers rights. In the case of Delores v Jeffries, case no. 22CV1322.

Do you want to see the Dominion emails? From Michigan Sheriff Dar Leaf. Do you want to see Dominion's source code and how it flips votes? I am against the changes you are making or trying to make to Rule 4. I am against WEC's position of constantly hiding everything from us citizens, including denying election observers to see inside the voting machine black boxes. We can't see the votes being counted, tabulated, transmitted.

Peter Bernegger

@PeterBernegger

Sharon Foley <1safwriter@gmail.com>

Hello Brandon,

I have four comments regarding the observer guidelines as below.

Conduct of election officials

EL 4.03 (1) Due to physical limitations, the orderly administration of elections, or both, the designated election official may *reasonably limit* the number of observers representing the *same organization* present at any one time at an observable location.

Comment 1) The language *reasonably limit* is vague and allows too much authority or room for interpretation to the election official. Two observers may seem a reasonable limit for one official, and ten might be reasonable for another for the same space and situation. As long as observers conduct themselves in an inconspicuous manner and don't interfere with the election, I think better language should reflect the following: every effort should be made to accommodate each concerned citizen who takes the time to present at a polling location wishing to observe the election and assure integrity.

Comment 2) What constitutes the *same organization* needs to be specifically defined. Observers typically check in as affiliated with the Republican Party, Democrat Party, or concerned citizens. Sometimes, they might sign in as an Independent, as representing the Green Party, or the Libertarian Party, etc. Is the plan to have a specific number for all these different organizations? What if an observer does not show up for a given group? Can their slots be assigned to someone with a different affiliation? To avoid confusion, this needs to be better delineated, and again, I think every effort should be made to accommodate each individual who takes the time to observe the voting process on election day.

EL 403 (4) The document reads as:

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.

Comment 3) There are four main activities to monitor at a polling location on election day. The ballot table, the same-day voter registration table, the opening of absentee ballots, and the tabulator machine.

In my experience from years of observing as well as serving as a poll worker it is impossible to see and hear all of these various aspects of the voting process from one viewing area. Typically, a viewing area is set up at a minimum of two locations: near the ballot table and the same-day voter registration table. Sometimes, a spot is also situated close to the opening of absentee ballots. The tabulator machine can be viewed from a distance. Wisconsin statute 7.41 states *The observation areas shall be so positioned to permit any election observer to readily observe all public aspects of the voting process.* One observing site does not fulfill this statute.

Comment 4) The WEC guidance does not state that observers should be able to readily observe the election process as stated in the statutes. The distance of 3 and 8 feet should be interpreted within statute 7.41 which states that the observer should be able to see all public aspects of the voting process.

Thank you for your time and consideration, it is deeply appreciated.

Sharon Foley

Debbie Morin <kdmorin6@sbcglobal.net>

Dear Brandon,

Following are my comments on the proposed election observer rule, chapter EL 4.

EL 4.01 – There should be an addition included directly after EL 4.01, stating something similar to: “Nothing in this chapter relating to the conduct, regulation and accommodation of election observers shall be construed to obstruct or prevent any election observer from readily seeing and hearing all public aspects of the voting process.”

EL 4.02 (7) – Addition: Observers shall be informed who the designated official is during any particular time, if the designated election official is someone other than the chief inspector or the clerk.

EL 4.02 (9) – Election inspectors, appointed/authorized by local governing bodies are also considered election officials pursuant to s. 7.30 (2) (a)

EL 4.02 (12) – Is a meeting location of a board of absentee ballot canvassers the same thing as a central count location?

EL 4.02 (13) – Change to: see AND hear.

EL 4.02 (18) – Remove “trained by or who identify as representing the same organization. The organization should retain sole discretion of its representation.

EL 4.03 (1) – It would be helpful to have this section amplify the word “reasonably” rather than just repeat it as found in s. 7.41.

EL 4.03 (1) – s. 7.41 (1) identifies only the chief inspector or municipal clerk as to who may limit the number of persons.

EL 4.03 (1) – “The designated official may **shall** use a copy of an inspectors’ statement or other incident log to comply with this subsection.”

EL 4.03 (2) – Is the required information in EL 4.04 (1) and the requirement to present photo ID arbitrary and/or absent of statutory authority?

EL 4.03 (2) (b) – Observable location should be plural; change to observable location(s).

EL 4.03 (4) – s. 7.41 (2) gives elections officials the option to restrict the location of observers, so this section stating an observation area shall be established may conflict with state law. Also, it would be helpful to have this section further clarify the 3-8 foot distance issue.

EL 4.03 (11) - Observers shall be permitted to observe poll lists and e-poll lists.

EL 4.03 (14) – The designated election official also shall identify to the offending observer the particular provision of this chapter or the applicable election statute violated by the observer’s conduct.

EL 4.03 (14) – An identification stated by an observer of violations of election law or code does not constitute offending conduct by that observer.

EL 4.03 (14) (c) – Failure of that election official to sign the written order or the unavailability of that official to review the order in a timely fashion **shall be noted on the written order** and does not affect the enforceability of that order.

EL 4.03 (14) (d) – “The designated official may **shall** use a copy of an inspectors’ statement or other incident log to comply with this subsection.”

EL 4.04 (1) – There is no statutory authority to require an observer to present a photo ID
There is conflict with state law to require observers to provide information on an observer log not specifically delineated in s. 7.41 (1)
It is arbitrary or in conflict with state law to not required conformity of photo ID to s. 5.02 (6m)

EL 4.04 (4) – Observers shall be informed when the designation of a designated election official changes.

EL 4.04 (6) – remove: “in the discretion of the designated election official” – It should read: No observer may engage in any loud, boisterous or otherwise disruptive behavior that threatens the orderly conduct of the election or interferes with voting or registration. (It reinforces EL 4.01)

EL 4.04 (7) – Absence of statutory authority.

EL 4.05 (1) (b) – Absence of statutory authority.

EL 4.05 (3) (a) – It should read: “An observer shall be permitted to observe **all processing procedures of absentee ballots**, during all hours.....

EL 4.05 (4) (c) – It should read: An observer shall comply with any requirements imposed on visitors **special voting deputies** by a facility served by special voting deputies.

EL 4.05 (4) (f) – Conflicts with state law.

EL 4.05 (6) – Can this section be combined with EL 4.05 (3)? If not, cite the statutory reference to a central counting location.

EL 4.07 – No statutory authority.

EL 4.07 (3) – Communications media members are observers in any capacity.

Thank you for considering the above comments on the proposed observer rule and for all your hard work in facilitating this process.

Respectfully,

Debbie Morin

Joanne Leonard <jleonard@pcpros.net>

Brandon:

I listened to comments today regarding the WEC proposed rules about observers at the election polls. There was a lot to clarify and just one suggestion: once this rule is passed - there needs to be training for ALL clerks in Wisconsin counties so they understand observers rights at the polls.

An issue that wasn't addressed was taking photos, videos, etc. of election tabulations after the polls are closed. Some clerks and/or chief election inspectors allow photos of final votes, others refuse to let us take any type of photos. This rule refers in several places to “location” etc. but never addresses if clerks AND Chief election inspectors should allow observers to take photos of vote tabulations the end of the election. This has been an ongoing issue in Marathon County. I believe this should be addressed more

clearly in the rules. This is a very frustrating issue for observers I work with. And they have asked repeatedly for more clarification in the rules.

Thank you for the hard work that has been done on the observer guidelines to date. Would appreciate it if WEC would take up this issue.

Joanne Leonard

RPMC Finance Committee Chair

923 Maple Hill Road

Wausau WI 54403

715-573-6918

Kathryn Bartelli 2bartelli@gmail.com

Brandon & Commissioners,

Thank you again for hearing feedback on EL 4.

As an election inspector and having observed at both elections & recounts, the following is my feedback for EL 4:

1) I feel 8' is too far to expect observers to see anything clearly. 6' is far enough.

2) EL 4.03 needs to be more detailed pertaining to section (1) and also needs to reference 4.05:

"Due to physical limitations or the orderly administration of elections, or both, 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."

Worded this way gives the clerks too much leeway in limiting the observers and gives the observers no recourse on how to report or deal with potential obstruction by the clerks. The above verbiage doesn't take into account or reference the different types of observing nor does it reference other sections of the proposed rule such as recounts, central count, or residential care facilities, hospitals etc.

Suggestions: Some formula for example-1 observer from an organization per each voting station (Registration, Sign in, ballot distribution, absentee ballot processing, tabulators etc) OR # of observers per # of voters.

3) There are probably more sections that need to reference 4.05 besides the following but the whole proposed rule needs to be reviewed. Too many times people stop reading & don't go all the way through.

4.03, 4.04 (7) & (12)

4) In EL 4.05 why not allow observers to be present for setup & closing processes to ensure chain of custody from one location to another instead of limiting it to election open & close?

There are a lot of loose ends in our elections: even election inspectors don't witness cutting or verifying tags on secure containers being moved; tags on tabulators, paperwork showing incidents during the election, spoiled ballots & more!

How many of the Commissioner and or Commission staff besides the previous clerks have worked an election all the way through or observed?

If you want to watch a smaller polling place election, feel free to come to the August primary in the Town of Geneva. But you should really go observe Central Count probably.

A Concerned Voter/Election Inspector/Observer, Kathryn Bartelli
N3082 Willow Rd
Lake Geneva, WI 53147

Molly J. Koranda molly_koranda@yahoo.com

EL 4.05 (4)(f) An observer shall not be permitted to enter a voter's private room.

I have observed many Special Voting Deputies in many facilities in the City of Madison. It is rare, but there are times when an eligible voter is not able to come to the common voting area, but instead votes in their private room. I have observed several of those and never felt that I was violating any privacy, any more that the Special Voting Deputies are. I always stayed as far away as possible from the voter, sometimes 10-12 feet away.

I am requesting that the commission delete the above language.

Thank you.

Molly J. Koranda

2602 Arbor Drive Apt 117

Madison, WI 53711

Julie Saunders julies53597@yahoo.com

Hi Brandon,

Here are my written comments:

13 lines of Wis Stat 7.41 has developed into 13 pages of many unfriendly observer rules. Too many of these rules conflict with existing statutes which is strictly prohibited by Wis stat 227.02. WEC has exceeded its authority by attempting to promulgate rules that clearly dismantles the statutory protection afforded observers. **Interpretation MUST come from an existing law!!**

First example of this is regards EL 4.05 called Location Specific requirements sub 4(f): WEC's rule reads that "an observer shall not be permitted to enter a voter's private room and the voter may elect to close their door or otherwise secure their voter privacy." Not documented from I can see under "statutes interpreted" is statute 6.875(6)(b) where a home or a facility shall become a polling place. WEC defined that one of the observable locations is a facility served by SVDs'. Hence, voting that occurs in a commons area or any other room is collectively part of a facility. You absolutely cannot separate the two. WEC egregiously ignores 6.875(6)(b) that clearly states "for purposes of the application of wis stat 7.41, the home or facility SHALL be treated as a polling place". The word SHALL indicates something is mandatory or why else would that be a statute! Observers are protected by the law to observe all aspects of the voting process in any area in a facility. Furthermore, closing of doors is a safety issue. Nobody has the authority to make a regulation that interferes with a statute.

Secondly, what stat says that an ID is not part of the public's aspect of the voting process? Please explain the violation of privacy if a PW can view an ID but an observer can't? Again, WEC did not and needs to state a statute to back this up. Regulations cannot exceed the authority of a statute.

Third, EL4.03(2)(b) states "an observer shall then be directed to an area of the observable location established by the designated election official as an observation area. We know that 7.41(2) says The observation areas (plural) shall be so positioned to permit any election observer to readily observe all public aspects of the voting process. Meaning there should be more than one area. Again, this 4.03(2)(b) rule does not abide by the existing statute.

I've said it before and I'll say it here again. There hasn't been one complaint against a trained observer that I know of in the past 2 plus years when hundreds of observers have exercised their right to be part of such an important part of the election process. My hope was that WEC would interpret 7.41 to support the rights and responsibilities of observers to make sure elections are conducted in a fair and impartial manner. Trust but verify. Many of these WEC rules infer observers are enemies of the state keeping them as far away from the election processes as possible. What are election officials so afraid of?

My last argument and in defense of observers, there is absolutely nothing written in this draft for recourse for observers. Plenty for everyone else involved. Why circumvent the respect due to observers?

I look forward to the Commission being more careful in continuing creating rules that bring confidence in the integrity of Wisconsin elections.

Diane Coenen dcoenen@oconomowoc-wi.gov

Hello Brandon:

I have a comment on Section 4.02 Definitions - Item (14) Observer. My comment could be included in this item definition or another definition could be created for "Observer Accommodation" means the observer qualifies for an accommodation as a result of disability, therefore an accommodation should be provided to the extent possible.

For instance, a chair, restroom, a magnifying implement (many polls have them), allowed to observe in an area with better lighting that does not interfere with pollworkers and voter, etc.

I would like to add, that I agree with all the comments made at today's public hearing. They were thoughtful, to the point and reasonable.

In summary, the draft order creating rules is well done, comprehensive and thorough. I do appreciate all the efforts from those involved to create complete rules and I thank you for the opportunity to be a part of the process.

Have a great rest of your day, Diane

Diane Coenen, CMC, WCMC

Natalie Snyder <caledoniatownclerk@gmail.com>

On behalf of my election chiefs, I would like to say this:

Observers should not be allowed to interact with election chiefs or election workers on election day. They should be provided a copy of the election manual in the observer area and they can refer to that with their questions. Just because a voter may not be in the room doesn't mean a chief or election worker isn't working. Answering constant questions as soon as a voter leaves is very distracting and is disruptive to the election day.

On behalf of myself, a Town Clerk, I would like to say this:

After having a very inquisitive observer attend much of the day on April 4, 2024, I would strongly recommend that observers be provided a copy of the election manual and not be allowed to speak during the election day. Hiring and retaining well qualified election chiefs is already a challenge. They do not need the added stress of trying to set boundaries with an observer all day. A clear boundary of "You're not allowed to speak except to challenge a voter" is a lot easier to enforce than the current rules.

I am scrambling to try to retain my election chief so that I have qualified trained personnel in place for August and November. Being in charge of an election and working a 15-ish hour day is exhausting, mentally and physically. Working that 15 hour mentally and physically exhausting day with an observer who is demanding constant attention is more than a chief should be expected to handle. My chief wants to quit because this observer plans to attend every future election for full days and the chief doesn't want to have to deal with the stress of balancing the observer's questions/talking with running the election.

I am recommending the election manual be supplied because our observer came "trained" by a group that is encouraging observers. The observer believed that he knew everything he needed to know about elections. He was shocked to learn that there was a manual and shocked by how much of it conflicted with the "observer training" he had completed. He even concluded that perhaps the group who trained him might have had an agenda.

I'm not sure this is what you're looking for, but I wanted to have our opinions known after experiencing an observer for the first time at the most recent election.

Thank you!

Natalie Snyder, Clerk/Treasurer

Rose Wisconsin <eucke.roseden.rose62@gmail.com>

Hello Brandon

I have been observing since 2020.

I have noted increased welcoming from leads at sites

Observer locations are closer but still 8 feet away.

My questions have been answered in cooperative way

I have observed 3 different sites.

University site most challenging due to locations for seating and crowds

Rose Eucke

Leslie Lauersdorf <poundpuppies5@wi.rr.com>

It would be nice to have more than one observation place that we could move around. I for one find sitting for 5 hours in one spot a little confining. It would be great to be allowed to take a break for a short stretch of your legs.

The last election I was on an island with no electric to power my computer. I was unable to see the actual voting machines aside from they were across the room and I was confined to my box.

Also, allow observers to have some food to be eaten when the poll is not busy. It's really rude to have poll watchers have to sit and watch poll workers eat pizza or donuts provided by the election commission. (I think that's who pays for it.) Or allow the poll watcher to leave to get something to eat when things are slow.

I am unable to attend the beginning of the meeting, but am able to attend after 2 p.m.

Leslie Lauersdorf

annette kuglitsch <annettekug@gmail.com>

Hello Mr Hunzicker-

I will limit my comments to ABSENTEE VOTING IN RESIDENTIAL CARE FACILITIES AND RETIREMENT HOMES and specifically points (d), (e) and (f) with my comments in **RED**.

(d) An observer shall be permitted to observe the process of absentee ballot distribution in the **common areas** of the home or facility.

(e) The Special Voting Deputies may not permit any person other than a Special Voting Deputy or relative of the elector assisting the elector in marking the ballot to hear any discussion regarding the electoral choices of the elector. Special Voting Deputies must enforce the voter's constitutional right to cast a secret ballot, just as the individual is entitled to in other absentee or polling place settings.

(f) An observer shall not be permitted to enter a voter's private room, however the observer shall be permitted to observe such voting from a common area in accordance with sub. (4)(d). The voter may elect to close their door or otherwise secure their voting privacy.

I will address points (d), (e) and (f) together. I believe that all three of these points are in conflict with Wis. Stat. § 6.84 (1) and Wis. Stat. § 7.41 (2).

Wis. Stat. § 6.84 (1)-The legislature finds that voting is a constitutional right, the vigorous exercise of which should be strongly encouraged. In contrast, voting by absentee ballot is a privilege exercised wholly outside the traditional safeguards of the polling place. The legislature finds that the privilege of voting by absentee ballot must be carefully regulated to prevent the potential for fraud or abuse; to prevent overzealous solicitation of absent electors who may prefer not to participate in an election; to prevent undue influence on an absent elector to vote for or against a candidate or to cast a particular vote in a referendum; or other similar abuses.

Wis. Stat. § 7.41 (2)- The observation areas shall be not less than 3 feet from nor more than 8 feet from the table at which electors announce their name and address to be issued a voter number at the polling place, office, or alternate

site and not less than 3 feet from nor more than 8 feet from the table at which a person may register to vote at the polling place, office, or alternate site. The observation areas shall be so positioned to permit any election observer to readily observe all public aspects of the voting process.

Or, as otherwise stated in the Absentee Voting in Residential Care Facilities and Retirement Homes manual February 2024, "The observation area shall be not less than 3 feet nor more than 8 feet from the location at which electors are marking their ballots. Wis. Stat. § 7.41(2)".

- In regard to rule (d), both the previous Draft version of Election Observers (Board Approved July 21, 2024) and the Absentee Voting in Residential Care Facilities and Retirement Homes manual February 2024 recognized the need for the observer rules to reflect state election law with this language; "The special voting deputies shall establish observation areas to allow observers to view all public aspects of the absentee voting process without disrupting the voting process. The observation area shall be not less than 3 feet nor more that 8 feet from the location at which electors are marking ballots". Why was this language removed from this current version? By not including these specifics, it leaves too much room for Wis. Stat. § 7.41 (2) to be ignored and interrupted by individual special voting deputies at will.
- In regard to rule (e), I would like to make 2 comments. Comment 1) I just mentioned that point (d) should have included the 3-to-8-foot rule but by leaving that out, the stage was set for point (e) that instructs the SVD to not permit any person, other than the assistor, to hear any discussion regarding the ballot selections that the elector makes. This verbiage leaves too much room for how this rule will be applied within the common area of the care facility. Will the observers be tucked away in a section of the common area in which the ability to readily observe all aspects of the voting process unfeasible? You might say that this is not the intent of the rule but what is to prevent this from happening? I am not suggesting that observers should be able to hear an elector's ballot selections, but the attempt to prevent this from happening could infringe on the observer requirements in Wis. Stat. § 7.41. Comment 2) Wis. Stat. § 6.84 (1) clearly states that absentee voting is a privilege exercised *wholly outside the traditional safeguards of the polling place but yet* rule (e) states that the SVD must enforce the voters right to cast a secret ballot, just as the individual is entitled to in a polling place setting. So no, according to Wis. § Stat. 6.84 (1), the absentee voter is not entitled to the same safeguards as a polling place setting! And rule (e) can't just make this "entitlement" up just because a WEC rule maker thinks that this should be a right of absentee voters.
- In regard to rule (f), why shall an observer not be permitted to enter a voter's room and why are observers regulated to observe from the hallway? I have heard the argument that a voter's room is like their "home" but of course it should not be looked upon as their home when an election is being conducted and absentee voting is taking place in that room. The statement that "the voter may elect to close their door or otherwise secure their voting privacy" is in direct conflict that permits any election observer to readily observe all public aspects of the voting process Wis. § Stat. 7.41 (2). But more importantly, as Wis. Stat. 6.84 (1) states "voting by absentee ballot must be carefully regulated to prevent the potential for fraud or abuse; to prevent overzealous solicitation of absent electors who may prefer not to participate in an election; to prevent undue influence on an absent elector to vote for or against a candidate or to cast a particular vote in a referendum; or other similar abuses. A closed door will shut out our observers and could lead to the voting abuse of our most vulnerable of voters! Of all of the rules associated with ABSENTEE VOTING IN RESIDENTIAL CARE FACILITIES AND RETIREMENT HOMES this one is the most flagrant violation of our state elections laws.

Respectfully submitted-

Annette Kuglitsch

Republican Party of Waukesha County

Director of Election Integrity

Dawn L. Johnson <dlj2cats@yahoo.com>

I am now a poll worker, but am wondering if we have Observers at Central Count during the night of the election. That's when and where they seem to magically find enough votes to turn the election in their favor at 3 am. As you recall, they have done this every 2 years since 2016.

Thank you,

Dawn Johnson

brianjensen7740 brianjensen7740@protonmail.com

I have read the new rule, and I feel that this rule could be used to limit observation and challenges. As a Wisconsin resident, I would like to see this rule voted down.

Best regards

Brian Jensen

Name: Brad Tangen

Address: W.10352 State Road 96, Dale Township, Fremont WI 54940

Email: brad12263@gmail.com

Organization: Election Inspector

Comments: To the Elections Commission: I have been both an Election Observer and an Election Inspector. As an Observer I wanted to get a picture of the tape of the final tally results. In some locations the Chief allowed it, in others the Chief would not allow it. I don't see why there should be any issue with getting a picture of the final tally result as long as the request is made to the Chief Inspector and an Observer does not handle the result tape. Just one other thing. I have concerns about non citizens voting in our elections. I wonder what measures are being taken with same day registration to ensure that only citizens can vote. Thank you.

Name: Scott Bolstad

Address: 603 Katie Ln, Eau Claire WI 54703

Email: bolstad1@yahoo.com

Organization: N/A

Comments: I have reviewed the proposed rule. It is a good idea to have standardized rules for observers and officials throughout the state. The new rules do not hamper the ability of an observer to witness the conduct of elections.

Name: Diane Hall

Address: 287 McKittrick St, Berlin Wisconsin 54923

Email: dianebaleshall@gmail.com

Organization: Me

Comments: When I 1st decide to become an election watcher I was prepared to take time to dedicate myself to fair elections. However now I am not so sure. I was to aid in Markesan, Wisconsin then all of the sudden they have 80 people. I have done the training as asked. I do think I could be an asset to the RNC. I live in

Berlin, Wisconsin. To tell the truth the New Mayor and City Administrator are wacked out liberals. At this time I do not believe Berlin will get a fair election. I would like to be able to watch the ballot counting if at all possible. I believe in the Republican party and want to do my part . Please feel free to call me. 920-573-0459

Name: Harry Keepthechange
Address: 16 Parkside Lane, Wilmington DE 19801
Email: This_Nation_Is_All_Done@DJT_Is_A_Posser.org

Organization:

Comments: Now is the time for Trump to abandon his bid for the Presidency and work for the Biden campaign. All charges against Trump in all venues will be dropped, he will get his \$175 million bond back. Then he can become ambassador to Ukraine securing \$60 billion every month for Zelenskyy's genocide program, while Melania barnstorms the nation demanding more rites for the LGBTIAQ+++++ because these people have ZERO rites whatsoever. But you all knew that. DJT can then become the baby slaughter czar and like FDR demand a fetus in every pot. That is all.

Name: Jeffrey Manlove
Address: 289 4th Street, Fond du Lac WI 54935
Email: erjeff@yahoo.com

Organization:

Comments: The only reason that I can imagine for changing these rules (CR24-032) is to facilitate cheating by making it harder for observers to do their jobs. I recommend NOT making any changes to the existing rules.

Name: John McCauley
Address: W148N9872 Woodcrest Ct, Germantown WI 53022
Email: Johnhmccauley@gmail.com

Organization:

Comments: I have been an observer at Milwaukee Central Count many times.

Most of the time it is really hard to see the ballots, especially when they are being recreated. We are too far away. A document camera connected to a monitor would be the best.

Ballots just turn up, with no clear chain of custody to be counted.

Ballot curing happens before we get to see them. No idea what was done.

Name: Mary Anne Carlson
Address: 107 East Green Tree Road, Glendale Wisconsin 53217
Email: rmacarlson@verizon.net

Organization:

Comments: I have been an observer at Milwaukee Central Count on 2 occasions. Both times I was there a full day. I observed: 1. broken chain of custody on a constant basis. Blue bags of ballots would arrive from a location (no verification of that location except what the city officials announced,

but there was no proof). Those ballots arrive from an individual (often alone) who had transported the ballots (unobserved) to the central count. The ballots were then taken to a separate room and data was entered into the computer. We were not allowed to observe the data being entered so we have no idea what was being done. The ballots were then sorted and distributed to the election workers.

2. upon arrival very early the day of the election at central count, the ballots had all been already "organized" alphabetically by district and ward and put into groups. We have no idea where, when, who or how those ballots came from or sorted.

3. I personally witnessed ballot envelopes that had white-out on them and new information written in that the workers were told by the city commission workers to accept the ballots (I completed an EL104 on these instances).

4. ballots would be rejected and put into a box. Observers, primarily democrat observers, were then allowed to take a photo of that ballot envelope with the voters name and text people with the information. The purpose was to try to get the voter to correct the ballot. But, no one monitored who that voter's information was being sent to or what they were actually doing with it.

5. Since Wisconsin law states that the two primary parties are to run the election (not the workers at Milwaukee Election Commission) that is violated constantly. The election commission workers (hired city employees, not the Republican/Democrat or Unaffiliated workers) "control" the process and often tell election workers whether they should or should not accept/reject a ballot.

6. There are unsecure doors that lead to a parking area that trucks park in and the drivers enter/exit with no security. We don't know their purpose or why they are allowed to enter/exit the area when everyone else has to be checked in, badged and are assigned locations/places to work.

7. We have observed the tabulators being opened and closed with out the tab ever being broken. We KNOW that the machines are truly not sealed. And, that the counting can be altered easily.

8. there is internet service available in the building and the machines attach to the internet. Overall, our election process is not safe. It is not run according to WI law. And it's in a constant state of chaos.

We should return to same day voting, paper ballots and NO central counts. All ballots should be managed at their voting locations.

Name: Elizabeth Bruders
Address: 123 Hinman Avenue, Waukesha WI 53186
Email: elizabethbruders@proton.me

Organization:

Comments: Here are my main concerns as an Milwaukee central count observer:

Ballot chain of custody is not clear or transparent. There is no written procedure for ballot chain of custody to make sure the ballots are secure (where they are kept, how they are transported, etc...). On election day, we don't have the count of the number of ballots that arrive at central count and where they come from (mail delivery, City Hall, central count drop box, or another location). Announcements after arrival would help, but observers at delivery, transport and central count arrival points would be better.

No observers are present during the 2-3 days prior to election day. No observers are present when the ballot envelopes are being separating by ward and alphabetized. We've never been able to watch this process because they consider it part of administration rather than the election process. 24/7 surveillance (with public viewing) would be helpful, so we can observe what is occurring during all the times ballot envelopes are being handled before, during and after the elections.

The security seals on the tabulators don't break at Milwaukee central count. They are thin pieces of plastic that can be pulled back and then resealed without a break in the seal. The technician has been observed accessing the machines on election day without that access being evident or recorded. The current seals offer no security and no guarantee that the machines are not accessed after testing and certification.

Are all of the election machines tested and certified before every election (or just a percentage of them)? For the last several elections at least one machine wasn't working properly at Milwaukee central count which delays the processing of the ballots, and thus holds up the election results. Every election electronic device should be tested and certified before observers prior to every single election.

Name: Paul Driftmier
Address: 7910 Dairy Ridge Rd., Verona WI 53593
Email: pdriftmier@mac.com

Organization: Citizen

Comments: I'm concerned that, in par.(9), the sixty day timeframe within which to submit reasons for an election official not complying with the preceding requirements re observers and observing is far too generous and could lead to noncompliance without recourse.

Name: Jay Heck
Address: 152 W. Johnson, #212, Madison WI 53701
Email: jheck@commoncause.org

Organization: Common Cause Wisconsin

Comments: TO: Legislative Members of the Joint Committee for Review of Administrative Rules, Wisconsin Elections Commissioners and Staff
FROM: Jay Heck, Executive Director of Common Cause in Wisconsin
DATE: April 24, 2024
RE: Statement from Common Cause Wisconsin on Wisconsin Election Commission Rule on Election Observer, Rule EL 4

Common Cause Wisconsin (CC/WI) supports the Wisconsin Elections Commission (WEC) Draft Election Observer, Rule EL 4, which establishes much needed clear rules and standards for election observers. Founded in 1970, CC/WI is the state's largest non-partisan citizens political reform advocacy organization with more than 8,000 members and activists in every county in Wisconsin.

Common Cause Wisconsin has recruited volunteer observers over many years and for several election cycles to be able to have our members observe and monitor the election process at polling locations throughout the state. Members of CC/WI have long been eager to have an opportunity to be part of the Wisconsin Election Protection programs in many different capacities, but they have particularly emphasized the value and importance of being trained as nonpartisan election observers by the League of Women Voters of Wisconsin for Election Day.

Common Cause Wisconsin was an active participating member of the WEC Election Observer Advisory Committee to assist with the development of the draft rule. It is the position of CC/WI that election observers need clear rules in order to carry out their tasks at polling locations, and the legislative approval of the Draft Election Observer Rule EL 4 will help protect voting rights while informing observers to be able to better cooperate with election officials. The rule seeks to benefit observers but will also preserve and enhance access to the election process, and help improve transparency, security, and confidence in Wisconsin's elections.

Common Cause Wisconsin supports Draft Election Observer Rule EL 4 in establishing clear rules and standards for observers at the state's thousands of polling places. The rule strikes a careful and important balance between the election official being able to carry out their jobs, an observer's access and ability to be able to view the voting process, and a voter's right to privacy and confidentiality while casting a ballot.

The rule is also comprehensive and responsive to the many points of concern members of the advisory committee named specifically at the meetings. These areas include the use of recording equipment, how observers can interact with voters and election officials while in the polling place, respecting a voter's right to privacy and the handling of confidential information, an observer's role when working with Special Voting Deputies, the safety and authority of election officials and chief inspectors, and maintaining an open and transparent process that is observable. The rule ensures the basic needs of election observers are met, such as access to restrooms, access to the voting process without interfering with election officials and voters, and receiving disability-related accommodations.

Common Cause Wisconsin recognizes the challenging task the WEC staff had in compiling comments, first-hand accounts, and feedback of the advisory committee with various nonpartisan organizations and active political parties in the state who often work with election observers. WEC staff and commissioners spent many hours facilitating the advisory committee, considering outside

input from individuals and organizations, and having honest discussions about how to improve the role of the election observer. The commissioners should be commended for finding common ground in the submitted draft of this rule in areas they initially had disagreements. As a result, this rule reflects fairness with clear, applicable expectations of election observers.

Observers, voters, and election officials rely on clear information from the WEC and the legislature. Common Cause Wisconsin supports Draft Election Observer Rule EL 4 and requests that the Joint Committee for Review of Administrative Rules move to pass this rule as written (with discussion and consideration of the Clearinghouse Rule 24-032 Wisconsin Legislative Council comments that offer clarifying suggestions). Establishing clear rules and standards for election observers across the state will help improve citizen confidence in the voting process and help observers in their important role of witnessing the election process.

Hi Brandon,

Thank you for the opportunity to speak at the hearing today.

We can have all the rules and laws, but without people following the rules and laws we have fraudulent elections.

WEC should suggest punishment for breaking WI Elections.

Sincerely,
John Landwehr

Name: Julissa Velazquez
Address: 633 S Hawley Road, Milwaukee WI 53214
Email: julissa@milwaukeeelabor.org

Organization: Milwaukee Area Labor Council

Comments: Date: April 24, 2024
To: Wisconsin Elections Commission
From: Milwaukee Area Labor Council AFL-CIO
Re: Public Comments for Wisconsin Elections Commission Regarding Draft Chapter EL 4 - Election Observers

The Milwaukee Area Labor Council is grateful for the opportunity to submit public comment regarding Draft Chapter EL 4. As a long-standing participant in a nonpartisan election observer program, the Milwaukee Area Labor Council acknowledges the significance of rules such as this and would like to express our support for the new rule.

We know from years of experience that setting clear and standard rules for election observers will be beneficial to all. It is evident that this rule would ensure that both clerks and other election officials are able to fulfill their Election Day duties. Election observers will fully understand their role in the voting process. The submitted rule comprehensively ensures the protection of election officials', election observers', and voters' rights.

We support that the submitted rule is fair, thorough, and balanced. Many on either side of the political spectrum as well as a wide range of nonpartisan organizations agree that this rule would be favorable to all. We commend the Wisconsin Election Commission for taking all sides into account, creating a draft that acknowledges a wide variety of experiences and perspectives.

This draft addresses many areas of concern including but not limited to how observers should interact with the Chief Inspector, observers' access to restrooms and other on-site accommodations, and where observers are expected to be to overlook the voting process. The draft rule balances observers' need of access to the voting process without disturbing election officials' ability to perform their job or voters' ability to confidently cast their ballots.

We thank you again for the chance to submit public comment for the submitted rule.

Name: Jacalyn Szehner
Address: 751 Ramble Ln, Plover Wisconsin 54467-2133
Email: jlsmarketing@charter.net

Organization: self

Comments: My name is Jacalyn Szehner and I reside at 751 Ramble Lane, Plover, WI 54467. I have been an Election Observer, Special Voting Deputy, and Election Inspector in the Village of Plover, as well as an Election Observer and Special Voting Deputy in the City of Stevens Point, both extensively since 2022. I am willing to sign any affidavits necessary in regards to my comments which follow regarding the Draft Order of the Wisconsin Elections Commission Cresting Rules, specifically relating to the proposal to create Chapter EL4

Regarding Page 5 (15) "Organization" definition. I believe something should be stated that an individual does not have to represent an "organization". I have registered under this "heading" as representing "self". This led to intense scrutiny and aggressive verbal interaction from the Village of Plover acting Chief Election Inspector to me on April 2, 2024, as he was intently trying to have me declare that I was representing a political party or a campaign. Just stating that "an organization... and shall not be construed to be limited to political parties, candidates, or campaigns," makes it sound like it still has to be some type of organization, example: League of Women's Voters, Pro-Life Wisconsin, etc., and does not specifically allow for "self" representation.

Regarding Page 5 (16) "Public aspects of the voting process" definition. I have concern regarding this definition and that on the Wisconsin Election Observer Rules at a Glance brochure, which is given to Election Observers. That brochure states under "Remember: End of Night Procedures, including the counting of ballots, are conducted as an "open meeting" and members of the public may observe". The Village of Plover acting Chief Election Inspector on April 2, 2024, advised me that the after the polls closed procedures were under the "open meeting" laws, such as the Village of Plover has during it's municipal meetings and thus I was to sit in the only designated area they allowed me at and I was not allowed to ask questions or move to any other area to observe the opening of the absentee ballot envelopes or the vote tallying activities. I requested to view the vote tallying activities three separate times and was not allowed to do so. I believe the term "open meeting" is not defined adequately on the brochure and further definition is required under this "Public aspects of the voting process".

Regarding Page 5 (18) "Representing the same organization" definition should be expanded to advise that "self" individuals are not under the same reference to limitations of "organizations".

Regarding Page 6 EL 4.03 Conduct of election officials (1) regarding the statement "reasonably limit the number of observers representing the same organization", I again state what I previously stated, that definition needs to be expanded to allow "self" representation for observing the polls.

Regarding Page 6 EL 4.03 (4) Conduct of election officials (4) “shall establish at least one observation area to enable observers to readily observe all public aspects of the voting process during the election”, the Village of Plover on April 2, 2024 did not allow a designated area for Election Observers to view the opening of the Absentee ballots, the tallying of the ballots, or the remaking of absentee ballots when necessary. Additionally, throughout the various elections in 2022-2024 the Village of Plover did not have one Republican and one Democrat opening the Absentee ballots or remaking ballots.

Regarding Page 7 EL 4.03 (4) “An observation area shall be not less than 3 feet or more than 8 feet from each table”, I believe 8 feet away from the table is not an observable length. The maximum length that is reasonable would be 5-6 feet and this should be specified for all voting processes, including vote count tallying, which is not specified here.



Wisconsin Elections Commission

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Wisconsin Elections Commission

Public Hearing Concerning Clearinghouse Rule (SS 089-22)

201 W. Washington Avenue, Second Floor

Madison, Wisconsin

1:00 p.m. April 24, 2024

Public Hearing on Administrative Rules Minutes

Commissioners Present: Commissioners Ann Jacobs and Robert Spindell Jr., by teleconference.

Staff present: Brandon Hunzicker, Caitlin Jeidy, Robert Kehoe, Anna Langdon, and Riley Willman, all by teleconference.

The hearing began at 1:00 p.m. Staff Attorney Brandon Hunzicker appeared and gave attendees a minute to enter the meeting. At 1:02 p.m., he welcomed attendees to the public hearing. Attorney Hunzicker provided a summary of previous actions concerning the administrative rule and its current status, including the Commission gathering information for the rule from a preliminary public hearing and two meetings of an advisory committee. He then explained the purpose of the public hearing, how attendees would each be given four minutes to provide comments, how the spoken and written comments would be communicated to the Commission, and how commentators at the hearing could provide comment directly to the Commission if they made the request in writing during the hearing.

The following individuals provided comments during the hearing:

Julie Seegers

Thirteen lines of Wis. Stat. § 7.41 has developed into thirteen pages of unfriendly observer rules, in my opinion. Too many of these rules conflict with existing statutes, which is strictly prohibited by Wis. Stat. § 227.02, WEC has exceeded its authority in attempting to promulgate some rules that clearly dismantles the statutory protection afforded observers. Interpretation must come from an existing law.

My first example of this is in regards to EL 4.05, called “Location specific requirements,” sub (4)(f), WEC’s rule reads that, “An observer shall not be permitted to enter a voter’s private room,” and “the voter may elect to close their door or otherwise secure their voter privacy.” Not documented from what I can see under statutes interpreted, is Wis. Stat. § 6.875 (6)(b), where a home or facility shall become a polling place. WEC defined that one of the observable locations is the facility served by SVDs, hence, voting that occurs in a commons area or any other room is collectively part of a facility. You absolutely cannot separate the two. WEC egregiously ignores Wis. Stat. 6.875 (6)(b) that clearly states, “For purposes of the application of Wis. Stat. § 7.41, the home or facility shall be treated as a polling place. The word “shall” indicates something is mandatory, or why else would that be a statute? Observers are protected by the law to observe all aspects of the voting process in any

Wisconsin Elections Commissioners

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facility and any area in a facility. Furthermore, closing of doors is a safety issue. Nobody has the authority to make a regulation that interferes with the statute.

Secondly, what state says that an ID is not part of the public's aspect of the voting process? Please explain the violation of privacy if a pollworker can view an ID but an observer can't. Again, WEC did not, and needs to state statutes to back this up. Regulations cannot exceed the authority of a statute.

Third, EL 4.03(2)(b) states, "An observer shall then be directed to an area of the observable location established by the designated election official as an observation area." We know that Wis. Stat. § 7.41(2) says that, "The observation areas," plural, "shall be so positioned to permit any election observer to readily observe all public aspects of the voting process." Meaning, there should be more than one area. Again, this EL 4.03(2)(b) rule does not abide by the existing statute. I've said it before and I'll say it again here, there hasn't been one complaint against a trained observer that I know of in the past plus two years, when hundreds of observers have exercised their right to be part of such an important part of an election process. So, my hope was that WEC would interpret Wis. Stat. § 7.41 to support the rights and responsibilities of observers to make sure elections are conducted in a fair and impartial manner. Trust but verify. Many of these WEC rules infer observers are enemies of the state, keeping them as far away from the election process as possible. What are election officials so afraid of?

My last argument in defense of observers, there is absolutely nothing written in this draft for recourse for observers. Plenty for everyone else involved, why circumvent the respect due to observers? So I look forward to the Commission being more careful and continuing creating these rules that bring confidence in integrity of Wisconsin elections.

Attorney Hunzicker gave any Commissioners present the opportunity to follow up with questions.

John Landwehr

The only reason we're here in this position to rework rules for observers is because, like many appointed or elected people in positions of authority, they choose not to follow existing rules and existing Wisconsin law. This is found in government at the national level, all the way down to local positions. We have a President of the United States that was told by the Supreme Court that forgiving loans for a specific class of citizens is unconstitutional, and that the President of the United States cannot spend taxpayer's money, only Congress may pass laws to spend taxpayers' money, but he goes ahead and does it anyway. Since there are no serious consequences for people at the top of government not following existing rules, people in the lower level of government have determined they no longer have to follow laws or rules either. This is through our entire society now. As far as Wisconsin Elections Commission is concerned, in 2020, they advised city clerks and every voter that they did not have to follow existing Wisconsin laws. City clerks fixed ballots, city clerks found third parties to administer city elections, WEC told voters to register as permanently confined so that they did not have to venture out on Election Day or during early voting, they were fearful of contracting COVID-19. This was just absurd. WEC said we could use drop boxes. This led to ballots being processed in Wisconsin, illegal ballots being processed for the 2020 election, estimated at around 250,000 illegal ballots were processed in Wisconsin, because they were not properly turned in to the city clerk, but nothing was ever done about it.

As an observer in the City of Racine, which is located in southeastern Wisconsin, since the 2020 election cycle, I have witnessed each election, in which only one polling location followed Wisconsin election law § 7.41 and 2. That means that since 2020, and I have no reason to believe that in the past ten years it's been any different,

that poll observers were prevented from performing duties guaranteed in Wisconsin election law § 7.41 and 2. In my case when I asked the city clerk to move the observers' area within the three-foot workstation which is listed in § 7.41, by the pollworkers' station, she simply said that, "it's 3 to 8 feet away and you're six feet away and that's a range, and that's where you're gonna stay," so we were not able to see anything, and she said that the City of Racine attorney also agreed with that.

This is not the point that I really want to make, I want observers to observe each certificate to be checked for fraud and the address and the signature. At other Racine polling places this last election, I went around and checked them all out, and of all the polling places, only one polling place was within the guidelines of § 7.41. When I walked into this particular area, which I won't mention, I asked where the observers' box was and the individual said, "we don't, have one, we allow the observers to walk wherever they want to so they can observe whatever they want to." And I said, "That's the way it's supposed to be because all observers want to do is observe." The most important aspect of Wisconsin voters is to have to realize that Wisconsin Election Commission is not a regulatory body, WEC does not have the authority to change election laws, but yet in 2020 they did. WEC has operated outside Wisconsin election laws. The chairperson that is there now, her term ended in August, but yet from what I heard last she's still there, I don't understand that. As far as Wisconsin ID, as whether or not observers can see it, absolutely they can see it. In order to vote, you need to have a Wisconsin ID. That is part of the public aspect of the voting process, so for anybody to tell me I can't look at somebody's ID is absolutely wrong.

Deputy Administrator Robert Kehoe called time.

Attorney Hunzicker reiterated how to submit written comments.

Commissioner Spindell asked Mr. Landwehr whether he thought only one polling place in Racine was doing things correctly because they didn't have a designated area for observers, and whether observers were able to see various processes in the other polling places.

John Landwehr responded:

The individual that allowed us to walk around, he just said that this is the way he's always done it. He's never had an observation area, he lets everybody walk around and see the voting process, which is the way it's supposed to be. The other ones, all the areas had observation areas that were laid out, and some of them were six feet away, in one case we were actually fifteen feet away from where they were working. Because it was a primary election I didn't make a deal out of it, I already have a criminal complaint filed with WEC concerning this matter, so we'll see how that all turns out. But it's a real basic thing that observers want to observe, and we can't see it when we're looking upside down at anything that's written from three feet away. Poll observers in Caledonia, where I go vote, they allow the observers to walk behind the poll worker station, where they can peer over their shoulder, at a distance, isn't infringing on anybody's personal space, but they can actually view what's going on. The other thing that I notice is recently, the last several elections we've been using the electronic signature pad, well this is absolutely illegal because that signature doesn't look like anything on my voter card or on my drivers license or anything, so I don't know why anybody is allowing that to be used.

Sandy Juno

Sandy Juno, I'm involved with the Election Integrity Network as well as being the vice chair of the Republican Party of Brown County, and in addition I served as former Brown County Clerk. My comments are in regard to

the Definitions area of the rules. I believe that it would be very helpful to have some definitions added, and it's in regard to 7.41 for public access. I think oftentimes, there's different interpretations by clerks, and since we have so many, that means there's really a lot of different interpretations, but if you look up "voting" by definition, it is a formal indication of choice between two or more candidates or courses of action, expressed typically through a ballot. And when you look up "casting a ballot" definition, that means to vote in an election. And so, when they're used interchangeably, you have two different things that can be happening, but it's kind of all bundled into one word I think that's what creates the confusion. So our concern is about public accessibility to observe the return of all absentee ballots in the clerk's office from the period that absentee ballots are available, typically 45 days prior to the election, through 8 p.m. on Election Day. The area of concern is the definitions of "voting" and "casting a ballot." Our interpretation, "voting" a ballot is the elector's selection of preferred candidates and referenda, and "casting a ballot" is a culmination of the voting process where as the clerk or pollworker has received the ballot, either in person from the elector or assignee, or by mail, and the ballot is now available for processing and tabulation.

Again, we feel these are two distinct and separate processes. For example, an elector could vote a ballot by making candidate or referenda choices, and can choose to either cast his or her ballot or not to. If the ballot is cast, it's available for processing and tabulation. If the ballot isn't cast, or not returned, it's not available for processing and counting. Likewise, you could have an elector who chose to vote a blank ballot, and that does happen sometimes. If the ballot isn't cast, it's not available for processing and tabulation. But if it is cast, or returned, it's available for processing and tabulation. So those are just a couple examples of where those differences come in. Currently, many of the clerks interpret voting a ballot and casting a ballot are one and the same, and what happens is, we only have an opportunity to observe in the clerk's office during the two weeks in-person absentee voting period. When that's over, the Monday prior to an election and Election Day, our observers aren't allowed into the clerk's office to observe any ballots being cast, or in other words, returned for processing and tabulation. So this request, I think, would clarify what the differences are. It would allow observers to be fully accommodated to observe the casting of ballots for the whole 45 days prior to Election Day, and through Election Day at 8 p.m. on Election Day. So we don't want to just be able to only a partial of the time, a two weeks out of the four weeks, we want to be able to observe for the full six weeks. So therefore, I'm requesting the definition of "voting" and "casting a ballot" be added to the observer rules to clarify the two distinct activities, and provide statewide guidance on observing activities.

Commissioner Spindell asked Ms. Juno whether her recommendation to the Commission was to define the word "casting" and define "voting the ballots."

Sandy Juno responded:

Yes it is, as two separate functions.

Eileen Newcomer

I'm Eileen Newcomer, and I'm the Voter Education Manager for the League of Women Voters of Wisconsin. Thanks for the opportunity to provide spoken public comment today. I also have submitted written comments as well in addition to speaking publicly, and we'd like to obviously comment on draft rule Chapter EL 4 on election observers, and our stake in this rule is that we've conducted our nationally recognized, non-partisan election observer program in Wisconsin for over ten years now. As one of the organizations with the largest non-partisan election observer programs, we have a vested interest in the administrative rule governing the roles

and responsibilities of both election observers and officials. We have closely monitored this administrative rulemaking process, and would like to express our support for the rule as drafted.

We want to begin by acknowledging the diligent effort put into drafting the language of this administrative rule, and we commend the Elections Commission staff for dedicating their time to crafting this rule, and for actively seeking and incorporating feedback from the public, as well as an advisory committee made up of over 25 stakeholders from across the political spectrum. We especially want to recognize Staff Attorney Brandon Hunzicker for skillfully facilitating the advisory committee meeting, which served as a model for civil dialogue. Staff members were respectful, ensured everyone's voice was heard, and effectively applied feedback from the committee to improve the draft rule. We really appreciate the robust dialogue among committee members and believe it has significantly enhanced the rule.

Some key aspects of the currently drafted rule that we support and would like to highlight include the clear definition of "communications media," the requirement for election officials to announce to observers when a ballot is being remade and the reason for doing so, allowance for observers to view rejected absentee ballot certificate envelopes, the protections for observers to have access to chairs and bathrooms, as well as ensuring reasonable accommodations for observers with disabilities, and the respect for the privacy of voters assisted by special voting deputies, particularly in their private rooms and private living spaces in residential care facilities. Every voter deserves to cast their vote with dignity and respect, irrespective of age, zip code, or disability status. Voters served by special voting deputies are entitled to the same right to privacy all voters can expect to maintain while voting in their private residences.

Finally, the required documentation and reporting in the case an observer is removed from the polling place is really important. This requirement is a crucial aspect of the rule that protects both observers and election officials while ensuring proper procedures are followed. We believe that this administrative rule as currently written establishes clear and consistent guidelines for election officials and observers and strikes a necessary balance between transparency for observers and the ability of election officials to carry out their duties effectively. Most importantly, it prioritizes the voters' rights to vote without intimidation or interference. Adopting this rule is a crucial step in ensuring a smooth and intimidation-free voting experience for Wisconsinites.

Attorney Hunzicker gave any Commissioners present the opportunity to follow up with questions.

Kathryn Bartelli

I would like to say first that I agree with Julie Seegers and the second speaker, I believe his name was John, and a lot of their conclusions. I have been an experienced poll worker and election observer and an observer at recounts, and so there's just a couple things I'd like to address today. I think that 3-foot to 8-foot rule, 8-foot is too far. Most of us are, a lot of us probably that observe are on the "cheaters" these days, and very hard to determine anything from eight feet away. I understand that it's kind of hard sometimes to figure out how to put stuff, observers' chairs and things, where it's too close, but I do feel that that's too far, the 8-foot.

Some of the other things I've noticed in the rule that you put forward, is on EL 4.03, I feel that needs to be a little more detailed because, I think it was Julie that mentioned, that a lot of what you've written here gives the most, I guess "power" is a bad word, but power to the clerks to regulate everything, and I think that EL 4.03 leaves it too broad. The way it's worded, that first part: "Due to physical limitations or the orderly administration of elections, or both, the designated election official may reasonably limit the number of

observers representing the same organization who represent at any one time at an observable location.” I get that there needs to be some controls, but it’s going to be different for a tiny polling place versus a central count, or even a larger polling place. So, I wondered if you had ever considered kind of a formula based on the number of registered voters, or the number of stations, or something, to further make it easier to allow more observers, because some clerks are just going to limit it the way they want it.

Like Julie said, there’s nothing in this that talks about how the observers may file a complaint or address issues when they’re observing. The other issue I found in several sections, EL 4.03, 4.04(7), (12), and 4.05, I think you need to re-look at some of that as far as recounts are considered. You do a little small section at the end, I forgot what that number is, about the recounts, but you don’t reference that section in any of the other parts. I think you need to add that if you don’t further address the recounts in those sections. Like I said, it was EL 4.03, 4.04 (7) (12), and 4.05 were the ones that need the recount added.

Deputy Administrator Robert Kehoe called time.

Attorney Hunzicker reiterated how to submit written comments.

Attorney Hunzicker gave any Commissioners present the opportunity to follow up with questions.

Lori Stottler

I just want to bring up two little points in the readthrough, I think it’s very thorough. I’ve been about 20 years now in elections, so I don’t see that there were a lot of changes that are occurring to this. I do want to page 7, EL 4.03 (11) and (12), I’m wondering if, with the growing use of electronic poll books, if the Commission would want to define the expectation of the e-pollbook and what the observer is to be allowed to see for that.

And then, is there anything in the document that addresses, I didn’t see but I probably missed it, the observers coming in and out of a location. I currently require any observer who is leaving to sign out and then back in, for the purpose of if there’s ever a challenge or a recount, I don’t want it documented that they were there if they weren’t, and so I’m just not sure if there was anything that kind of addresses, I know they have to sign in and receive that many of them go to make phone calls and whatnot, and it would be nice to have something consistent across the state.

Attorney Hunzicker gave any Commissioners present the opportunity to follow up with questions.

Attorney Hunzicker asked any remaining potential speakers to raise their hand. He reiterated how you raise a hand for participants attending the meeting via phone and checked the attendee list again for potential speakers. He stated that anyone who wished to submit written comment could do so until 4:30 p.m. that afternoon.

Attorney Hunzicker spoke on next steps concerning the rule and confirmed no one else wanted to speak. The hearing ended at 1:44 p.m. The following text remained on the Zoom meeting screen until 4:30 p.m.:

Thank you!
Your feedback is appreciated!

Written comments can be submitted to brandon.hunzicker@wisconsin.gov until 4:30 p.m. today, April 24

For further information, contact WEC.

PH: 608-266-8005 Email: elections@wi.gov

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April 24, 2024 Wisconsin Election Commission public hearing minutes prepared by:



Anna Langdon, Help Desk Staff

April 29, 2024



Wisconsin Elections Commission

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(608) 266-8005 | elections@wi.gov | elections.wi.gov

DATE: For the September 11, 2024, Commission Meeting

TO: Commissioners, Wisconsin Elections Commission

FROM: Brandon Hunzicker, Staff Attorney

SUBJECT: EL 4 Election Observer Emergency Scope Statement

ATTACHMENTS: Appendix A – Election Observer Emergency Scope Statement
Appendix B – Governor Approval Letter
Appendix C – Public Hearing Minutes
Appendix D – Written Public Comments
Appendix E – Requests to Present to the Commission
Appendix F – JCRAR Rule Suspension Letter for Previously Promulgated Emergency Rules

Introduction: On June 27, 2024, the Commission approved sending a scope statement for an emergency rule on election observers, 072–24, to the Governor for approval. On July 3, the Governor approved the scope statement, and the Commission published it in the Administrative Register on July 8. On July 9, the Joint Committee for the Review of Administrative Rules (JCRAR) directed the Commission to hold a preliminary hearing and comment period for the scope statement and the Commission scheduled the hearing for July 19. The Commission must now consider all comments received during the comment period and consider whether to formally approve the scope statement. Due to staff’s assessment that there is a high chance this rule would be suspended if put in place, staff do not recommend formally approving the scope statement.

Discussion:

During the hearing on July 19, two individuals, Julie Saunders-Seegers and Eileen Newcomer, requested to present their arguments concerning the scope statement to the Commission during a meeting. The requests are attached as Appendix E. Because a quorum of the Commission was not present at the preliminary hearing, they may present their arguments to the full Commission because they sent their requests in writing during the hearing. Wis. Stat. 227.18(3)(b). Because Commission staff kept written minutes of the meeting, the presentations before the Commission must be limited to the record of the hearing. Wis. Stat. § 227.18(3)(d). Each individual was allowed four minutes to present during the hearing, and staff suggest allowing each individual four minutes, instead of the usual three, to present their arguments to the Commission during today’s public comment period.

The Commission must review the public comments received during the comment period before it could vote to formally approve the scope statement. Commission staff received 36 pages of written comments from the public. In addition, six people provided oral comments during the hearing. Commission staff have summarized all written and oral public comments below. The minutes from the hearing follow this memo as Appendix C and

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Administrator
Meagan Wolfe

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the full text of all written comments follows this memo as Appendix D. Both should be reviewed by the Commission prior to any approval of the scope statement.

Comments in Support:

Two written comments, with one being accompanied by an oral presentation at the hearing, were submitted in support of the emergency rule given how long it has taken for the permanent rule to be put into place. These comments were supportive of the rule as a necessary step before the November elections and supported the emergency rule adopting the same rule language as the permanent rule.

Comments in Opposition:

The vast majority of comments (over two dozen) related to the finding of emergency and specifically asserted that there was not an emergency that justified using the emergency rulemaking procedures. Some comments opposed the emergency rule because it would go into effect too close to the November election. Other commenters opposed the rule because they believed that Wis. Stat. § 7.41 already sufficiently regulates observer conduct. Another subset of comments opposed the entire rule in general, arguing that the rule was either not needed or infringed on the rights of observers.

Other Substantive Comments:

Several commenters provided specific recommendations for what they'd like to see in the rule text. One commenter encouraged the rule to copy the three to eight foot minimum and maximum distance requirements from statute so there was no confusion over where observers could be located. Two other comments stated they believed absentee ballot drop boxes should be covered and considered in the rule text.

Generally, staff have recommended that the Commission approve scope statements that have been approved by the Governor and that have received public comments. In this case, staff have only provided a possible motion and do not recommend approval. This is for two reasons.

First, most of the public comments were opposed to the scope statement. Though it is difficult to assess overall public sentiment, and though some of the individuals who submitted written comments may have been unaware of the closely related and ongoing permanent rule that has been developed with the input of a bipartisan advisory committee, it is at least clear that around 50 individuals felt motivated to contact the Commission to express opposition to the emergency scope statement, largely due to a disagreement with the Commission's finding of emergency and use of the emergency rulemaking procedures. The Commission could still vote to approve a scope statement after receiving negative comments, but it is important to consider those comments first.

Second, the Commission should consider the possibility that JCRAR may suspend this emergency rule, and for reasons similar to those expressed within the public comments. On July 22, the JCRAR voted to suspend the Commission's three emergency rules that had taken effect on June 10 and July 1 relating respectively to uniform instructions and ballot access challenges. The Committee expressed during a hearing and in a letter sent on August 1 that it disagreed specifically with the Commission's finding of emergency. The letter is attached as Appendix F. The finding of emergency in the election observer scope statement before the Commission is substantially similar to the findings in the suspended rules. Were an emergency rule concerning election observers to take effect, it is possible, if not likely, that the JCRAR would vote to suspend it on the same basis.

Not only would such a vote prevent the rule from being in effect during the General Election, it could also delay the implementation of the related permanent rule. Under Wis. Stat. s. 227.26(2)(1), "[i]f the committee suspends an emergency rule under this section, the agency may not submit to the legislature under s. 227.19 (2) the substance of the emergency rule as a proposed permanent rule during the time the emergency rule is

suspended.” The scope statement for the permanent observer rule expires on May 21, 2025. Action to permanently block the emergency rule would require a vote by the legislature that would likely not occur until January of 2025 after the new legislative session begins, and while that process might resolve before May and allow the permanent rule to continue, the timing could also put the permanent rule scope statement in jeopardy.

Due to these issues, which have not been present for any prior scope statement at the time of formal approval, staff provide a possible motion only and do not recommend approving the scope statement.

Possible Motion: The Wisconsin Elections Commission has received and reviewed all public commentary for scope statement SS 072–24, relating to an emergency rule for election observers. As the body with policy-making powers over the subject matter of the proposed rule, the Commission hereby approves the statement of scope under Wis. Stat. 227.135(2).

STATEMENT OF SCOPE
Pursuant to Wis. Stat. § 227.24
WISCONSIN ELECTIONS COMMISSION

Rule No.: EL Ch. 4 Election Observers

Relating to: Conduct, Regulation, and Accommodation of Election Observers

Rule Type: Emergency

FINDING OF EMERGENCY:

This Statement of Scope pertains to the promulgation of an emergency rule under Wis. Stat. § 227.24(1)(a).

The preservation of public peace, safety, and welfare of Wisconsin voters, observers, and election officials necessitates putting this rule into effect prior to the time it would take to promulgate it normally under chapter 227. The election cycle for a major presidential election year is already underway, which is expected to produce high voter turnout and high levels of scrutiny on Wisconsin’s election procedures. Emergency rulemaking will provide the Commission an opportunity to address election administration needs ahead of the November 2024 general election. The Commission’s permanent rule on election observers cannot take effect prior to being reviewed by the legislature, which will not officially consider the rule as received until January of 2025. Unless the Commission promulgates emergency rules under § 227.24(1)(a), Wisconsin will not have rules in place concerning election observers for the upcoming General Election.

RULE ANALYSIS:

1. A description of the objective of the proposed rule.

The Wisconsin Elections Commission (“Commission”) proposes to create Wis. Admin. Code EL Ch. 4 (“EL Ch. 4”), pertaining to the conduct, regulation, and accommodation of Election Observers. The Commission seeks to promulgate rules that set forth standards of conduct applicable to persons who are present at a polling place, or elsewhere, for the purpose of observing all public aspects of an election.

2. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives.

Existing Policy:

The Commission currently advises election officials, observer groups, and individuals on observer conduct using an expired version of emergency rules that were in place under the former Government Accountability Board. The Commission advises that the expired rules are the Commission’s interpretation of the public’s right to access under Wis. Stat. § 7.41.

Proposed Policy:

The Commission proposes to codify a permanent rule as required by Wis. Stat. § 7.41(5). The rule will expand upon items addressed in the statute that need clarification, such as: what interactions are permissible between observers, voters, and election officials; how a chief inspector may restrict which areas are open to observers; and what may count as disruptive behavior.

Alternatives:

If the Commission does not create EL Ch. 4, the current advice provided to local election officials, observer groups and individuals will remain, without the force and effect of an underlying administrative rule.

3. Detailed explanation of statutory authority for the rule (including the statutory citation and language).

Wis. Stat. § 7.41(5) states that the Commission “shall promulgate rules that are consistent with the requirements of sub. (2) regarding the proper conduct of individuals exercising the right under sub. (1), including the interaction of those individuals with inspectors and other election officials.”

Wis. Stat. § 5.05(1) states that the Commission “shall have the responsibility for the administration of chs. 5 to 10 and 12 and other laws relating to elections and election campaigns, other than laws relating to campaign financing.” Pursuant to such responsibility, the Elections Commission may “[p]romulgate rules under ch. 227 applicable to all jurisdictions for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns, other than campaign financing, or ensuring their proper administration.” Wis. Stat. § 5.05(1)(f).

Wis. Stat. § 7.08(3) states that the Commission shall “[p]repare and publish separate from the election laws an election manual written so as to be easily understood by the general public explaining the duties of the election officials, together with notes and references to the statutes as the commission considers advisable.”

Wis. Stats. § 227.11(2)(a) states that “[e]ach agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.”

4. An estimate of the amount of time agency employees will spend developing the proposed rule and of other resources needed to develop the rule.

WEC staff estimates that it would take approximately 30 staff hours to promulgate the administrative rule.

5. A description of all of the entities that may be affected by the proposed rule.

The proposed rule will affect and is likely to provide procedural clarity, authority, and security to municipal clerks, other local election officials, media, accessibility advocates, local election inspectors, and all organizations and individuals that wish to observe elections in Wisconsin by maintaining a presence at polling places. To a significant degree, the proposed rule will codify existing practices, and thus will require only moderate compliance outreach to observers, media, accessibility advocates, and the public as well as training to clerks and local election officials. The effect of the proposed rule, and subsequent processes, will have little to no impact on small businesses.

6. A summary and preliminary comparison of any existing or proposed federal regulation that addresses or is intended to address the activities to be regulated by the proposed rule.

There are no existing federal laws that attempt to regulate the right of citizens to observe elections at polling places or attempt to regulate the conduct of persons who act as observers at polling places.

Agency Contact Person: Brandon Hunzicker, Staff Attorney
(608) 267-0714; brandon.hunzicker@wisconsin.gov

Meagan L.M. Wolfe

Meagan Wolfe
Administrator, Wisconsin Elections Commission
June 28, 2024
Date Submitted



Tony Evers

Office of the Governor | State of Wisconsin

July 3, 2024

By Electronic Mail Only

Dear Secretaries and Agency Heads:

On this day, I approved the following statements of scope pursuant to Wis. Stat. § 227.135(2):

- A statement of scope by the Department of Safety and Professional Services, submitted June 12, 2024, relating to plumbing code review (Wis. Admin. Code chs. SPS 325, 361-366, and 381-387); and
- A statement of emergency scope by the Wisconsin Elections Commission, submitted June 24, 2024, relating to conduct, regulation, and accommodation of election observers (Wis. Admin. Code ch. EL 4).

On this day, I approved the following proposed administrative rule pursuant to Wis. Stat. § 227.185:

- A proposed emergency rule by the Hearing and Speech Examining Board, submitted April 23, 2024, relating to implementation of the audiology and speech-language pathology interstate compact (Wis. Admin. Code ch. HAS 6).

Please direct any questions about this letter to my policy director, Katie Domina.

Sincerely,

Tony Evers
Governor

cc: Mel Barnes, chief legal counsel (mel.barnes@wisconsin.gov)
Katie Domina, policy director (katherine.domina1@wisconsin.gov)
DOA State Budget Office (SBOAdminRules@spsmail.wi.gov)
DSPS (DSPSAdminRules@wisconsin.gov)
Brandon Hunzicker, WEC, (brandon.hunzicker@wisconsin.gov)



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

Public Hearing on Administrative Rules via Teleconference
201 W. Washington Avenue, Second Floor
Madison, Wisconsin
1:00 p.m. July 19, 2024

Public Hearing on Scope Statement 072-24

Staff present: Ahna Barreau, Brandon Hunzicker, Robert Kehoe, Anna Langdon, and Riley Willman, all by teleconference.

The hearing began at 1:01 p.m. Staff Attorney Brandon Hunzicker gave attendees until 1:03 p.m. to enter the meeting. At that time, he welcomed attendees to the public hearing and comment period inviting comments on Emergency Scope Statement 072-24, concerning the conduct, regulation, and accommodation of election observers.

Attorney Hunzicker reviewed past actions taken in the process to promulgate the emergency rule. He also summarized past actions taken in the process to promulgate the related permanent rule on the same topic, starting in 2022, and stated that the purpose of the hearing was to gather comments. Attorney Hunzicker noted that viewers tuning in on Wisconsin Eye would be unable to provide comment through that medium and reviewed how to access the Zoom meeting on the WEC website. He stated that comments presented during the hearing would be presented to the Commission through detailed minutes, and that written comments would be accepted until 4:30 p.m. that day. Attorney Hunzicker said that following receipt of written comments, the Commission would vote to approve or not approve the scope statement. He noted that if anyone at the hearing wished to present comments to the full Commission, they could do so if the request was made in writing during the public hearing.

Attorney Hunzicker reviewed how to comment within the Zoom meeting and stated each speaker would get four minutes to speak. He clarified that all comments must relate to the scope statement and questions may be answered at the discretion of WEC staff. He stated that written comment could be directed to his email, brandon.hunzicker@wi.gov, until 4:30 p.m. that day.

Eileen Newcomer

This is Eileen Newcomer, and I have comments on behalf of the League of Women Voters of Wisconsin. Thank you so much for the opportunity to provide public comment on behalf of the League regarding the emergency scope statement concerning election observers. The League has conducted our nationally recognized nonpartisan election observer program in Wisconsin for over 10 years. As one of the organizations with the largest nonpartisan election observer programs, we have a vested interest in the administrative rules governing the roles and responsibilities of both election observers and officials. The League has closely monitored this

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

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administrative rulemaking process and would like to offer our support for the implementation of an emergency rule for election observers that would be in effect for the November 2024 election. Much work has already been done to draft the permanent rule on election observers, and we would like to see the emergency rule adopt the same language that has been developed for the permanent rule. We commend the Elections Commission staff for dedicating their time to crafting the permanent rule and taking steps to implement an emergency rule. During the permanent rulemaking process, the Elections Commission actively sought and incorporated feedback from the public, as well as an advisory committee made up of over 25 stakeholders from across the political spectrum. We appreciate the robust dialogue among committee members and believe it has significantly enhanced the rule. Some key aspects of the proposed permanent rule that we support, and we believe would be important to include in the emergency rule, include the clear definition of “communications media,” requirement for election officials to announce to observers when a ballot is being remade, and the reason for doing so, allowance for observers to view rejected absentee ballot certificate envelopes, protections for observers to have access to chairs and bathrooms, as well as ensuring reasonable accommodations for observers with disabilities, respect for the privacy of voters, assisted by special voting [deputies], particularly in their private rooms or private living spaces in residential care facilities. Every voter deserves to cast their vote with dignity and respect irrespective of age, zip code or disability status. Voters served by special voting deputies are entitled to the same right to privacy all voters can expect to maintain while voting in their private residences. And the required documentation and reporting in the case an observer is removed from the polling place. This requirement is a crucial aspect of the draft permanent rule that protects both voters and election officials while ensuring proper procedures are followed. We believe that the draft permanent administrative rule as currently written establishes clear and consistent guidelines for election officials and observers, and it could easily be adopted through the emergency rulemaking process. Thank you so much for your consideration.

Julie Saunders Seegers

Thank you for this opportunity. My name is Julie Saunders Seegers and I have been a recruiter, trainer, and huge supporter of observers for the last three years. My comments are: why did WEC wait this long to make permanent the rules that the election observer advisory committee, which I was a member of, spent months, starting, like you said, November 22, revising and re-revising? I think I know. WEC waited until the Legislature was out of session, so WEC could skirt the scrutiny of JCRAR, which is the Joint Committee for Review of Administrative Rules. For those listeners who don't know what that is, this legislative committee oversees the rulemaking process for Wisconsin agencies. Because of WEC's strategy to not go through the permanent rule process and skip to the emergency rule process, WEC can proceed with making any rules that fit their desired results. Only after these rules are made and published can JCRAR investigate complaints with respect to those rules. WEC's emergency observer rule will be in effect for 150 days unless JCRAR finds that any or all of these potential rules conflict with existing statutes or processes were not followed. Which brings me to Wis. Stat. 227.135(2). It says, “No state employee or official may perform any activity in connection with the drafting of a proposed rule, except for an activity necessary to prepare the statement of scope of the proposed rule, until the governor and the individual or body, with policymaking powers over the subject matter of the proposed rule, approve the statement.” I would like to emphasize that WEC already spent months drafting a permanent rule. Seeing that staff and the observer advisory committee have likely spent hundreds of hours promulgating permanent rules with the same type of rules that WEC wants to promulgate in this emergency scope statement, it is already violating the administrative procedure.

George Barker

My name is George Barker and I'm just your average citizen that's retired, and I agree with what Julie said. I don't agree with emergency procedures, emergency rules being used in this case. I think the election activities has been vested in the state Legislature and we should keep it there. The WEC seems to be able to bypass the

Legislature by using an emergency rule, and my feeling is a lack of preparation on your part doesn't create an emergency on our part, and so I think there's too much potential for abuse. I recommend removing the last two lines in your scope that start with "Unless the Commission promulgates emergency rules under..." and instead replace it with, "The Commission will not be allowed to promulgate the rules through emergency rules procedure." Thank you.

Julie Saunders Seegers

Julie Saunder Seegers asked if she could ask questions and Attorney Hunzicker said yes, though he clarified that the purpose of the hearing was to gather comments for the Commission and he may only be able to provide a very limited response.

Julie Saunders Seegers asked:

Can you be clear on what the emergency is?

Attorney Hunzicker responded:

Yeah, I mean, I think I'm limited to what is in the Finding of Emergency in the scope statement. This is simply that the election is underway, and unless the Commission uses the emergency rulemaking procedures, there will not be any rule in place on election observers before the upcoming elections, and that is the only route for having a rule in place prior to that election. So it's just that finding of emergency in the scope statement, so I can't add any additional details to what's there.

Julie Saunder Seegers responded:

Well, Wis. Stat. § 7.41 are the rules, plus rules and statutes that state the rights of electors as well as observers, observers are electors as well, so the scope is not clear at all of what the emergency is, and therefore this really needs to just not happen. There's just not enough time. Again, they should have made the permanent rules when they had time. They had plenty of time to get those permanent rules done, so it's very obvious what the M.O. is here. Alright, thank you, Brandon.

Mary Ann Carlson

I've been just a concerned citizen. I have been an observer at Milwaukee central count, and I just want to concur with the last two speakers, and Julie is right. I mean, the law already states who observers are and what they need to do. There's all kinds of rules in place on this stuff. I don't understand what this is at all; I'm completely confused why there would be any action taken, and any organization who thinks they have the right to call an emergency and establish their own responsibility for running that at the same time doesn't make any sense. If there's an emergency, that ought to be a statewide call, not some committee who decides that they need XYZ. So there's no oversight here; there's no checks and balances. It just feels like it's kind of off the tracks here, so I just want to make that statement. Thank you very much.

Sandra Morris

Yeah, I agree with what the last few callers have said. What I would like to actually state, and I did send an email to the attorney to say this, just because the WEC officials think they're being challenged, and they don't like it, and that is equating to disrespectful or inappropriate behavior is not accurate, because we have a right to question legal actions, even things that we think are questionable. Because I think what's happening right now

is they didn't like the actions of some of the observers in this recent election, and they had very valid points and they were within their rights, within their laws to question it, and I think what's happening is that they don't like being questioned. But that's our right, that's our duty, and the law says it is so. I think this is just put into place so that we can't question them, and I think it's total bogus. I think it's unconstitutional and totally illegal, and so I'll finish with that.

Debra Morin

Debra Morin clarified with Attorney Hunzicker that speakers could also submit written comments in addition to speaking.

Debra Morin provided spoken comment:

I have been observing elections at polling places, in central counts, in residential care facilities and in-person absentee voting locations in various municipalities for 16 years. I have recruited election inspectors and election observers over these years, and I was a member of WEC's recent observer advisory committee. I think it would be a mistake at this time in this current election cycle to promulgate an emergency rule related to the conduct, regulation and accommodation of election observers. The text of this emergency rule scope statement was copied and pasted from the permanent rule statement of scope. Will the text of the permanent rule itself also be copied and pasted from the still unfinished work on the permanent rule? If so, we are now asking officials to become familiar with and apply a 13-page document for the first time, in all election locations, in the November 5, high turnout Presidential Election. Keep in mind, these election officials will also be administering a Partisan Primary Election on August 13, as well as having to assimilate recent court rulings on absentee ballot drop boxes and the right of some voters to vote electronically from home, and then any other future court ruling from now until November. So today, July 19, 2024, public comments are first being heard on the emergency rule scope statement. For context, according to state law, the deadline to send absentee ballots for the November election to voters with a request on file is Thursday, September 19. So technically, the November General Election begins in exactly two months. In the last Presidential Election, in 2020, in a WEC memo to the clerks, there were over 900,000 absentee ballot requests on file in early September. In that memo, WEC acknowledged the challenge for clerks in meeting those deadlines. And not to mention, this is just for context, the additional workload in the hiring and training of a maximum number of election workers for this high turnout November election. So currently, observers are given a trifold brochure entitled, "Observer Rules at a Glance." It's an easy and quick read for anyone observing the election process. It has been working fine. Until there is time to properly promulgate a permanent observer administrative rule, we can continue using the brochure; maybe we can rename it, "Election Observer Guidelines at a Glance." At the April 24, 2024, public hearing on the draft permanent rule text, I suggested 28 changes to the rule text. Several of my objections were for reasons of the absence of statutory authority, a conflict with state law, or arbitrariness. I don't know the nature of the comments made by others at that hearing or comment period. The Commission has yet to address the public input received at the April hearing. I fear trying to get an election observer emergency rule in place for this November's election would not preserve the public peace, safety, and welfare, and may only serve to create an emergency WEC is seeking to avoid. So those are my comments.

Julie Saunders Seegers

Julie Saunder Seegers asked a question:

Brandon, your answer for emergency is really a non-answer. This really isn't an emergency, and there is no emergency. You couldn't even say what the emergency was. So I think that you said that we could come make

comments in front of the Commissioners as well. Would that be something that I could do in addition, to ask questions like this?

Attorney Hunzicker responded:

Yes, you can. You can present to the Commission in a Commission meeting if you request during this meeting. So if you just send me an email within the next couple of minutes, I will certainly consider that to have been submitted during this meeting for that purpose.

Julie Saunders Seegers

Okay. Alright, thank you, Brandon, will do.

Attorney Hunzicker verified that no one else wanted to speak and reiterated the deadline to submit written comment. The live portion of the hearing ended at 1:37 p.m. and a slide remained in the Zoom meeting, reading:

Thank you!
Your feedback is appreciated!
Written comments can be submitted to
brandon.hunzicker@wisconsin.gov until 4:30 p.m. today, July 19
For further information, contact WEC.
PH: 608-266-8005 Email: elections@wi.gov

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July 19, 2024, Wisconsin Election Commission public hearing minutes prepared by:

Anna Langdon, Help Desk Staff

July 30, 2024

Appendix 1



P.O. Box 2597
Madison WI 53701-2597

TO: Wisconsin Elections Commissioners and Staff

FROM: Jay Heck, Executive Director of Common Cause in Wisconsin

DATE: July 19, 2024

RE: Statement from Common Cause Wisconsin on Wisconsin Election Commission Emergency Rule on Election Observer, SS 072-24 Scope Statement

Common Cause Wisconsin (CC/WI) supports the Wisconsin Elections Commission (WEC) Emergency Rule on Election Observer, Scope Statement 072-24¹, which establishes much needed clear rules and standards for election observers. Founded in 1970, CC/WI is the state's largest non-partisan citizens political reform advocacy organization with more than 8,000 members and activists in every county in Wisconsin.

Common Cause Wisconsin has recruited volunteer observers over many years and for several election cycles to be able to have our members observe and monitor the election process at polling locations throughout the state. Members of CC/WI have long been eager to have an opportunity to be part of the Wisconsin Election Protection programs in many different capacities, but they have particularly emphasized the value and importance of being trained as nonpartisan election observers by the League of Women Voters of Wisconsin for Election Day.

Common Cause Wisconsin is an active participating member of the WEC Election Observer Advisory Committee assisting with the development of the rule. Given the timeline of promulgating a permanent rule and the importance of having clarity for the November 2024 election, CC/WI supports WEC in its request for an emergency rule for SS 072-24. Election observers need clear rules in order to carry out their tasks at polling locations. Having this rule in place for November will help ensure the safety of voters, observers, and election officials. The

¹ https://docs.legis.wisconsin.gov/code/scope_statements/all/072_24

rule seeks to benefit observers but will also preserve and enhance access to the election process, and help improve transparency, security, and confidence in Wisconsin's elections. The rule strikes a careful and important balance between the election officials being able to carry out their jobs, an observer's access and ability to be able to view the voting process, and a voter's right to privacy and confidentiality while casting a ballot.

The rule is also comprehensive and responsive to the many points of concern members of the advisory committee named specifically at these meetings. These areas include the use of recording equipment, how observers can interact with voters and election officials while in the polling place, respecting a voter's right to privacy and the handling of confidential information, an observer's role when working with Special Voting Deputies, the safety and authority of election officials and chief inspectors, and maintaining an open and transparent process that is observable. The rule ensures the basic needs of election observers are met, such as access to restrooms, access to the voting process without interfering with election officials and voters, and receiving disability-related accommodations.

Common Cause Wisconsin recognizes the challenging task the WEC staff had in compiling comments, first-hand accounts, and feedback of the advisory committee with various nonpartisan organizations and active political parties in the state who often work with election observers. WEC staff and commissioners spent many hours facilitating the advisory committee, considering outside input from individuals and organizations, and having honest discussions about how to improve the role of the election observer. The commissioners should be commended for finding common ground in the submitted scope statement for this emergency rule and for forwarding the process in a bipartisan manner. As a result, this rule reflects fairness with clear, applicable expectations of election observers.

Observers, voters, and election officials rely on clear information from the WEC. Common Cause Wisconsin supports the proposed rule and requests that the Wisconsin Elections Commission approves this Emergency Rule on Election Observers, Scope Statement SS 072-24, as written. Establishing clear rules and standards for election observers across the state will help improve citizen confidence in the voting process and help observers in their important role of witnessing the election process.



612 W. Main Street, #200
Madison, WI 53703

Phone: (608) 256-0827
www.lwwwi.org



Date: July 16, 2024

To: Wisconsin Elections Commission

From: The League of Women Voters of Wisconsin

Re: Public Comments for Wisconsin Elections Commission Regarding Preliminary Public Hearing on Emergency Scope Statement Concerning Election Observers

Thank you for the opportunity to submit public comments on behalf of the League of Women Voters of Wisconsin regarding the emergency scope statement concerning election observers. The League has conducted our nationally recognized nonpartisan election observer program in Wisconsin for over 10 years. As one of the organizations with the largest nonpartisan election observer programs, we have a vested interest in the administrative rules governing the roles and responsibilities of both election observers and officials. The League has closely monitored this administrative rule-making process and would like to express our support for the implementation of an emergency rule for election observers that would be in effect for the November 2024 election.

Much work has already been done to draft the permanent administrative rule on election observers, and we would like to see the emergency rule adopt the same language as has been developed for the permanent rule. We commend the WEC staff for dedicating their time to crafting the permanent rule and taking steps to implement an emergency rule.

During the permanent rule making process the WEC actively sought out and incorporated feedback from the public as well as an advisory committee made up of over 25 stakeholders from across the political spectrum. We appreciate the robust dialogue among committee members and believe it has significantly enhanced the rule. Some key aspects of the proposed permanent rule that we support and would be important to include in the emergency rule include:

- Clear definition of communications media.
- Requirement for election officials to announce to observers when a ballot is being remade and the reason for doing so.
- Allowance for observers to view rejected absentee ballot certificate envelopes.

- Protections for observers to have access to chairs and bathrooms as well as ensuring reasonable accommodations for observers with disabilities.
- Respect for the privacy of voters assisted by Special Voting Deputies, particularly in their private rooms or private living spaces in residential care facilities. Every voter deserves to cast their vote with dignity and respect, irrespective of age, zip code, or disability status. Voters served by Special Voting Deputies are entitled to the same right to privacy all voters can expect to maintain while voting in their private residences.
- Required documentation and reporting in the case an observer is removed from the polling place. This requirement is a crucial aspect of the rule that protects both observers and election officials while ensuring proper procedures are followed.

We believe that the draft permanent administrative rule, as currently written, establishes clear and consistent guidelines for election officials and observers, and could be easily adopted through the emergency rule making process. It strikes a necessary balance between transparency for observers and the ability of election officials to carry out their duties effectively. Most importantly, it prioritizes voters' rights to vote without intimidation or interference. Adopting this rule is a crucial step in ensuring a smooth and intimidation-free voting experience for Wisconsinites.

Thank you for your consideration.

Introduction

The Center for Election Confidence, Inc. (CEC) submits these comments to the Wisconsin Election Commission (WEC) to highlight the critical role election observers play in securing and bolstering confidence in the electoral process and to ensure that the public’s right of access envisioned in Wisconsin law is implemented effectively.

As WEC considers this effort to re-codify an expired Government Accountability Board emergency rule concerning the public’s right to observation of Wisconsin elections, CEC encourages WEC to ensure that any new rule and associated guidance materials specifically include language confirming the minimum and maximum distance requirements in Wis. Stat. § 7.41(2) so that “any election observer [may] readily observe all public aspects of the voting process.”

Wisconsin Election Law Provides for Specific Distance Requirements for Observation

Wis. Stat. § 7.41(2), sets specific minimum and maximum distance requirements for the location of election observation areas so that “any election observer [may] readily observe all public aspects of the voting process.”

This requirement is further defined by explaining that observation areas “shall be not less than 3 feet from nor more than 8 feet from the table at which electors announce their name and address to be issued a voter number at the polling place, office, or alternate site[.]” Further, observation areas shall be “not less than 3 feet from nor more than 8 feet from the table at which a person may register to vote at the polling place, office, or alternate site.”

Any Re-Codification of the Election Observer Rule Must Reference Access Requirements

Any re-codification by WEC of the election observer rule must reference the access requirements contained in Wis. Stat. § 7.41(2) to ensure that both members of the public acting as election observers and election officials are aware of the specific minimum and maximum distance requirements for the location of election observation areas.

A failure to include access requirements in a re-codification of the election observer rule may result in a misunderstanding of the applicability and enforceability of Wis. Stat. § 7.41(2), resulting in the placement of election observation areas outside of the specific minimum and maximum distance requirements. Such misunderstanding would violate the underlying purpose of § 7.41(2), that “[t]he observation areas shall be so positioned to permit any election observer to readily observe all public aspects of the voting process.”

Conclusion

Wisconsin law provides for specific minimum and maximum distance requirements for the placement of election observation areas to ensure that members of the public acting as election observers are able “to readily observe all public aspects of the voting process.” In order to alleviate any confusion or misunderstanding and to ensure that the public’s right of access envisioned in § 7.41(2) is implemented effectively, CEC encourages WEC to ensure that any re-codification of the election observation rule specifically reference these distance requirements.

Respectfully submitted this 19th day of July, 2024,

Lisa L. Dixon, Executive Director
Center for Election Confidence, Inc.

Lane E. Ruhland, Attorney
Ruhland Law and Strategy, LLC

Public Comments for July 19th WEC Preliminary Hearing on Emergency Statement of Scope SS 072-04

Date: July 18, 2024

To: Wisconsin Election Commission

From: Barbara Beckert, bpbeckert@gmail.com

Members of the Commission and staff, thank you for your service and for the opportunity to provide public comments regarding the [SS 072-24 Scope Statement](#).

I served on the Wisconsin Election Commission's Advisory Committee on Election Observers, representing Disability Rights Wisconsin, prior to my retirement at the end of 2023. I commend the Commission for establishing the advisory committee and thank the staff, especially Attorney Brandon Hunsicker, for providing a forum for stakeholders with a wide range of perspectives to dialogue and respectfully share their input. It is gratifying to see that input from the committee has been incorporated to improve the Draft Rule EL 4 - Election Observers.

It is important that the Commission address election administration needs related to observers, ahead of the November 2024 general election. I am concerned that if the Commission does not promulgate an emergency rule under § [227.24\(1\)\(a\)](#), Wisconsin will not have rules in place concerning election observers for the November 2024 General Election. Clerks will not have the tools they need to address conduct of observers and ensure the rights of observers and voters, and there will not be consistent practices across municipalities.

I strongly support the Emergency Scope Statement and ask that the Commission approve the Scope Statement following this hearing. It is important that the Commission have rules in place concerning observers for the upcoming General Election.

As noted in the Statement of Scope: "The proposed rule will affect and is likely to provide procedural clarity, authority, and security to municipal clerks, other local election officials, media, accessibility advocates, local election inspectors, and all organizations and individuals that wish to observe elections in Wisconsin by maintaining a presence at polling places"

In terms of the content of the proposed emergency rule regarding election observers, these are some key aspects of the currently drafted rule that I supported as a member of the committee and had strong support from disability and aging groups. I was pleased to see the inclusion of the following items in draft rule EL-4 Election Observers:

- Requiring that observation areas be accessible to observers with disabilities and include space for mobility equipment, chairs, or other disability related aids.
- Protections for observers to have access to chairs and restrooms.

For residents of care facilities:

- Requiring that an observer shall comply with any requirements imposed on visitors by a facility served by special voting deputies. This is vital to protecting the health and safety of vulnerable residents.
- Stating that Special Voting Deputies must enforce the voter's constitutional right to cast a secret ballot, just as the voter is entitled to in other absentee or polling place settings.
- Clarifying that "an observer shall not be permitted to enter a voter's private room; however the observer shall be permitted to observe such voting from a common area in accordance with sub. (4)(d). The voter may elect to close their door or otherwise secure their voting privacy." It is essential to protect the privacy of residents assisted by Special Voting Deputies. Residents of care facilities have the same rights to privacy as any Wisconsin resident voting in their own home. While the common areas are considered a polling place, a resident room specifically is not a polling place. No election observer needs to nor should have access to the private residence of a voter, especially to a bedroom.

Disability and aging groups strongly supported these provisions and urge that they be included in the emergency and permanent rule moving forward.

In closing, I strongly support the proposed Emergency Scope Statement and ask that the Commission approve the Statement following this hearing. It is essential that the Commission have rules in place concerning observers for the upcoming General Election.

Julie Saunders-Seegers
7/19/2024

RE: Scope Statement 072-24

I have been a recruiter, trainer and huge supporter of observers for the last 3 years. My comments are:

Why did WEC wait this long to make permanent the rules that the Election Observer Advisory Committee, which I was a member of, spent months starting late 2022 discussing, revising and re-revising? I think I know. WEC waited until the legislation was out of session so WEC could skirt the scrutiny of JCRAR. That is the Joint Committee for Review of Administrative Rules for those listeners who don't know what that is. This legislative committee oversees the rulemaking process for Wisconsin agencies. Because of WEC's strategy to not go through the permanent rule process and skip to the emergency rule process, WEC can proceed with making any rules that fit their desired results. Only after these rules are made and published, can JCRAR investigate complaints with respect to these rules. WEC's emergency observer rule will be in effect for 150 days unless JCRAR finds that any or all these potential rules conflict with existing statutes or processes were not followed. Which brings me to...

Wis Stat 227.135(2) says No state employee or official may perform any activity in connection with the drafting of a proposed rule, except for an activity necessary to prepare the statement of the scope of the proposed rule until the governor and the individual or body with policy-making powers over the subject matter of the proposed rule approve the statement. " I would like to emphasize that WEC already spent months drafting a permanent rule. Seeing that WEC staff and the Observer Advisory Committee have likely spent hundreds of hours preparing promulgated permanent rules with the same type of rules that WEC wants to promulgate in this emergency scope statement, WEC is already violating the administrative procedure law 227.135(2). All WEC has to do is slap an emergency rule title on it. All the work has already been done. This is evidenced by scope statement item number 4 that states it would take WEC staff 30 hours to promulgate these emergency rules. 30 hours? That would be a record to promulgate all the rules to expand all the items addressed in WisStat 7.41. A JCRAR flow chart shows that it takes 7.5 to 13 months to promulgate a "typical" permanent rule. It should definitely take more than 30 hours starting from scratch to create such an elaborate emergency rule.

What is the emergency? This is not clear in your “Statement of Scope”. WEC states that the “emergency rulemaking will provide the Commission an opportunity to address election administration needs. What do you mean by “administration needs”? Who needs are you concerned about? A few of the items that come to mind that were discussed: 1) not allowing observers to see ID’s. Will WEC try to keep observers from observing behind the poll workers? 2) Keeping observers out of the rooms of nursing home patients directly violates the law that turns that room into a polling place. 3) Keeping observers as far away from seeing and hearing in Central Count is another huge concern in many locations. This has never been successfully addressed by WEC.

Observers have already been trained for the two upcoming elections. You will do nothing but create confusion if you promulgate emergency rules. Isn’t that what we should avoid?

I would like to address what happened at a Milwaukee election site on July 2, 2024. Commissioner Jacobs broke many observer rules that day. Seems hypocritical to make emergency rules that she can’t follow herself. I have bragged that an observer has never been asked to leave any election site for disruptive behavior in those three years in all of Wisconsin. Unfortunately, I can’t say that anymore, not from any fault of their own, but because the election clerks/chiefs involved on July 2, 2024, turned to WEC for advice when observers, who are also electors, begin challenging ballots that did not meet the requirements of statute 6.86(1)(ac). WEC turned on the observers because they didn’t like observers exercising their rights as observers and electors. Five observers were removed from 3 different election sites in Glendale, WI who were exercising their rights as observers and electors. They were not disruptive in any way, shape or form. They were respectful, only spoke to the clerk or chief in charge, and stayed within the designated areas designated all which WEC outlines in this scope as concerns. Who didn’t do that was Ann Jacobs, who signed in as an observer on the same day at Milwaukee Central Count. She was wearing an observer badge and went in areas that no other observer would have even been allowed to go, as well as she spoke to the media in a central count location...another action WEC would never have allowed any other observer. What was she doing there? The answer is she was coaching clerks and elections staff to not accept legal challenges against illegal ballots. Commissioner Ann Jacobs gave advice to them about EL-122 that there is a current injunction on. Thus, signing in as an observer so she could state she was there to observe when the truth is she was giving advice. Again, what’s the emergency, Commissioner Jacobs?

MaryBeth Slezak <marybeth.slezak@gmail.com>

I sat in on the Zoom call this afternoon. I fully agree with the majority who spoke on their grave concerns. "Your (WEC) lack of planning does not necessitate an 'emergency' on our part... the electors of the State of Wisconsin." Doing this 'change' so late in the current presidential election cycle time frame will only compound voters distrust in the election process. I have been an election observer, election inspector, and special voter deputy. The current guidelines are sufficient!

What 'emergency' are you anticipating? What do you know that we, the citizens of Wisconsin need to prepare?

WEC needs to be reminded, they are NOT a legislative branch of our state government, and they need to cease acting in this manner!

Respectfully,
MaryBeth Slezak

Debbie Morin kdmorin6@sbcglobal.net

Dear Brandon,

Following are my comments on the Emergency Scope Statement concerning election observers:

I have been observing elections at polling places, in central counts, in residential care facilities and in-person absentee voting locations in various Wisconsin municipalities for 16 years. I have recruited election inspectors and election observers over these years and I was a member of WEC's recent election observer advisory committee.

I am opposed to the approval of the election observer emergency rule scope statement. I think it would be a mistake, **at this time in the current election cycle**, to promulgate an emergency rule related to the conduct, regulation and accommodation of election observers.

The text of this emergency rule scope statement was copied and pasted from the permanent rule statement of scope. Will the text of the permanent rule itself also be copied from the still **unfinished** work on the permanent rule? If so, **we are asking election officials to become familiar with and apply a 13 page document for the first time in all election locations in the November 5th high turnout presidential election.** Keep in mind these election officials will also be administering a partisan primary election on August 13th, as well as having to assimilate recent court rulings on absentee ballot drop boxes, the right of some voters to vote electronically from home and any other future court ruling from now until November.

Today, July 19, 2024, public comments are **first** being heard on the emergency rule scope statement. For context, the statutory deadline to send absentee ballots for the November 5th election to voters with a request on file is September 19, 2024. So technically, the November General Election begins in exactly 2 months. In the 2020 presidential election, according to a WEC memo to the clerks, there were over 900,000 absent ballot requests on file in early September. In that memo WEC acknowledged the challenge for clerks in meeting those deadlines. Not to mention the additional work load in the hiring and training of a maximum number of election workers for a high turnout election. And the "to-do" list continues to grow.

Currently observers are given a tri-fold brochure entitled "Election Observer Rules-at-a-Glance". It's a quick and easy read for anyone observing the election process. It has been working fine. **There is no emergency at this time necessitating the establishment of this election observer emergency rule.** Until there is time to properly promulgate a permanent election observer administrative rule, we can continue using the brochure, maybe renamed as "Election Observer Guidelines-at-a-Glance". Additionally, Wis. Stat. 7.41, "the public's right to access" remains in place to govern the conduct, regulation and accommodation of election observers.

At the April 24, 2024 public hearing on the draft permanent rule text, I submitted **28 suggested changes to the rule text. Several of my objections were based on reasons of the absence of statutory authority, a conflict with state law or arbitrariness.** I don't know the nature of comments made by others at that hearing/comment period. **The commission has yet to address the public input received at the April hearing.** If this emergency rule is based on the text of the permanent rule, my 28 concerns still stand.

I fear trying to get an election observer emergency rule in place before this November's election would not preserve, but more likely **disrupt** the public peace, safety and welfare of Wisconsin voters, observers and election officials. Rushing to get an election observer rule in place at this time would likely create the disruptions WEC is seeking to avoid.

Respectfully,

Debbie Morin

Mike & Pam Spaid spaid@charter.net

This is an outrage. They had years to fix this. This is election fraud. There is no emergency in regards to observer rule changes.

Cherie Adler cherklop@yahoo.com

It has been WEC's strategy is to NOT have the rules passed before the legislative session closed is their modus operandi...so they can proceed to make emergency rules without going thru the normal process of scrutiny through the legislative process. THERE IS NO EMERGENCY!

We already have statutes in place that give observers rights who are also electors: Observers have a right to observe all public aspects of the voting process; any registered elector of a municipality may challenge the registration of any other registered elector; the vote of any absent elector may be challenged by any elector for cause.

There is no emergency You are making an egregious error of overstepping your boundaries. NO NEW 'EMERGENCY' RULES.

Cherie Adler

PamA 81 pamaug931@gmail.com

Hello,

This is to inform you that Wisconsin is watching. There is no emergency with election observer rules. What is the emergency? Where and when was it published? WEC must not overstep boundaries by misinterpreting state statutes. Observers need to observe the voting process according to laws in place.

Pam Augustyn

Antigo, WI

Jeff M erjeff@yahoo.com

There is no emergency and we all know it. To suggest that there is, for purposes of promulgating rules governing election observers, is a despicable and fraudulent power grab by WEC

There are already rules on the books that should be adhered to unless or until the legislature moves otherwise. WEC had ample time to pursue this under normal procedures and to suggest that there is now an emergency is simply a lie and further evidence that the WEC needs to be eliminated.

I certainly hope that my opinion on this matter is represented in the upcoming public hearing. [SS 072-24](#)

Sincerely,

Jeffrey C. Manlove MD

289 4th St.

Fond du Lac, WI 54935

lbramel@1791.com

Mr Hunzicker,

What is the 'Emergency' to justify the use of 'Emergency Rule Making' to change the rules of observing the election.

We are watching and waiting for your response to this violation of existing state laws.

I am appalled at how WEC loathes the Wisconsin voter so much that the Commission would try something like this so close to the election.

AND Megan Wolf must GO!

Mrs. Leslie Bramel

Men. Falls

Michael Nedvidek mikenedvidek@gmail.com

This attempt by WEC should be seen for what it is. It is an attempt to further damage the integrity of Wisconsin elections. I am an Election Observer and I can tell that these rules will keep us from effectively doing our duty. We won't be able to see ID's making it so we won't be able to stand behind the poll workers,

-WEC wants to restrict observers to one location. Observers have a right to observe all public aspects of the voting process per 7.41.

-In a nursing home situation, Elec Obsvrs won't be allowed in the elector's room where SVD's are administering the voting process violating 6.875(6)(b) that "the home or facility SHALL be treated as a polling place".

-I'll guarantee there will be absolutely nothing written in these emergency rules that will provide

recourse or protection for observers. WEC shows no respect for observers. Please, this is an urgent situation as these emergency rules will last for 150 days, well beyond the Presidential election.

WEC's rules proposal is 88 pages long!! Most have a hidden agenda and also misinterpret the laws.

WEC cannot go rogue and write emergency rules that we can't see ahead of time. I demand that WEC withdraw these rules now.

Regards,
Michael D. Nedvidek

Bill Utphall billutphall@gmail.com

There is no emergency. Any new rules enacted by wec under so called emergency are direct election interference. You people are so obvious and pitiful.

William utphall

E1396 state road 64

Boyceville wi 54725

Herman Riddle riddleherman49@gmail.com

Herman Riddle
July 19th, 2024

Reference to SS 072-24

It was brought to my attention yesterday that WEC is holding a meeting asking for an "emergency rules" on observers.

My concern is that WEC wants rules on observers and there are rules already in place.

If it's because of the recent situation on July 2nd 2024, what more ruling is needed that would do more than simply having observers removed from the polling places? Did not the current rules work?

Who determines what disruptive is? When my 7-year-old child interrupts my business phone call from his Mother and he questions me; is he being disruptive? When he asked me to show him my phone so he feels comfortable it's his mom, do I dismiss him for asking a communicative cooperative question?

The problem with an "Emergency" to alter rules seems not to be in the best interest of the public and a little suspect of a potential power play on the public since the current rules had observers removed earlier this month and no arrest were made for disruptive behavior.

So again what defines Disruptive Observers?

Ballot challenging is a State Law designed that no Persons or Political party can cheat. It's not a Democrat law; it's not a Republican law.

It's a law of "integrity" and inclusiveness that "all" of Wisconsin voters can feel confident that the time they took out of their busy schedule to cast their vote is fair and equitable. That their constitutional rights as a "Citizen" of America and the great State of Wisconsin is bilaterally protected. Anything to abort, alter, or emergency amend at this point is an obvious attempt to unnecessarily control, unknowingly to most of the public, all polling venues. Our Wisconsin legislative polling laws allows us participatory exercises for the intended purpose of Transparency.

WEC's perspective of a disruptive observer is clearly a violation of the right of an election observer to question even the legitimacy of even a single ballot.

Five of the six times I have been an observer from Kenosha to Twin Lakes and in ALL these polling venues the Chief and the City Clerks and workers were fantastic in solving problems and situations with transparency, explanation, and resolve.

What we need is rules that bring poll workers and observers together, instead of preemptive attempts silencing hard working, volunteering concerned Citizen of fair Wisconsin elections.

dmcpsc87@aol.com

To Whom It May Concern:

I am a Wisconsin resident. I do not believe there is any emergency that should prevent observers being present for all aspects of the voting process for the General Election this fall, November 5, 2024.

Thank you,

Donna Chamberlain

De Pere, WI

Name: rose eucke

Address: 3239 n Cramer st, Milwaukee WI 53211

Email: eucke.roseden.rose62@gmail.com

Organization:

Comments: Drop boxes outside of polling locations not monitored by person huge concerns. During last time used I witness hands full drop into box. A dog put ballots in box for treats' not in line of vision of person or poll locations Should be inside polling location preferably handed to poll worker

How will poll worker's screen ID for non citizen Migrants that are being provided in Wisconsin?

Nancy Rodee nancyrodee@gmail.com

Just wanted to throw this out to the Republican Party organizers....how about making this song part of the team..Michael McDonald song "I stand for you". Trump certainly stands for all of us..slogan MAGA...who wouldn't want that for our country. God bless him and all of you. Thank you!

Kathryn Bartelli 2bartelli@gmail.com

WEC Commissioners & staff:

I would appreciate my comments being read out loud during the public comment section in case I end up not being able to participate.

I, an election inspector sometimes observer myself, am in opposition to any and all "emergency" or other rules that you, WEC & staff, have tried to promulgate, including the one today that may prevent citizens/voters from exercising their rights as election observers.

The statute is clear about what rule/s you might promulgate:

(5) The commission shall promulgate rules that are consistent with the requirements of sub. (2) regarding the proper conduct of individuals exercising the right under sub. (1), including the interaction of those individuals with inspectors and other election officials.

Try not to do what you always seem to do- bend rules to what you want them to be not what they are supposed to be by law/statute and then give that "guidance" to clerks to further partisan agendas!

3' is reasonable 8' is ridiculous and is mainly implemented so that observers might not visually catch items that election workers may have missed such as missing signatures on absentee certificates/envelopes. 8' is also unreasonable for hearing voter name & address announcements or any potential discussion about an abnormality the election worker might find & bring to the attention of the clerk or chief election inspector.

Recently I observed at the Milwaukee Central Count and no one from the election staff bothered to explain the observation area to me other than to point out some taped lines on the floor. If we violated spaces it's their own fault for not educating us.

You might wish to publicly explain why some of the process there was unobservable behind closed doors in a separate room marked for Milwaukee Election Commission staff only. The glass windows were way farther away than 8'. Is this a violation of WI statutes? How about making some "rules" for clerks to follow that don't violate WI Statutes?

A concerned citizen/election inspector,

**Kathryn Bartelli
N3082 Willow Rd
Lake Geneva, WI 53147
712-540-2125**

shannon w shanolynn@hotmail.com

Observers have a right to observe all public aspects of the voting process; any registered elector of a municipality may challenge the registration of any other registered elector; the vote of any absent elector may be challenged by any elector for cause.

There is no emergency, I warn anyone involved of the potential egregious error of overstepping their boundaries.

Margaret Gould margaretgould0@gmail.com

We already have statutes in place that give observers rights who are also electors: Observers have a right to observe all public aspects of the voting process; any registered elector of a municipality may challenge the registration of any other registered elector; the vote of any absent elector may be challenged by any elector for cause.

Thank You,

Margaret Gould

Shorewood WI 53211

M Legler justme4x@gmail.com

There is no reason for observer rule change there is no emergency.

manuel@hispanicsuw.com

Mr Hunzicker,

I came across from a watch person that the WEC has called for an emergency to circumvent the normal procedures on establishing Observer rules, as established by state law. Please stop this. What exactly is the emergency? Emergency procedures were not even used during covid.

Manuel Casares, President

Hispanics United Wisconsin, Inc

PO Box 251, Beloit WI 53512

telephone: 608-466-6433

[Facebook Page](#)

elizabethbruders elizabethbruders@proton.me

I have worked as an observer at all the elections processed at Milwaukee Central Count since August 2022. I have observed them processing the absentee ballots, usually from about 9am on election day until the zip drives leave for Milwaukee city hall.

Observers are an important part of the election process because we watch to make sure that election officials are following Wisconsin election laws. This observation has been especially important since 2020 when we saw the Wisconsin Election Commission and Meagan Wolfe creating election rules and guidelines that were later determined to be illegal by Wisconsin judges. Observers help bring accountability to the election process. The recent “Emergency” rules created by WEC would hinder that observation and accountability.

By observing at Milwaukee Central Count, I’ve seen that there is very little security to protect the votes of Wisconsin voters. There is no chain of custody to keep track of where the ballots are coming from, how many arriving at each drop off, and who is handling the ballots to make sure they are secure. Observers have to constantly ask busy canvassers where the ballots are coming from and how many arrived; there are no forms shared with observers to make sure the election machines and ballots are being properly secured.

This chain of custody issue becomes even more important with the Wisconsin Supreme Court allowing drop boxes again despite a ruling from two years ago that considered them illegal.

Wisconsin Election Commission and Meagan Wolfe has not educated voters and clerks regarding important WI election laws.

Wis. Stat. 6.86(1)(a)6 and 6.86(1)(ac) safeguard absentee ballots by requiring the request to be included inside the envelope with the ballot.

Wisconsin electors **“shall return with the voted ballot a copy of the request bearing an original signature of the elector as provided in s. 6.87(4).”** (emphasis added)

Wis. Stat. 6.84(2) provides that ballots cast in contravention of 6.86(1)(ac) and 6.87(4) **may not be counted, and if counted, may not be included in the certified result of any election.** (emphasis added)

As an observer, I’ve never seen this required request inside the envelope with the mail-in absentee ballot.

In February 2024, a complaint/lawsuit was filed to address this problem ([Case 2024CV000043](#)) in Marinette County. In May 2024, the judge granted a temporary injunction, agreeing with the plaintiff ([Case 2024CV000043 Document 33](#)). A letter was sent to the clerks to notify them about these important Wisconsin laws and their need to follow them. Instead of standing by Wisconsin laws and educating voters and clerks, WEC’s response was this letter: https://elections.wi.gov/sites/default/files/documents/FAQ_Official%20Absentee%20Ballot%20Certificate%20Application_EL-122_FINAL.pdf

WEC considers the envelope to be adequate application and certification and they want it to take the place of the required absentee ballot request. They told the clerks they don’t need to

follow the injunction until the lawsuit is decided. This response is yet another time WEC and Meagan Wolfe have shown a disregard for the election laws made by our legislature.

On 7/2/2024, I watched the Special Election in District 4 at two different locations. Observers were trying to challenge the absentee ballots that didn't have the required request inside the envelope with the ballot. We were told by the chief inspectors and clerks that we are not allowed to challenge these ballots even though they do not comply with Wisconsin law. The results of this election were certified even though the election was conducted illegally.

Observers are an important part of elections in Wisconsin. We strive to be respectful, but we want all our election officials to comply with Wisconsin election laws. The "Emergency" observer rules created by WEC should not stop observers from keeping our election officials accountable and insuring that our elections are conducted according to Wisconsin law.

Comment also submitted to the Wisconsin legislature on 7/19/2024:

<https://docs.legis.wisconsin.gov/feedback/agencyform?cite=scope/072-24>

Sincerely,

Elizabeth Bruders

123 Hinman Avenue

Waukesha, WI 53186

Peter pmbmap123@gmail.com

TO: the Six WEC Commissioners

Regarding the soon-to-be-held hearing on election observer rules, WEC has falsely declared an emergency. I read what WEC alleges to be an emergency, and it is in no way, shape or form an emergency. Not even close.

WEC certainly knows the Courts ruled that Covid was not even an emergency. WEC continues to abuse this provision of the rulemaking process.

Any rules changed will be challenged.

Peter Bernegger

Diane Coenen dcoenen@oconomowoc-wi.gov

Thank You Brandon for providing us notice several days in advance of the hearing and time to review the emergency scope statement. I have reviewed and have no comments or suggested changes. Although I will not be able to attend the hearing, I do support.

Thank You, Diane

Diane Coenen, CMC, WCMC

Professional City Clerk
City of Oconomowoc
174 E. Wisconsin Avenue
Oconomowoc, WI 53066
262-569-2175

dcoenen@oconomowoc-wi.gov

Jim Buck jbuck1@wi.rr.com

I have worked as an election observer for a couple of years at central count and I've been asked to go to additional polling places as needed in Kenosha, WI. I have reviewed the section 7.41 and it adequately describes the rules needed to run a successful election. Polling places around Wisconsin differ greatly and creating an emergency rule at this late date will lead to confusion.

30 hours to produce a rule this important will only cause problems!

Thanks,

James Buck

--

James Buck
7103 37th Avenue
Kenosha, WI 53142
262-705-2832

rmacarlson@verizon.net

I am strongly concerned about the term "emergency". What emergency?

I do not agree that WEC has the right or responsibility to establish an emergency and then give themselves the right to rule

And I want removal of the last 2 lines and be replaced with "commission will not be allowed to promulgate emergency rules"

Mary Anne Carlson

703-994-2551

S Arnz skarnz7114@gmail.com

Hello,

I just became aware that the WEC is trying to instill new rules for election poll observers. May I ask:

1) What is the emergency?

2) Where and When was this published?

It is my understanding that the JCRAR has the power to suspend these 'emergency rules' once published. Senator Nass and Representative Neylon are copied on this email and I am asking them to act on this immediately.

I fear that these 'rules' are an attempt to infringe on the rights of citizens to observe the entire election process, including central count. Observers are critical as 'eyes on the process' and these 'emergency rules' are suspect for a clean election.

I volunteered my time for 5 days for the 2020 presidential recount in Madison and saw plenty of fraudulent ballots: pristine stacks of so-called mail in ballots, no creases, 1 vote for Biden, no down votes and no initials on the back from the clerk. I also saw plenty of cured mail in envelopes with corrections to addresses that weren't even close to the original supposed address of the voter. Do people not know where they live??

We have recently received a 'register to vote' mailing at our home with our correct last name but my name was 'Amy' and my husband's the name of his uncle who has NEVER lived here and has been dead for several years. We have NEVER received mail with these names before. I have also just received a text on my phone for one of my kids to register who live out of state. Sent to my phone as if I am my child. Seems quite shady to me and all the more that citizens are allowed to observe the entire process with no emergency rules to restrict access.

There are already rules in place for observers. I should know. I have worked as one the last few elections.

Sincerely, Sue (not Amy) Arneson

Pamela M Behnke mapsandrew@aol.com

I don't understand what the "emergency" is. We've known about the upcoming elections for a very long time. Rules should be followed that are set forth by our legislative body. WEC works for them not the other way around.

Some of the recent decisions made by WEC are very concerning, i.e. Absentee Ballot Envelopes. Our 1850 municipality clerks look to WEC for advisement and council. With this topic they have put our clerks and the election inspectors in a very difficult position.

The BIG difference is people are watching what happens at the polls and what is happening within the organization of Wisconsin Election Commission. People are engaged because they are concerned with the direction of our Nation.

If WEC is concerned of the safety of voters, election officials and municipality clerks, they have to do a much better job of following the rules set by our legislative body. By following the rules and being transparent about those rules, there would be little questioning by an observing. It's when stated rules are bent or shifted, that's when questioning comes into question.

There are solid rules in place for observers. As a chief election inspector, I welcome observers. I want them to understand the process. We need to be open and transparent about the process, not closed off and cumbersome to the observers.

Pam Behnke

Fond du Lac

Ron Martin rmartin333@charter.net

I have been an election observer in every presidential election since 2004. The rules as written in state law are reasonable, but in 2020 it was especially difficult to see or hear much of anything in the polling place, and that was during the "Covid emergency." What is the "emergency" now such that new rules for observers are necessary? Did you not think an election would be held in November 2024, and now at the eleventh hour this becomes a crisis?

More restrictive rules on observers are not needed, and there is certainly no emergency at this time which would require such rules.

State law allows election observers from both parties, or any citizen of Wisconsin, to observe and challenge any election procedures that are questionable or may be fraudulent. It doesn't matter if WEC or the chief election inspector on the scene doesn't like or want such challenges.

It is our constitutional right to challenge our officials and observe all public aspects of our elections. WEC does not have the authority to take these rights away. I ask you to follow the law as written and allow lawful observing of our Wisconsin elections.

Ron Martin

409 Nadig Dr.

Fort Atkinson, WI 53538

(608) 220-5949

Sandra Morris sandra.kay.888@gmail.com

Dear Mr Hunzicker,

I am writing to you to ask what is the emergency that makes it possible for WEC to create these "EMERGENCY" rules today? I have heard my entire life, "Your failure to plan is NOT an emergency on my part" and I would like to ask as a taxpayer and as a elector of this great state, **WHAT IS THE EMERGENCY AND WHY WAS IT NOT PLANNED FOR WHEN YOU HAD THE ENTIRE YEAR and ACTUALLY 4 YEARS TO PLAN** and make rules or change the laws? Did you publish the emergency? I'd like to point out that Covid was not considered an Emergency in the end by the courts....

The law already covers Election Observers - and we have a right to observe and challenge things. I would like to point out that a challenge that WEC and elections officials do not like is **NOT** disruptive if it is about a legal issue or a public concern. It is our constitutional right and duty to challenge

our officials. Observers have the right to observe ALL public aspects of the voting process. WEC does not have the right to remove our rights.

I ask you to follow the law as it is written and allow for lawful observing of the vote.

Sincerely,

Sandra K. Morris

908 Belmont Ave.

Racine, WI 53405

262-939-0242

Kathleen Videen videenk@gmail.com

Fact check- there is no emergency. Don't start messing around with rules. There was enough time to make changes and Ms Wolfe did nothing. She isn't authorized anyway - she is a squatter. We're all watching.

Kathleen Videen Exeland WI

Mason Nick mason.nick17@yahoo.com

Brandon,

The WEC is trying to pass new rules for election observers without going through the normal rule making process and are now trying to pass the rules via emergency rule making. They purposely waited until past the deadline so they could use the emergency rule making to pass rules that are not bi-partisan.

Harry Waite harry.wait922@gmail.com

There is no emergency or crisis that threatens honest elections.

There is an emergency that threatens corrupt elections.

Enforce the laws already written

Dawn Santoro dsantoro1967@gmail.com

In regards to the Preliminary Public Hearing on Emergency Scope Statement.

The Wisconsin Statue 7.41 already addresses conduct, regulation and accommodation of election observers. There is absolutely no reason to have this hearing other than to violate our poll observers right to do their job and observe our elections. I urge you to adhere to the Wisconsin State Statue

7.41.

Thank you,

Dawn Santoro

Mike Santoro santorom2020@gmail.com

Sir,

In regards to the Preliminary public hearing on the emergency scope statement. The Wisconsin Statute 7.41 addresses the conduct and accommodation of all election observers. Poll observers serve a specific purpose in our democratic election process. WS 7.41 States, Any member of the public may be present at any polling place, in the office of any municipal clerk whose office is located in a public building on any day that absentee ballots may be cast in that office, or at an alternate site under s. 6.855 on any day that absentee ballots may be cast at that site for the purpose of observation of an election and the absentee ballot voting process, except a candidate whose name appears on the ballot at the polling place or on an absentee ballot to be cast at the clerk's office or alternate site at that election. These laws that have been agreed upon and placed into law by our representatives are there to keep the process honest and legal.

The Wisconsin Statute 7.41 addresses everything required by law for all observers democratic or republican. There are rules regarding violations and unruly observers. See WS 7.41.3.a&b

By rewriting the law to help one party or another will strip the legal rights of our observers thus destroying our democratic process of checks and balances.

V/R

Michael A. Santoro
SOF Consultants LLC

Kenosha, WI
President, DAV Owned
Santorom2020@gmail.com
SOFconsultantsLLC@gmail.com
(719) 684-5222

Maureen Reisner reisnerm242@gmail.com

Good afternoon,

My name is Maureen Reisner and I have been working elections both as an Election Inspector/Poll Worker and an Election Observer on and off since 2010. My concern with these "Emergency Rules" is that I have experienced on both sides of the electoral process undue prejudice against poll observers. I have seen taped lines that far exceeded the standards. I have seen Chief Election Inspectors occupy the spaces that should be designed for observers, stating "Oh no, you can't go there because that's my workspace." "No you can't go there because that's where we keep our food." (While pointing to a small table with 3 pieces of fruit on it.) I have experienced a Chief Election Inspector refusing to accept a challenge to a ballot without going through the process stated in our state statutes. The chief election inspector deemed the the act of challenging a ballot as a disruption warranting removal from the location. The process to protect our election is being undermined. Transparency and adherence to the rule of law in the election process should be our number one priority. The recent commotion to an election in Glendale has been widely exaggerated by the Mayor and the media. A simple review of footage and recorded audio would confirm that the interpretation of "disruption" was loosely defined as anyone challenging a ballot.

One thing that should be done is there should be consequences for WEC and election officials who do not follow the laws. To this day I have not seen anything to hold WEC and our election officials accountable, and this has led to officials going rogue and making up the rules as they go along, resulting in the undermining of transparency in our elections.

I feel that any changes in the rules regarding election observers should err on the side of transparency and the rule of law rather than the overreaction of biased Election Officials willing to compromise our election process.

Sincerely,

Maureen Reisner

Ljewell Ljewell@protonmail.com

You think the people of Wisconsin are imbeciles. There is no emergency. The statutes are already in place for observers at the polling areas. Stop overstepping your bounds. When is this state, this country going to start protecting our votes? Why is it that our votes which are so important and sacred are being corrupted? When is someone in this state with integrity going to start doing what's right? Are you going to let the demonRats steal this election again? Please stand up for the people of this state!

Laura Ewell

Name: Eileen Keck
Address: 700 Viirginia st, Racine Wi 53405
Email: dentalchic700@gmail.com

Organization:

Comments: I believe in more than half of voting drop boxes are illegal to the extent that illegals use the to vote. Remember that's exactly why Biden has let all these illegals into our country! Also heard people vote several times this way. Crooked far left! Too much to ignore illegal adjendas over and over. And I hope drop vote box people will NOT get to vote AGAIN if Biden bows out!!!!

Not again!

Address: 152 Johnson St, Suite 212, Madison Wisconsin 53711

Email: jheck@commoncause.org

Organization: Common Cause Wisconsin

Comments:

TO: Wisconsin Elections Commissioners and Staff

FROM: Jay Heck, Executive Director of Common Cause in Wisconsin

DATE: July 19, 2024
RE: Statement from Common Cause Wisconsin on Wisconsin Election Commission Emergency Rule on Election Observer, SS 072-24 Scope Statement

Common Cause Wisconsin (CC/WI) supports the Wisconsin Elections Commission (WEC) Emergency Rule on Election Observer, Scope Statement 072-24, which establishes much needed clear rules and standards for election observers. Founded in 1970, CC/WI is the state's largest non-partisan citizens political reform advocacy organization with more than 8,000 members and activists in every county in Wisconsin.

Common Cause Wisconsin has recruited volunteer observers over many years and for several election cycles to be able to have our members observe and monitor the election process at polling locations throughout the state. Members of CC/WI have long been eager to have an opportunity to be part of the Wisconsin Election Protection programs in many different capacities, but they have particularly emphasized the value and importance of being trained as nonpartisan election observers by the League of Women Voters of Wisconsin for Election Day.

Common Cause Wisconsin is an active participating member of the WEC Election Observer Advisory Committee assisting with the development of the rule. Given the timeline of promulgating a permanent rule and the importance of having clarity for the November 2024 election, CC/WI supports WEC in its request for an emergency rule for SS 072-24. Election observers need clear rules in order to carry out their tasks at polling locations.

Having this rule in place for November will help ensure the safety of voters, observers, and election officials. The rule seeks to benefit observers but will also preserve and enhance access to the election process, and help improve transparency, security, and confidence in Wisconsin's elections. The rule strikes a careful and important balance between the election officials being able to carry out their jobs, an observer's access and ability to be able to view the voting process, and a voter's right to privacy and confidentiality while casting a ballot.

The rule is also comprehensive and responsive to the many points of concern members of the advisory committee named specifically at these meetings. These areas include the use of recording equipment, how observers can interact with voters and election officials while in the polling place, respecting a voter's right to privacy and the handling of confidential information, an observer's role when working with Special Voting

Deputies, the safety and authority of election officials and chief inspectors, and maintaining an open and transparent process that is observable. The rule ensures the basic needs of election observers are met, such as access to restrooms, access to the voting process without interfering with election officials and voters, and receiving disability-related accommodations.

Common Cause Wisconsin recognizes the challenging task the WEC staff had in compiling comments, first-hand accounts, and feedback of the advisory committee with various nonpartisan organizations and active political parties in the state who often work with election observers. WEC staff and commissioners spent many hours facilitating the advisory committee, considering outside input from individuals and organizations, and having honest discussions about how to improve the role of the election observer. The commissioners should be commended for finding common ground in the submitted scope statement for this emergency rule and for forwarding the process in a bipartisan manner. As a result, this rule reflects fairness with clear, applicable expectations of election observers.

Observers, voters, and election officials rely on clear information from the WEC. Common Cause Wisconsin supports the proposed rule and requests that the Wisconsin Elections Commission approves this Emergency Rule on Election Observers, Scope Statement SS 072-24, as written. Establishing clear rules and standards for election observers across the state will help improve citizen confidence in the voting process and help observers in their important role of witnessing the election process.

Name: John Wilcox

Address: 4107 Bordeaux Drive, Janesville Wi 53546

Email: wilcoxj62@gmail.com

Organization: Free and fair elections

Comments: One of the most important items of business should be cleaning up county voter rolls. If a county clerk is resisting to do so then a letter from the National RNC Legal Team should be delivered to the clerk making it clear that failure to clean up voter rolls will result in a law suit / litigation.

Our county clerk in Rock County has to this point refused to clean up the voter rolls.

Name: Bruce Ashford

Address: 911 Isabelle Avenue, Racine WI 53402

Email: Bruce.ashford@gmx.com

Organization: Self

Comments: Since boxes are allowed, citizen monitoring should be required, or at the minimum allowed. The entity in charge of the drop boxes must maintain written daily records of the time the box was placed and picked up, and the number of ballots collected.

Name: MICHAEL JANKE

Address: 3218 N Shawnee Lane, Appleton, WI, 54914, Appleton Wisconsin 54914

Email: m_janke2@aol.com

Organization:

Comments: I do not understand why "Emergency" rules need to be adopted less than 4 weeks before the August primary and less than 4 months before the general election. No definition has been provided to justify the emergency being claimed nor what the proposed rules would be.

Given the high level of distrust in WEC, this will only serve to inflame this distrust and lend credibility to those who feel that this could have been addressed several months ago when the legislature was still in session. This has the appearance of partisan politics, and I would like to see this new initiative set aside and the current rules be allowed.

Name: George Barker

Address: 1601 S Seminole Rd, APPLETON WI 54914

Email: geobarker123@gmail.com

Organization:

Comments: RE: SS 072-24 Notice of Preliminary Hearing

Hearing Date: Friday, July 19, 2024

Related to: Conduct, regulation, and accommodation of election observers

I do not agree with allowing emergency rules [§ 227.24(1)(a)] for creating or amending existing conditions for the 2024 General Election. The power of modifying election activities has been vested in the State Legislature and the observer rules should have been created months ago. The "lack of preparation...does not constitute an emergency" is how I feel as using these emergency procedures has too much potential for abuse.

Therefore, I recommend dropping the allowance of §227.24(1)(a), which means I recommend dropping "Unless the Commission promulgates emergency rules under § 227.24(1)(a), Wisconsin will not have rules in place concerning election observers for the upcoming General Election." from the Scope. And, I prefer to add "The Commission will not be allowed to promulgate emergency rules under § 227.24(1)(a) for election observers."

The observer rules can be created now, perhaps even used as suggestions in the 2024 General Election, but hold off until the 2025 legislative session to pass them into law, with the signature of the Governor.

Name: James Buck

Address: 7103 37th Avenue, Kenosha WI 53142

Email: jbuck1@wi.rr.com

Organization: Citizen and observer

Comments: I have worked as an election observer for a couple of years at central count and I've been asked to go to additional polling places as needed in Kenosha, WI. I have reviewed the expired section 7.41 and it adequately describes the rules needed to run a successful election. Polling places around Wisconsin differ greatly and creating a permanent rule at this late date will lead to confusion.

There is another alternative that makes sense, the commission should reinstate, "the Commission's interpretation of the public's right to access under Wis. Stat. § 7.41."

This will give the Wisconsin Elections Commission adequate time and resources to do a permanent rule. 30 hours to produce a rule this important will only cause problems!

Thanks,

James Buck

Name: Dawn Santoro

Address: 6017 65th Street, Kenosha WI 53142

Email: dsantoro1967@gmail.com

Organization:

Comments: In regards to the Public Hearing on Emergency Scope Statement. The Wisconsin Statue 7.41 already addresses conduct, regulation and accommodation of election observers. There is absolutely no reason to have this hearing other than to violate our poll observers right to do their job and observe our elections. I urge you to adhere to the Wisconsin Statue 7.41

Thank you, Dawn Santoro

Name: Sandi Rodriguez

Address: 1346 Settlers Row, Green Bay WI 54313

Email: goshopma@gmail.com

Organization:

Comments: We are against any restrictions to observers in our elections. Why is there any need for Emergency Rules when there is NOT any emergency. We want transparency in our elections and limiting our observers capacity to see what is going on is against our State Statutes.

Name: JERRY Luedtke

Address: 6843 W BELOIT RD, MILWAUKEE Wisconsin 53219

Email: gluetke@asc1inc.com

Organization: ASC1 INC.

Comments: THIS MESSAGE TO WEC AND THE COMMITTEE MEMBERS - THE UNELECTED BUREAUCRATS AGAIN TRYING TO CREATE MORE CONFUSION REGARDING ELECTION OBSERVERS – STOP ATTEMPTING MORE BOGUS RULES AND GUIDANCE - PERIOD. YOU ARE TRYING TO REGULATE OUR GOD GIVEN FREEDOMS AND RIGHTS UNDER THE FIRST AMENDMENT AS CITIZEN OBSERVERS AS WELL AS MANIPULATING THE LAWS ALREADY WRITTEN IN THE STATE STATUTES. YOUR "GUIDANCE IS GARBAGE" - PERIOD FULL STOP!!! THE ENTIRE PAST MEETING MINUTES 88 PAGES OF MOSTLY BASELESS NONSENSICAL BACK AND FORTH SEEMS TO BE RUN ENTIRELY BY DEMOCRATS TRYING TO SUBVERT YET ANOTHER ELECTION THIS AUGUST AND NOVEMBER 2024. NEVER MIND THE QUARTER MILLION - NON-CITIZENS THAT HAVE WISCONSIN DRIVER'S LICENSES WITH ERRATIC EXPIRATION DATES BASICALLY DECLARING THEY ARE NOT CITIZENS AND THEN THE 40,000 MORE WITH STATE I.D.'S - MANY OF WHOM ARE GOING TO TRY AND VOTE THIS NOVEMBER. WHAT ARE THE CHECKS AND BALANCES FOR THAT????? ARE THE MUNICIPAL CLERKS GOING TO "REJECT" THOSE "PERSONS" WHO SHOW UP AT THE POLLS WITH THESE DOCUMENTS THAT DON'T HAVE THE ADDITIONAL SUPPORTING PAPERS TO "PROVE" THEY ARE NATURALIZED CITIZENS??? THATS WHAT THE OBSERVERS NEED TO DO!!! - NOT LESS THAN 3 FEET AND NOT MORE THAN 8 FEET??? CAN'T SEE CRAP FROM THAT DISTANCE!! ALL BY DESIGN!! I WILL BE THERE WITH MY "BIRDING BINOCULARS" TO CALL OUT THE FRAUD AND ADDRESS THE CHIEF INSPECTORS - AS WELL AS CALLING OUT ANY MISSED STEPS I SEE IN THE PROCESS. NO MORE SIGNATURE VERIFICATION WITH THE PAPER BOOKS - JUST A SWIPE ACROSS THE SCREEN AS A VALIDATING SIGNATURE - WTF!!! - SAME DAY REGISTRATION – ANOTHER PIECE OF GARBAGE - BECAUSE PEOPLE MIGHT FORGET WHEN

VOTING DAY IS?? YOU WEC AND THE MUNICIPAL CLERKS BETTER HAVE A BONAFIDE AND CORRECT SYSTEM OF COMPLETE VERIFICATION(S) IN PLACE TO FULLY REJECT ANYONE ATTEMPTING TO COMMIT FRAUD AND FELONY UNDER THE LAWS OF WISCONSIN. YOU BETTER GET IT RIGHT FOR WISCONSIN - WE ARE NOT VENEZUELA - OR COLUMBIA!!!!!!!!!!!!

Name: Shelly Principe

Address: 1005 58th Rd #122, Union Grove WI 53182

Email: shelly.principe@gmail.com

Organization:

Comments: I am writing to oppose the newest emergency rule, EL Ch. 4 Election Observers (I note this same process was utilized with EL-2 regarding nomination papers). I believe these changes should be handled by our elected officials, not by the WEC, a regulatory agency. The timing of this is curious in light of the most even number of volunteers who want to help protect the voting process in our state. The rules currently in place concerning election observers are sufficient. There is no good reason for any changes at this time, and certainly not on some spurious basis when our state senate and assembly in not in session.

Name: Richard DuBois

Address: 535 Hickory Street Unit 105 , Wrightstown WI 54180

Email: dickd@blindspotusa.com

Organization: Forward Move

Comments: In the last three months, I've learned a lot about elections and observers. I took it upon myself to write this. My sole purpose was to share this with somebody to create an efficient training document that in individual may take the time to learn. If you have any questions, please contact me.

Summary of Topics

1. Introduction to Observer Guidelines

- Overview of the roles and responsibilities of Election Day and Special Voting Deputy (SVD) observers.
- Importance of maintaining the integrity and confidentiality of the voting process.

2. Observer Procedures and Etiquette

- Signing in and presenting ID.
- Location and behavior guidelines within the observation area.
- Handling interactions with voters, SVDs, and election officials.

3. Voting Process Overview

- Eligibility requirements for voters.

- Steps involved in voter registration and verification.

- Procedures for marking and submitting ballots.

4. Special Voting Deputy (SVD) Observations

- Rules for observing absentee voting in residential facilities.
- Guidelines for maintaining voter privacy and handling ballots.
- Specifics on assisting and witnessing voter activities.

5. Election Day Observations

- Roles of Chief Election Inspectors and poll workers.
- Detailed steps of the voting process at polling places.
- Handling absentee ballots and curbside voting.

6. Challenging Electors • Legal grounds and procedures for challenging a voter's eligibility.

- Proper methods for reporting and resolving challenges.

7. Closing Procedures • Steps to follow at the close of polls.

- Reconciliation of poll books and ballot counts.
- Reporting and documenting irregularities.

8. FAQs and Common Issues

- Frequently asked questions about observer responsibilities and scenarios.
- Common issues to watch for and report.

9. Reminders and Best Practices

- Key reminders for observers to ensure proper conduct and reporting.
- Emphasis on respect, confidentiality, and adherence to guidelines.

Training Content

Introduction to Observer Guidelines

- The role of Election Day and SVD observers is to ensure the voting process is conducted fairly and lawfully while maintaining voter confidentiality.
- Observers must follow guidelines to avoid disrupting the voting process.

Observer Procedures and Etiquette

- Upon arrival, observers must sign in, present ID, and follow the CEI's directions regarding their observation area.
- Observers should maintain a respectful demeanor, avoid wearing campaign materials, and not engage with voters or the press.

Voting Process Overview

- Voters must be U.S. citizens, 18 years or older, and have resided in the election district for 28 consecutive days.
- Voters must present ID and proof of residence. The process includes registering, verifying identity, marking ballots, and submitting them via a tabulator.

Special Voting Deputy (SVD) Observations

- Observers must sign in with SVDs and follow the set observation areas within residential facilities.
- SVDs handle ballot distribution, and observers must respect privacy rules, maintaining a distance of 3 to 8 feet from voters.
- Observers cannot challenge voter eligibility at the facility but must report issues to the municipal clerk.

Election Day Observations

- CEIs oversee polling places and manage observer conduct.
- Observers must watch for proper voter registration, ID presentation, ballot issuance, and tabulation.
- Special attention should be given to absentee ballot processing and curbside voting.

Challenging Electors

- Observers can challenge voters if there is clear evidence of ineligibility based on specific legal grounds.
- Challenges must be handled by election inspectors, with proper documentation and adherence to statutory procedures.

Closing Procedures

- At poll closing, observers should ensure all voters in line are allowed to vote and reconcile the number of ballots with poll book entries.
- Observers should document any discrepancies and capture data from tabulator receipts.

FAQs and Common Issues

- Observers may need to wear masks but cannot enforce PPE on voters.
- Key issues to monitor include opening times, registration errors, electioneering, mechanical issues, and ballot shortages.

Reminders and Best Practices

- Observers should always be respectful, follow CEI requests, and refrain from using phones for calls or taking photos inside polling places.
- Detailed note-taking and prompt reporting of issues are essential.

Certification Course Quiz

1. True/False: Observers can take photos inside the polling place.
 - False
2. Yes/No: Are observers allowed to assist voters in marking their ballots?
 - No
3. Multiple Choice: What is the minimum distance observers should maintain from voters in a facility?
 - A) 1 foot
 - B) 3 feet
 - C) 5 feet
 - D) 8 feet
 - Answer: B) 3 feet
4. Yes/No: Can observers challenge a voter's eligibility directly at the facility?
 - No
5. True/False: Both SVDs must sign the "Certification of Witness" on absentee ballots.
 - True
6. Multiple Choice: What should an observer do upon arrival at a polling place?
 - A) Sign in and present ID
 - B) Start observing without checking in
 - C) Engage with voters
 - D) Take photos for documentation
 - Answer: A) Sign in and present ID
7. True/False: Observers can wear campaign materials inside the polling place.
 - False
8. Yes/No: Is it required for voters to present ID at the polling place?
 - Yes
9. Multiple Choice: How many days must a person reside in an election district before they are eligible to vote?
 - A) 10 days
 - B) 28 days
 - C) 30 days

D) 60 days

Answer: B) 28 days

10. True/False: Observers can make phone calls inside the polling place.

False

11. Yes/No: Can an observer ask the CEI to confirm the zero count receipt before polls open?

Yes

12. Multiple Choice: What should be done if a ballot is rejected by the tabulator?

A) Ignore it

B) Mark it as spoiled and issue a new one

C) Create a duplicate ballot

D) Allow the voter to try again

Answer: C) Create a duplicate ballot

13. True/False: Observers can assist election inspectors in processing ballots.

False

14. Yes/No: Are observers allowed to use electronic devices to record their observations?

No

15. Multiple Choice: Who is responsible for managing the polling place?

A) SVDs

B) Observers

C) Chief Election Inspector (CEI)

D) Voters

Answer: C) Chief Election Inspector (CEI)

16. True/False: Observers must follow the CEI's directions regarding their observation location.

True

17. Yes/No: Can a voter receive a new ballot if they make a mistake?

Yes

18. Multiple Choice: How should observers report any irregularities they notice?

A) Speak directly to voters

B) Report to the media

- C) Fill out the observer reporting form
- D) Ignore the issue
- Answer: C) Fill out the observer reporting form

19. True/False: Observers can be removed by the CEI if they disrupt operations.

- True

20. Yes/No: Are observers allowed to observe absentee ballot processing on Election Day?

- Yes
-
-

Name: Cindy Treleven

Address: 4983 Edgewater Beach Rd, Green Bay WI 54311

Email: cctree11@gmail.com

Organization:

Comments: I object to any restrictions that limit observers in our elections. Why is there any need for Emergency Rules when there is NOT any emergency? We want transparency in our elections and limiting our observers capacity to see what is going on is against our State Statutes.

Name: Janet Smies

Address: 1188 Saint Lawrence Dr., Green Bay WI 54311

Email: Jssmies@gmail.com

Organization:

Comments: Please realize the need for transparency in our elections and refrain from adding any emergency restrictions for those who are observers during elections. It is certainly important for observers to be able to actually see what is going on to give assurance to all that the election is not compromised.

From: [Julie Saunders](#)
To: [Hunzicker, Brandon L - ELECTIONS](#)
Subject: Request for WEC meeting
Date: Friday, July 19, 2024 1:39:20 PM

**CAUTION: This email originated from outside the organization.
Do not click links or open attachments unless you recognize the sender and know the content is safe.**

Hi Brandon,

I would like to request a meeting with the commissioners to understand what this emergency rule is really about. I am available to come to Madison or attend on zoom.

Thank you,

Julie Saunders-Seegers
608-212-6037

From: [Eileen Newcomer](#)
To: [Hunzicker, Brandon L - ELECTIONS](#)
Subject: Request to speak at WEC Meeting
Date: Friday, July 19, 2024 1:38:06 PM

**CAUTION: This email originated from outside the organization.
Do not click links or open attachments unless you recognize the sender and know the content is safe.**

Hi Brandon,

I'd like to take advantage of the opportunity to present our spoken comments on the scope statement at an upcoming WEC meeting.

Please let me know if you need anything else from me.

best,
Eileen

--

Eileen Newcomer
(she, her, hers)
Voter Education Manager
League of Women Voters of Wisconsin
2023 Democracy Defender

612 W Main St Ste 200
Madison WI 53703

Ph: 608-256-0827
WWW: lwvwi.org
FB: [@LWVWI.ORG](https://www.facebook.com/LWVWI.ORG)
Tw: LWV_WI

[You can use calendly to set up a meeting with me!](#)



JOINT COMMITTEE FOR THE REVIEW OF ADMINISTRATIVE RULES

COMMITTEE CO-CHAIRS: SENATOR STEVE NASS AND REPRESENTATIVE ADAM NEYLON

August 1, 2024

Ann Jacobs, Chairperson
Meagan Wolfe, Administrator
Wisconsin Elections Commission
P.O. Box 7984
Madison, WI 53707-7984

Dear Chairperson Jacobs and Administrator Wolfe:

We are writing to notify you that, as you are already aware, the Joint Committee for Review of Administrative Rules (JCRAR) voted on July 22, 2024, pursuant to s. 227.26 (2) (d), Stats., to suspend EmR 2407, EmR 2408, and EmR 2409, emergency rules of the Wisconsin Elections Commission (WEC), on the grounds that the rules fail to comply with legislative intent.

Of particular concern is that WEC's claim of an emergency falls woefully short of the statutory definition for invoking an "emergency" to justify an emergency rule. The commission had every opportunity to follow the standard permanent rule process, which provides for increased transparency, public input, and legislative review. WEC provides no evidence of factors relating to the November 2024 election that jeopardizes the public peace, health, safety, or welfare that is different than past elections.

In addition, Legislative Council analysis found drafting issues with the emergency rules relating to form, style, adequacy of references, and identified instances of provisions that lacked clarity. Issues of clarity and the lack of plain language could create serious challenges for individuals and organizations in understanding and complying with these emergency rules.

The full text of the motions passed by JCRAR is as follows:

Moved, that the Joint Committee for Review of Administrative Rules, pursuant to s. 227.26 (2) (d), Stats., suspend an emergency rule of the Wisconsin Elections Commission, relating to mandatory use of uniform instructions for absentee voting (EmR 2407), on the grounds that the rule fails to comply with legislative intent.

Moved, that the Joint Committee for Review of Administrative Rules, pursuant to s. 227.26 (2) (d), Stats., suspend an emergency rule of the Wisconsin Elections Commission, relating to challenge procedures for declarations of candidacy (EmR 2408), on the grounds that the rule fails to comply with legislative intent.

Moved, that the Joint Committee for Review of Administrative Rules, pursuant to s. 227.26 (2) (d), Stats., suspend an emergency rule of the Wisconsin Elections Commission, relating to challenge procedures for nomination papers (EmR 2409), on the grounds that the rule fails to comply with legislative intent.

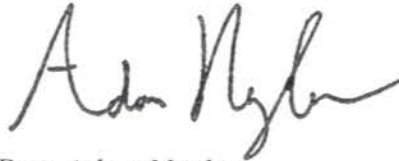
JCRAR's action to suspend Emergency Rules EmR 2407, EmR 2408, and EmR 2409, pursuant to state statute, s. 227.26 (2) (d), Stats., takes effect immediately and means all provisions of these emergency rule are no longer in effect or enforceable.

Please contact us if you need any additional information or have further questions on the committee's action.

Sincerely,



Senator Steve Nass
Co-Chair, JCRAR



Rep. Adam Neylon
Co-Chair, JCRAR



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

DATE: For the **September 11, 2024**, Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Prepared and Presented by:
Angela O'Brien Sharpe
Staff Attorney

SUBJECT: Consideration of Public Hearing on Statement of Scope for Administrative Rule relating to confidentiality of judicial officer information on certain election materials (EL Ch. 19)

ATTACHMENTS: **Attachment A:** Governor Evers Approval Letter – August 1, 2024
Attachment B: Publication in Administrative Register – August 26, 2024
Attachment C: Notice of Preliminary Public Hearing and Comment Period

Introduction

On March 27, 2024, the Legislature enacted 2023 Wisconsin Act 235 (“Act 235”), which will be effective on April 1, 2025. Act 235 addresses the confidentiality of judicial officer information on certain election materials, including nomination papers, declarations of candidacy, and public records. The new law provides judicial officers with the option to file a certification of residence with the Commission instead of listing their residential address on nomination papers, declarations of candidacy, and circulator certifications. The Commission will be required to keep that certification of residence confidential unless specific statutory exceptions apply.

On June 27, 2024, the Commission authorized staff to begin the emergency and permanent administrative rulemaking process to comply with the Legislature’s directive in Act 235, and also reviewed the proposed statement of scope.

On July 2, 2024, staff transmitted the statement of scope to the Department of Administration (“DOA”). On July 8, 2024, the DOA legal team completed review of the scope statement and confirmed the Commission’s statutory authority to enact the proposed rule and forwarded the scope statement to the Governor’s Office.

On August 1, 2024, Governor Evers approved the scope statement. See **Attachment A**.

On August 20, 2024, staff transmitted the scope statement and date of Governor’s approval to the Legislative Reference Bureau (“LRB”) for publication in the Administrative Register, and also transmitted

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

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the same to the Secretary of Administration, the chief clerks of each house of the Legislature, and the co-chairpersons of the Joint Committee for the Review of Administrative Rules (“JCRAR”).

The scope statement was published in the Register on August 26, 2024. See **Attachment B**. Wis. Stat. §§ 227.24(1)(e)1d.; 227.135(2), (3). It will expire in 30 months on February 26, 2027.

Next Steps

When the scope statement was published in the Administrative Register on August 26, 2024, the 10 Day Waiting Period began. Wis. Stats. §§ 227.24(1)(e)1d. and 227.135(2). The 10 Day Waiting Period means the time during which the Commission must wait after the scope statement is published in the Register and before the Commission can vote to approve the scope statement. During the 10 Day Waiting Period, JCRAR can direct the Commission to hold a preliminary public hearing and comment period on the scope statement. Wis. Stats. §§ 227.24(1)(e)1d. and 227.136 (1). The Commission may also affirmatively decide to hold a public hearing and comment period on the statement of scopes without waiting to be directed to do so by JCRAR. Wis. Stats. §§ 227.24(1)(e)1d. and 227.136 (1).

If a public hearing and comment period is held, the Commission may not vote to approve the statements of scope without receiving and reviewing public comments and feedback reported by the agency from the hearing. Wis. Stats. §§ 227.24(1)(e)1d., 227.136, and 227.135(2). Commission staff are prohibited by statute from performing any activity in connection with the drafting of an emergency or permanent rule until the statements of scope have been approved by the Commission after a period for public hearing and comment, if applicable. Wis. Stats. §§ 227.24(1)(e)1d. and 227.135(4).

Discussion

Staff recommend that the Commission consider affirmatively noticing a public hearing and comment period for this scope statement without waiting to be directed to do so by JCRAR. For recent rule promulgations, JCRAR has consistently directed the Commission to hold this public hearing and comment period. JCRAR has not had the opportunity to direct a hearing and comment period as of the time of drafting this memorandum, but staff will update the Commission at the September 11 meeting if such a directive is issued in the interim. Affirmatively noticing a public hearing and comment period is consistent with past practice, as the Commission chose to do so when promulgating rules on uniform instructions, ballot access challenge procedure, and election observers.

Recommended Motion: The Wisconsin Elections Commission authorizes staff to hold a virtual public hearing and comment period on the scope statement discussed in this memo on Wednesday, September 18, 2024, from 1 p.m. to 4 p.m. Commission Secretary Marge Bostelmann authorizes staff to affix her electronic signature to the Notice of Possible Quorum attached to the hearing and notice. The Commission directs staff to transmit notice for the preliminary public hearing and comment period to be published by the Legislative Reference Bureau in the Administrative Register. Staff are also directed to publish notice of the public hearing date, and comment submission details, on the Commission’s website and on the agency’s calendar. Finally, staff are directed to produce and summarize all written and verbal comments received during the comment period and public hearing to accompany the scope statement for final review at a future meeting.



Tony Evers

Office of the Governor | State of Wisconsin

August 1, 2024

By Electronic Mail Only

Dear Secretaries and Agency Heads:

On this day, I approved the following statements of scope pursuant to Wis. Stat. § 227.135(2):

- A statement of permanent and emergency scope by the Elections Commission, submitted July 2, 2024, relating to confidentiality of judicial officer information on certain election materials (Wis. Admin. Code ch. EL 19); and
- A statement of permanent and emergency scope by the Pharmacy Examining Board, submitted July 10, 2024, relating to electronic prescriptions, prescription labeling, CPR for pharmacists, epinephrine delivery systems, controlled substance prescription transfers, remote dispensing, managing pharmacist definition, initial consultation, alteration, and final check (Wis. Admin. Code ch. Phar 7); and
- A statement of scope by the Department of Safety and Professional Services, submitted June 10, 2024, relating to licensed midwives comprehensive review (Wis. Admin. Code chs. SPS 180-183); and
- A statement of scope by the Controlled Substances Board, submitted July 17, 2024, relating to scheduling 2-methyl AP 237 (Wis. Admin. Code ch. CSB 2); and
- A statement of scope by the Controlled Substances Board, submitted July 17, 2024, relating to scheduling ADB-BUTINACA, α -PiHP, and 3-MMC (Wis. Admin. Code ch. CSB 2).

On this day, I approved the following proposed administrative rules pursuant to Wis. Stat. § 227.185:

- A proposed rule by the Elections Commission, submitted July 3, 2024, relating to the certification and training of municipal clerks (Wis. Admin. Code ch. EL 12); and
- A proposed rule by the Controlled Substances Board, submitted July 17, 2024, relating to transferring Flualprazolam and scheduling four (4) synthetic benzodiazepine substances (Wis. Admin. Code ch. CSB 2).

Please direct any questions about this letter to my policy director, Katie Domina.

Sincerely,

A handwritten signature in black ink that reads "Tony Evers". The signature is written in a cursive, flowing style.

Tony Evers
Governor

cc: Mel Barnes, chief legal counsel (mel.barnes@wisconsin.gov)
Katie Domina, policy director (katherine.dominal@wisconsin.gov)
DOA State Budget Office (SBOAdminRules@spmail.wi.gov)
DSPS (DSPSAdminRules@wisconsin.gov)
Angela O'Brien Sharpe, Wisconsin Elections Commission
(angela.sharpe@wisconsin.gov)

SS 096-24

Elections Commission (EL)

Administrative Code Chapter Affected:

Ch. EL 19 (Revised)

Related to: Confidentiality of judicial officer information on certain election materials

Date Statement Approved by Governor: August 1, 2024

STATEMENT OF SCOPE

P. RSU^{NT} TO W^S. ST^T. § 227.24

WISCONSIN ELECTIONS COMMISSION

Rule No.: Wis. Admin. Code EL Chapter 19

Relating to: Confidentiality of Judicial Officer Information on Certain Election Materials

Rule Type: Emergency Rule and Permanent Rule

FINDING OF EMERGENCY:

This Statement of Scope pertains to the promulgation of an emergency rule under Wis. Stat. § 227.24(1)(a). The preservation of the public peace, safety, and welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the permanent rulemaking procedures. Wis. Stat. § 227.24(1)(a).

The preservation of peace, safety, and welfare of Wisconsin elections necessitates putting this rule into effect prior to the time it would take to promulgate it normally under chapter 227. 2023 Wisconsin Act 235 (“Act 235”) goes into effect on April 1, 2025, and requires the Commission to promulgate rules for its administration. While the Commission intends to promulgate a simultaneous permanent rule on this topic, an emergency rule is necessary to ensure that the Legislature-directed process is in place when the law goes into effect. Act 235 will protect the personal information of judicial officers, a large majority of whom have experienced increase risk of threats, harassment, and violence in recent years. Having an administrative rule approved and ready to go into effect on April 1, 2025, will ensure that Commission staff follow specific procedures to ensure the proper handling of protected judicial officer information. There may not be time to promulgate the permanent version of this rule prior to April 1, 2025, especially considering that the remainder of 2024 will require much of the Commission’s attention for two major elections on August 13, 2024, and November 5, 2024.

RULE ANALYSIS

Pursuant to §§ 227.24(1)(e)1d. & 227.135(1):

a) A description of the objective of the proposed rule.

Act 235 was legislated and passed in response to several high-profile incidents of violence against the judiciary, both within Wisconsin and nationally. Among other provisions, Act 235 provides judicial officers with the option to file a certification of residence with the Commission instead of listing their residential address on nomination papers, declarations of candidacy, and circulator certifications. The proposed rule will promulgate specific procedures to facilitate this process within the existing framework of ballot access requirements and civic participation.

b) Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives.

Judicial officers who are elected officials must file nomination papers and declarations of candidacy to appear on the ballot to be elected. Wis. Stat. §§ 8.10, 8.15, 8.20. Any candidate who circulates nomination papers is required to provide their residential

address on those papers. Wis. Stat. §§ 8.10(2)(b), 8.15(5)(a), 8.20(2)(a). Likewise, candidates are also required to file a declaration of candidacy, which also asks them to provide their residential address. Wis. Stat. § 8.21(1). Separate from the candidate process, any qualified individual may also circulate nomination papers, or certain election petitions, which also requires them to provide their residential address. Wis. Stat. §§ 8.10(3); 8.15(4)(a); 8.20(3); 8.40(2). Nomination papers, declarations of candidacy, and election petitions are all public records. Wis. Stat. § 19.32(2).

There is currently no administrative process in place for a judicial officer to file a certification of residence with the Commission.

The proposed rule would establish procedures by which judicial officers may file a certification of residence with the Commission if they do not wish to provide their residential address on their nomination papers, declaration of candidacy, or circulator certification. The proposed rule would also establish procedures by which the Commission shall provide such certifications of residence to local filing officers. The proposed rule would prescribe procedures by which both the Commission and local filing officers should confirm candidate residency when a judicial officer files a certification of residence. Finally, the proposed rule would establish procedures by which the certifications of residence shall be kept confidential, as well as procedures by which judicial officers can consent to disclosure.

The alternative would be to not promulgate this rule, leaving the Commission without a clear process in place to receive certifications of residence from judicial officers. The Commission could attempt to comply with the new obligations imposed by Act 235 through internal policy or guidance documents, but those would not carry the force of law.

c) Detailed explanation of statutory authority for the rule (including the statutory citation and language).

General Authority pursuant to Wis. Stat. § 5.05(1): “General authority. The elections commission shall have the responsibility for the administration of chs. 5 to 10 and 12 and other laws relating to elections and election campaigns, other than laws relating to campaign financing. Pursuant to such responsibility, the commission may:

- (f) Promulgate rules under ch. 227 applicable to all jurisdictions for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns, other than laws regulating campaign financing, or ensuring their proper administration.”

Specific Authority pursuant to Wis. Stat. § 8.07: “The commission shall promulgate rules under this chapter for use by election officials in determining the validity of nomination papers and signatures thereon.”

Specific Authority pursuant to Act 235: “The commission shall promulgate rules for the administration of this subsection and prescribe a certification of residence for a candidate or circulating judicial officer for use under this subsection.”

Agency Rulemaking Authority pursuant to Wis. Stats. § 227.11(2)(a): “Agency rulemaking authority. Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.”

d) An estimate of the amount of time agency employees will spend developing the proposed rule and of other resources needed to develop the rule.

WEC staff estimates that it would take approximately 100 staff hours to draft a scope statement and carry out the subsequent steps to promulgate an administrative rule.

e) A description of all of the entities that may be affected by the proposed rule.

The proposed rule would affect all judicial officers, as defined by Wis. Stat. § 757.07(1)(e). It would also affect clerks, election officials, candidates, and individuals interested in ensuring that judicial candidates follow the required procedure to seek ballot access for an office for which they are qualified. The rule is likely to provide the necessary clarity and authority for a process to manage judicial certifications of residence, including how local filing officers and Commission staff can still confirm that judicial candidates meet the residence requirements for the offices they seek. The proposed rule would require minimal compliance outreach and training to clerks because of their familiarity with ballot access as local filing officers. The proposed

rule should minimize the risk that a judicial officer's protected information is inadvertently released by providing clear procedures for how the Commission will receive and process certifications of residence. The effect of the proposed rule, and subsequent processes, would have little to no impact on small businesses.

f) A summary and preliminary comparison of any existing or proposed federal regulation that addresses or is intended to address the activities to be regulated by the proposed rule.

The Daniel Anderl Judicial Security and Privacy Act requires government agencies and private actors to remove the personal information of judges from public view within 72 hours of receiving a request for removal. Pub. L. 117-263, div. E, title LIX, subtitle D, Dec. 23, 2022, 136 Stat. 3458. However, this federal law does not specifically address election paperwork for judges, nor does it include any provisions for how states can regulate and protect judicial information when it is required by state law for certain processes.

Agency Contact Person:

[Menu](#) » [Administrative Rules Related](#) » [Administrative Register](#) » [2024](#) » [824B](#) » [Register](#) » [Statements of Scope](#) » [SS 096-24](#) » [SS 096-24](#)

Links to Admin. Code and Statutes in this Register are to current versions, which may not be the version that was referred to in the original published document.

Notice of Preliminary Public Hearing and Comment Period

The Wisconsin Elections Commission (WEC) announces that it will hold a preliminary public hearing and comment period on the following statement of scope for emergency and permanent rulemaking:

- 510 – EL 19 – Judicial Privacy Protections – Concerning the creation of a new administrative rule relating to the confidentiality of judicial officer information on certain election materials

Members of the public may attend the hearing and provide their perspective on the scope statements. Members of the public may also submit written comments as described below at any time before 4:00 p.m. on September 18, 2024.

Hearing Information

Date: September 18, 2024

Time: 1:00 p.m. to 4:00 p.m. CST

Location: *see below for virtual attendance options*

Virtual

You are invited to a Zoom webinar.

When: **Sep 18, 2024 01:00 PM Central Time** (US and Canada)

Topic: Public Hearing on Scope Statement for Proposed Ch. EL 19 - Judicial Privacy Protection Rule

Please click the link below to join the webinar:

<https://us06web.zoom.us/j/83346040609?pwd=4qKF7J2TREETPYXQhXIraNorulXW6Rx.1>

Passcode: 577631

Or One tap mobile :

+16469313860,,83346040609#,,,,*577631# US

+13017158592,,83346040609#,,,,*577631# US (Washington DC)

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

+1 646 931 3860 US

+1 301 715 8592 US (Washington DC)

+1 305 224 1968 US

+1 309 205 3325 US

+1 312 626 6799 US (Chicago)

+1 646 558 8656 US (New York)

+1 386 347 5053 US

+1 507 473 4847 US

+1 564 217 2000 US

+1 669 444 9171 US

+1 689 278 1000 US

+1 719 359 4580 US

+1 720 707 2699 US (Denver)

+1 253 205 0468 US

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)
+1 360 209 5623 US
Webinar ID: 833 4604 0609
Passcode: 577631
International numbers available: <https://us06web.zoom.us/j/kdfhCqI827>

Accessibility

This meeting will include the option for captioning. Additional accessibility considerations may be available and can be requested by contacting elections@wisconsin.gov.

Submittal of Written Comments

The statements of scope may be reviewed at [\[LINK\]](#) and written comments may be submitted to that site or directly to the WEC at angela.sharpe@wisconsin.gov no later than 4:00 p.m. on September 18, 2024.

Notice of Possible Quorum

Wisconsin Elections Commission

Public Hearing Seeking Comment on Administrative Rule Scope Statement
Wednesday, September 18, 2024
1:00p.m. to 4:00p.m. CST

A quorum of the members of the Wisconsin Elections Commission may be present at the agency’s public hearing seeking comment relating to the following scope statement for emergency and permanent rulemaking:

- 510 – EL 19 – Judicial Privacy Protections – Concerning the creation of a new administrative rule relating to the confidentiality of judicial officer information on certain election materials

Notice is hereby given that the above gathering may constitute a meeting of the Wisconsin Elections Commission. However, no items are on an agenda for Commission consideration, nor will action be taken by the Commission.

Approved: [DATE]

[Signature]

Marge Bostelmann
Commission Secretary, Wisconsin Elections Commission



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

DATE: Prepared for the September 11, 2024, Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Prepared and Presented by:
Angela O'Brien Sharpe, Staff Attorney

SUBJECT: EL Ch. 7 – Approval and Security of Electronic Voting Equipment and Ballot Security

ATTACHMENTS: **Attachment A:** Economic Impact Analysis Comment Period Documentation

Attachment B: Draft Final Rule Order

Attachment C: Economic Impact Analysis & Fiscal Estimate

Attachment D: Notice of Submittal of Proposed Rule to Legislative Council Rules Clearinghouse

Attachment E: Notice of Public Hearing and Comment Period

Introduction:

On June 27, 2024, the Commission approved the final text of the proposed administrative rules relating to the approval and security of electronic voting equipment and ballot security. Staff have taken steps since then to proceed with the rulemaking promulgation.

On August 16, 2024, staff published a draft of the EL 7 Approval and Security of Electronic Voting Equipment and Ballot Security Rule Order and Economic Impact Analysis as a clerk communication, which contained links to the documents on the Commission website and a description of how comments on the EIA could be submitted. A reminder about the EIA comment period was also included in the Commission's newsletter on August 30, 2024. On August 19, 2024, a notice of a comment period on the EIA was published in the administrative register, which also contained links for the public to submit economic comments. Individuals could provide any comments on the EIA until September 3, 2024.

No comments were received during the comment period by the time these materials were finalized and sent out. Staff will provide supplementary materials ahead of this meeting if any comments are received between the materials deadline and September 3.

Documentation related to the comment period for the EIA is included as **Attachment A**.

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

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Expiration of Scope Statement

The scope statement for proposed EL 13 expires on **October 4, 2024**. Scope statements expire 30 months after the date on which they were initially published in the Administrative Register. Wis. Stat. § 227.135(5). Staff expect that the last step in the rulemaking process that can be completed before the scope statement expires is submission of the rule order and economic impact analysis to the Rules Clearinghouse, and possibly scheduling a comment period and public hearing on October 3, 2024.

However, because this rule would promulgate existing Commission guidance and was directed by the Legislative Audit Bureau, staff recommend that the Commission reauthorize the commencement of rulemaking when the scope statement expires next month. The reauthorized rulemaking would take much less time because many of the drafting steps are already complete. Additionally, the reauthorized rulemaking would presumably benefit from the analysis from the Legislative Council, and possibly public comment as well, meaning staff could implement those edits in the draft rule after the Commission reapproves the scope statement.

Next Steps:

Staff now ask the Commission to review and approve the draft Rule Order, the EIA, and Fiscal Estimate for submission to the Rules Clearinghouse. Staff also ask the Commission to consider a draft notice of submission to the Rules Clearinghouse. The Commission should consider whether it wishes to make any final changes to the Rule Order or the EIA.

Draft Rule Order and Economic Impact Analysis

The Commission must finalize the Draft Rule Order and the EIA before staff can submit them to the appropriate offices. Those documents have been included as **Attachment B** and **Attachment C**.

Submission to the Legislative Council's Rules Clearinghouse

If the Commission approves the rule order and EIA at today's meeting, the next step is for staff to submit those documents to the Legislative Council pursuant to § 227.15(1). Staff must also submit a Notice of Submittal of Proposed Rule to the Legislative Council Clearinghouse along with these documents to the LRB and to the secretary of administration. Wis. Stat. § 227.15(1). A copy of this notice is included as **Attachment D**.

Public Comment Period and Hearing

Normally, the next step after submission to the Rules Clearinghouse would be to hold a public hearing and comment period on the substance of the rule. However, that hearing cannot be held until the Legislative Council issues its analysis, or until the initial review period of 20 working days has expired, whichever comes first. Wis. Stat. § 227.15(1). In addition, notice for the public hearing must be given at least 10 days prior to the date set for the hearing. Wis. Stat. § 227.17(2).

Staff recommend that the Commission approve the date for a public hearing on the last day it can be held before the scope statement expires—**October 3, 2024 from 1 p.m. to 3 p.m.**—in case staff receive the analysis from the Legislative Council prior to 20 working days. If the hearing were set for October 3, 2024, notice would have to be given no later than Monday, September 23. If the materials were submitted to the Rules Clearinghouse on September 12, 2024, the Legislative Council would have 14 working days to submit their analysis so the hearing could be held on October 3. Staff will request that the Legislative Council expedite their review in consideration of the scope statement expiration date. The hearing would only be held if staff receive the Legislative Council's

analysis on or before October 2, 2024. The Commission cannot hold the hearing on October 3 if it doesn't receive the Legislative Council's analysis early because the 20-working day period would run until October 9, 2024. Wis. Stat. § 227.15(1).

The notice for this hearing must be approved by the Commission, and the Commission must publish the notice in the Administrative Register, send it to the secretary of administration, and provide whatever notice it believes is necessary to interested persons. Wis. Stat. § 227.17(1) & (2m). Consistent with other rulemaking procedures, staff recommend publishing the notice on the Commission's website under the rules section and within the calendar, as well as publishing a clerk communication with a link to the notice. A copy of the proposed notice has been included as Attachment E. Staff will include a disclaimer on each notice that this public hearing is contingent upon receiving analysis from the Legislative Council on or before October 2, 2024, and that the hearing will be cancelled if the report from the Legislative Council staff is not received.

Recommended Motion: Staff shall update the draft Rule Order and finalize the EIA as directed by the Commission during this meeting, if necessary. Staff shall finalize the draft notice for the hearing and comment period and the draft notice of submission to the rules clearinghouse as directed by the Commission during this meeting, and take all necessary steps to publish those notices in the administrative register and as needed to provide the public with notice of the hearing as directed during this meeting. Staff shall send the notice of hearing to the secretary of administration. Staff shall submit the EIA to the Department of Administration, the governor, and to the chief clerks of each house of the Legislature. Staff shall submit the Draft Rule Order and EIA and Fiscal Estimate to the Legislative Council's Rules Clearinghouse. Since the Commission will not be able to submit the rule to the Legislature pursuant to Wis. Stat. § 227.19 before the scope statement expires on October 4, 2024, the Commission reauthorizes the rulemaking on this topic and directs staff to bring a new scope statement and notice of public hearing and comment period for Commission review at the next available meeting.

**WISCONSIN ELECTIONS
COMMISSION**




Economic Impact Analysis—Ch. EL 7 Revisions Relating to Approval and Security of Electronic Voting Equipment and Ballot Security

Friday, August 16, 2024

To: City of Milwaukee Election Commission Milwaukee County Election Commission
Wisconsin County Clerks Wisconsin Municipal Clerks

Priority: Timely Attention

File Downloads

-  [EL 7 Draft Notice - EIA Comment Period_0.pdf](#)
-  [EL 7 Draft Rulemaking Order - Permanent Rule_0.pdf](#)
-  [EL 7 Fiscal Est_Economic Impact Analysis_0.pdf](#)

On June 27, 2024, the Commission members voted to approve the draft language of the proposed permanent rule relating to approval and security of electronic voting equipment and ballot security.

The current step for the rule is the Economic Impact Analysis. Please take a look at the documents posted here:

<https://elections.wi.gov/draft-rule-update-chapter-el-7-approval-securi...>

The documents are the Scope Statement, the draft rule order, which contains the full text of the permanent rule as approved by the Commission, draft Economic Impact Analysis, and a notice inviting individuals affected by the rule to comment on any economic impacts that might stem from the rule.

This round of comments is focused exclusively on economic impacts. The round of comments after this will be a public hearing and comment period, and the Commission will then accept all comments on the text of the rule. Though you may prepare comments on the text and substance of the rule using this draft, please do not submit comments on the rule text until the public hearing and comment period has been noticed by the Commission. You will receive another notice once the Commission has approved a public hearing and comment period.

Economic impact comments will be accepted until 5 p.m. on Tuesday, September 3, 2024, and can be emailed to Angela O'Brien Sharpe at angela.sharpe@wisconsin.gov. Please let us know if you wish to collaborate with us on the Economic Impact Analysis.

Memo Type: Clerk Communication

Public Notice: Notice re. Solicitation of Comments on an EIA

Elections Commission (EL)

Related to: Proposed rule relating to approval and security of electronic voting equipment and ballot security

Notice Soliciting Comments Regarding an Economic Impact Analysis

Subject: Proposed rule relating to approval and security of electronic voting equipment and ballot security

Notice Date: August 16, 2024

Comment Period: August 16, 2024 – September 3, 2024

The Wisconsin Elections Commission (Commission) is preparing an economic impact analysis (EIA) for the proposed rule under Scope Statement 029-22 relating to approval and security of electronic voting equipment and ballot security. The scope statement, a preliminary draft of the EIA and a draft of the rule order are available on the Commission's website, here: <https://elections.wi.gov/draft-rule-update-chapter-el-7-approval-security-electronic-voting-equipment-and-ballot-security>. The draft documents may be updated following the receipt and consideration of EIA comments.

The Commission must solicit comments on the economic impact of the proposed rule and, if requested, coordinate with local governments on the EIA. The Commission will accept written comments for its election inspector and SVD training EIA **until 5 p.m. on September 3, 2024**. Please provide specific information and include any supporting economic data. Please do NOT submit comments on revisions to the rule language. The Commission will hold a separate hearing and comment period for comments on the rule language after proper notice in accordance with ss. 227.17 and 227.18, Stats.

EIA comments may be emailed to angela.sharpe@wisconsin.gov or mailed to: Angela Sharpe Wisconsin Elections Commission, P.O. Box 7984, Madison, WI 53707-7984.

Any local government unit affected by the rule may request to coordinate with the Commission on the EIA. Please state this request within your EIA comments. The Commission will contact all local government units that request to coordinate and incorporate their comments into the EIA to the extent feasible.

Under section 227.137, Stats., the Commission is soliciting comments on the information listed below:

1. Any implementation or compliance costs that are reasonably expected to be incurred.
2. Actual quantifiable benefits of the proposed rule.
3. Whether the proposed rule would adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of the state.
4. Economic impacts of specific alternatives to the proposed rule.
5. Any other economic impacts to any affected party

The scope statement did not estimate any economic impact to small businesses, but if you are a small business as defined in s. 227.114(1), Stats., please let us know in your comments.

When the EIA is ready, the Commission will submit the rule order and economic impact analysis to the Wisconsin Legislative Council under s. 227.15, Stats.

Links to Admin. Code and Statutes in this Register are to current versions, which may not be the version that was referred to in the original published document.

DRAFT ORDER OF THE WISCONSIN ELECTIONS COMMISSION

The Wisconsin Elections Commission adopts the following permanent rule to amend EL 7, relating to approval and security of electronic voting equipment and ballot security.

The statement of scope for this rule, SS 029-22, was approved by the Office of Wisconsin Governor Tony Evers on March 31, 2022, published in Register No. 796A1, on April 4, 2022, and approved by the Wisconsin Elections Commission on July 22, 2022.

RULE ANALYSIS

Statutes Interpreted:

Sections 5.91, 5.905, Stats.

Statutory Authority:

Sections 5.05(1), 5.87(2), 5.905(3), 5.93, 7.08(1)(d), and 227.11(2)(a), Stats.

Related Statutes:

Sections 5.76—5.95, Stats.

Plain Language Analysis:

The proposed administrative rule will make two amendments to Wis. Admin. Code EL Ch. 7. First, the rule will create new EL § 7.04, which will promulgate the Commission’s voting systems standards, testing protocols, and procedures pertaining to the use of communication devices in electronic voting systems. The rule will require the Commission to annually review and approve new versions of these standards, testing protocols, and procedures. Second, the rule will create new EL § 7.05, which will ensure the security, review, and verification of software components for electronic voting systems. The rule will require that all applications for certification of electronic voting systems contain completed testing from an accredited Voting System Testing Laboratory (“VSTL”) so that the Commission can verify the security, review, and verification of the software components of the voting system.

Summary of, and Comparison With, Existing or Proposed Federal Regulations:

The Help America Vote Act (“HAVA”) prescribes practices and associated documentation used to test and maintain voting systems. 52 U.S.C. § 21081. HAVA requires the U.S. Election Assistance Commission to develop and maintain a set of guidelines called the Voluntary Voting System Guidelines (“VVSG”), which are voluntary specifications for the functionality, accessibility, and security capabilities. HAVA also requires the Elections Assistance Commission (“EAC”) to provide for the testing, certification, decertification, and recertification of voting systems technology by accredited laboratories. 52 U.S.C. § 20971. The VVSG 1.0/1.1 contain voluntary requirements for, among other things, telecommunications requirements, data transmission, protection against external threats, wireless communications, controlling usage, protecting wireless path, and protecting the physical voting system.

Summary of Comments Received During Preliminary Comment Period and at Public Hearing on Statement of Scope

No members of the public attended the April 29, 2022, public meeting to offer comments on the statement of scope for the proposed rule.

The Commission received three written comments specific to the scope statements for this rule. A comment from the League of Women Voters of Wisconsin requested that the Commission consider including testing of accessible voting equipment as part of the pre-election equipment testing as part of this rulemaking. Comments from the Wisconsin Disability Vote Coalition and Verified Voting were substantively similar to the comment from the LWVW.

The Commission reviewed the three written comments and voted to approve the scope statement as written on July 22, 2022.

Comparison with Similar Rules in Illinois, Iowa, Michigan, and Minnesota

While Illinois has extensive statutory and administrative regulations related to the approval process for voting systems, it does not have an explicit provision imposing additional requirements on voting systems with telecommunication components. *See* 10 ILL. COMP. STAT. 5/24–5/24C (2024), ILL. ADMIN. CODE TIT. 26 (2024). Illinois statutes do, however, explicitly ban the use of voting systems with Infrared Data Association communication ports. 10 ILL. COMP. STAT. 5/24A-16. The Illinois administrative code does require that the State Board of Elections apply all requirements of the Federal Elections Commission, the Elections Assistance Commission (“EAC”), or the Elections Assistance Commission Standards board, as well as the testing requirements of an approved independent testing authority. ILL. ADMIN. CODE TIT. 26 § 204.10.

While the proposed rule sets standards for voting systems with telecommunications components that are more explicit than the standards in Illinois law, they are also less strict than Illinois’s categorical ban on devices with Infrared Data Association communication ports. Additionally, the Illinois requirement that the State Board of Elections apply the requirements of the EAC or an approved independent testing authority likely imposes similar testing requirement to the proposed rule’s requirement that voting systems undergo testing from a VSTL accredited by the EAC.

Iowa also has extensive statutory and administrative regulations regarding testing standards for voting systems. The Secretary of State—who also serves as the State Commissioner of Elections—has the statutory authority to adopt rules prescribing testing methodologies and performance standards for voting systems. IOWA CODE § 52.5 (2024). The rules promulgated by the Secretary of State are required to at least meet the standards adopted by the Federal Elections Commission (“FEC”) in 2002. *Id.* Iowa’s administrative rules currently require voting systems to meet either the 2002 FEC guidelines or the EAC’s 2005 voluntary guidelines. IOWA ADMIN. CODE r. 720-22.2. Compliance with these guidelines must be certified by a test authority accredited by the National Association of Electronic Directors (“NASED”) or a test laboratory certified by the EAC. IOWA ADMIN. CODE rs. 720-22.1, 720-22.2. Neither Iowa’s statute nor administrative code set additional standards or testing protocols for voting systems containing telecommunication devices.

While Iowa administrative rules appear to be more lenient regarding certification than the proposed rule, the mention of NASED certification is largely anachronistic as the NASED itself no longer certifies voting equipment. <https://www.nased.org/about-nased>. All modern electronic voting systems will only be approved in Iowa if they have been tested by an EAC certified lab. As a result, the proposed rule imposes more updated certification requirements than Iowa's rules. The proposed rule will also place more explicit standards on voting systems with telecommunication devices than those contained in Iowa statute or administrative code.

The Michigan board of state canvassers is responsible for approving all voting systems. MICH. COMP. LAWS § 168.795a(1). Michigan statutes require that all electronic voting systems either be certified by an independent testing authority accredited by NASED and the board of state canvassers, or have certification from the manufacturer that the system meets or exceeds the performance and test standards prescribed by the board of state canvassers. *Id.* Specific testing standards are prescribed by Michigan statute and elaborated upon through administrative rules. *See* MICH. COMP. LAWS § 168.794a, MICH. ADMIN. CODE r. 168.773. No provisions specifically impose additional standards for voting systems which contain telecommunication devices.

As with Iowa, the reference to NASED accreditation in Michigan statute is largely anachronistic. As a result, all modern voting systems will require certification from their manufacturer that they meet the board of state canvassers requirements in order to be approved in Michigan. The proposed rule will impose a higher standard than the existing Michigan testing requirement and is more in line with federal guidance regarding testing certification. The proposed rule will also place higher standards on voting systems with telecommunication components than those contained in Michigan statute and administrative code.

The Minnesota Secretary of State reviews and approves all applications for new voting systems. MINN. STAT. § 206.57 subdivision 1. Voting systems must be certified by an independent testing authority accredited by the EAC or an appropriate federal agency that is responsible for testing and certification of compliance with federal guidelines. MINN. STAT. § 206.57 subdivision 6. Minnesota's administrative code contains additional pre-testing procedures but does not impose approval requirements exceeding those found in statute. MINN. R. 8220–8230. No provisions in Minnesota statute or administrative code impose additional standards for voting systems which contain telecommunication devices.

The proposed rule imposes certification requirements which are practically identical to Minnesota statute. While Minnesota allows for certification by testing authorities certified by additional appropriate federal agencies, at this time the EAC is the only appropriate federal agency. The proposed rule will place higher standards on voting systems with telecommunication components than those contained in Minnesota statute or administrative code.

Summary of Factual Data and Analytical Methodologies

Commission staff did not perform empirical analysis for this rule as the intent of the rule is simply to implement existing guidance. The Commission relied on its existing guidance and practices which have been used to certify elections systems in Wisconsin.

Analysis and Supporting Documents used to Determine Effect on Small Business

There is no anticipated effect on small business. No specific analysis was performed for the fiscal estimate, nor were any supporting documents generated, because there is no anticipated effect on any fiscal liabilities and revenue, and no anticipated costs to be incurred by the private sector.

Agency Contact Person:

Angela O'Brien Sharpe, Staff Attorney
Wisconsin Elections Commission
201 West Washington Avenue
P.O. Box 7984
Madison, WI 53707-7984
Telephone: 608-264-6764
Email: angela.sharpe@wisconsin.gov

RULE TEXT

SECTION 1. EL 7.01(1)(h) is created to read:

EL 7.01 Application for approval of electronic voting system.

7.01(1)(h) An electronic voting system containing telecommunications components must meet the additional requirements and procedures in s. EL 7.04.

SECTION 2. EL 7.04 is created to read:

EL 7.04 Voting systems standards, testing protocols, and procedures pertaining to the use of communication devices

7.04(1) Any voting system containing a telecommunications component must comply with the standards, testing protocols, and procedures pertaining to the use of telecommunication devices in Wisconsin that are prescribed by the commission.

7.04(2) The commission shall annually review and approve a new version of the standards, testing protocols, and procedures pertaining to the use of telecommunication devices in Wisconsin. Prescribing a version of the standards, protocols, and procedures described in this section constitutes an action by the commission per s. 5.05(1e), Stats.

SECTION 3. EL 7.05 is created to read:

EL 7.05 Security, review, and verification of software components for electronic voting systems

7.05(1) An application for commission certification of an electronic voting system must contain completed testing from an accredited Voting System Test Laboratory (VSTL) so that the commission can ensure the security, review, and verification of software components as a condition of certification. In order to determine that the software components correspond to the instructions actually used by the system to count votes, each software component must be either certified by the EAC, where EAC certification is available, or be tested by an accredited VSTL.

7.05(2) A qualifying VSTL under sub. 1 can only be accredited by the United States Election Assistance Commission.

SECTION 4. EFFECTIVE DATE. This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2), Stats.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date 08/08/2024
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Chapter EL 7 Approval of Electronic Voting Equipment	
4. Subject The proposed administrative rule will make two amendments to Wis. Admin. Code EL Ch. 7. First, the rule will create new EL § 7.04, which will promulgate the Commission’s voting systems standards, testing protocols, and procedures pertaining to the use of communication devices in electronic voting systems. The rule will require the Commission to annually review and approve new versions of these standards, testing protocols, and procedures. Second, the rule will create new EL § 7.05, which will ensure the security, review, and verification of software components for electronic voting systems. The rule will require that all applications for certification of electronic voting systems contain completed testing from an accredited Voting System Testing Laboratory (“VSTL”) so that the Commission can verify the security, review, and verification of the software components of the voting system.	
5. Fund Sources Affected <input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected Wis. Stat. s. 20.510
7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency’s Budget	
8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State’s Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0.00	
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
11. Policy Problem Addressed by the Rule The proposed rule will promulgate existing Commission guidance regarding the voting systems standards, testing protocols, and procedures pertaining to the use of communication devices in electronic voting systems. The rule will also codify existing practices to ensure the Commission is meeting its statutory duty to ensure the security, review, and verification of software components for electronic voting systems.	
12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. None, though it may seem as if the rule may impact electronic voting system vendors, the actual function of the rule is to codify existing guidance that those vendors are already following. As such, there will be little to no financial impact on local officials or small businesses.	
13. Identify the Local Governmental Units that Participated in the Development of this EIA. No local government units participated in the development of this draft EIA.	
14. Summary of Rule’s Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State’s Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) None. Voting equipment vendors have likely already been performing these or similar functions, and this codification of the process will not result in additional economic burden.	
15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule	

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

The greatest benefit to implementing the rule is to codify existing Commission guidance to provide clarity, consistency, and certainty for voting equipment vendors. The alternative to implementing this rule would be to leave the communication device aspect of voting equipment unaddressed by rule, and to leave existing practices as norms instead of rules.

16. Long Range Implications of Implementing the Rule

Implementing this rule should lead to greater consistency concerning the treatment of communication devices in electronic voting systems and a guarantee that successful existing practices will be required and will continue to be carried out.

17. Compare With Approaches Being Used by Federal Government

The Help America Vote Act (“HAVA”) prescribes practices and associated documentation used to test and maintain voting systems. 52 U.S.C. § 21081. HAVA requires the U.S. Election Assistance Commission to develop and maintain a set of guidelines called the Voluntary Voting System Guidelines (“VVSG”), which are voluntary specifications for the functionality, accessibility, and security capabilities. HAVA also requires the Elections Assistance Commission (“EAC”) to provide for the testing, certification, decertification, and recertification of voting systems technology by accredited laboratories. 52 U.S.C. § 20971. The VVSG 1.0/1.1 contain voluntary requirements for, among other things, telecommunications requirements, data transmission, protection against external threats, wireless communications, controlling usage, protecting wireless path, and protecting the physical voting system.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

While Illinois has extensive statutory and administrative regulations related to the approval process for voting systems, it does not have an explicit provision imposing additional requirements on voting systems with telecommunication components. See 10 ILL. COMP. STAT. 5/24–5/24C (2024), ILL. ADMIN. CODE TIT. 26 (2024). Illinois statutes do, however, explicitly ban the use of voting systems with Infrared Data Association communication ports. 10 ILL. COMP. STAT. 5/24A-16. The Illinois administrative code does require that the State Board of Elections apply all requirements of the Federal Elections Commission, the Elections Assistance Commission (“EAC”), or the Elections Assistance Commission Standards board, as well as the testing requirements of an approved independent testing authority. ILL. ADMIN. CODE TIT. 26 § 204.10.

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<https://www.nased.org/about-nased>. All modern electronic voting systems will only be approved in Iowa if they have been tested by an EAC certified lab. As a result, the proposed rule imposes more updated certification requirements than

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

Iowa's rules. The proposed rule will also place more explicit standards on voting systems with telecommunication devices than those contained in Iowa statute or administrative code.

The Michigan board of state canvassers is responsible for approving all voting systems. MICH. COMP. LAWS § 168.795a(1). Michigan statutes require that all electronic voting systems either be certified by an independent testing authority accredited by NASED and the board of state canvassers, or have certification from the manufacturer that the system meets or exceeds the performance and test standards prescribed by the board of state canvassers. Id. Specific testing standards are prescribed by Michigan statute and elaborated upon on through administrative rules. See MICH. COMP. LAWS § 168.794a, MICH. ADMIN. CODE r. 168.773. No provisions specifically impose additional standards for voting systems which contain telecommunication devices.

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The proposed rule imposes certification requirements which are practically identical to Minnesota statute. While Minnesota allows for certification by testing authorities certified by additional appropriate federal agencies, at this time the EAC is the only appropriate federal agency. The proposed rule will place higher standards on voting systems with telecommunication components than those contained in Minnesota statute or administrative code.

19. Contact Name Angela O'Brien Sharpe, Staff Attorney	20. Contact Phone Number 608-264-6764
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This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

N/A

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

N/A

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

N/A

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

N/A

5. Describe the Rule's Enforcement Provisions

The Commission would not be able to certify any voting equipment that did not comply with these rules.

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

Yes No

Notice of Submittal of Proposed Rule to Legislative Council Rules Clearinghouse

On September 12, 2024, the Wisconsin Elections Commission submitted a proposed rule to the Wisconsin Legislative Council Clearinghouse pursuant to s. 227.15 (1), Wis. Stats.

Analysis

The proposed rule would create new provisions of Wis. Admin Code Ch. EL 7, relating to approval and security of electronic voting equipment and ballot security.

Statement of Scope

The scope statement for this rule, SS 030-22, was approved by the Office of Wisconsin Governor Tony Evers on March 31, 2022, published in Register No. 796A1, on April 4, 2022, and approved by the Wisconsin Elections Commission on June 22, 2022.

Agency Procedure for Promulgation

A public hearing is required and is scheduled to be held on October 3, 2024, at 1 p.m. on Zoom.

This hearing is contingent upon the Commission receiving the written report of the legislative council staff review of the proposed rule under Wis. Stat. § 227.15(1) on or before Wednesday, October 2, 2024. If the report is not received on or before October 2, this hearing will be cancelled and staff will provide notice of the cancellation.

Materials related to the proposed rule can be found on the Commission’s website at this link:
<https://elections.wi.gov/draft-rule-update-chapter-el-7-approval-and-security-electronic-voting-equipment-and-ballot>

Agency Organizational Unit Primarily Responsible for Promulgating Rule

Wisconsin Elections Commission

Agency Contact Person

Angela O’Brien Sharpe – Staff Attorney
angela.sharpe@wisconsin.gov
P.O. Box 7984, Madison, WI 53703-7984
608-264-6764

Notice of Hearing

The Wisconsin Elections Commission (“the Commission”) announces that Commission staff will hold a public hearing on a permanent rule to create new provisions of Wis. Admin Code EL Ch. 7 relating to approval and security of electronic voting equipment and ballot security.

This hearing is contingent upon the Commission receiving the written report of the legislative council staff review of the proposed rule under Wis. Stat. § 227.15(1) on or before Wednesday, October 2, 2024. If the report is not received on or before October 2, this hearing will be cancelled and staff will provide notice of the cancellation.

Hearing Information

Date: Thursday, October 3, 2024

Time: 1:00 p.m.

Location: *See below for virtual attendance options*

[Insert Zoom Info]

Accessibility

This meeting will include the option for captioning. Additional accessibility considerations may be available and can be requested by contacting elections@wisconsin.gov.

Appearances at the Hearing and Submittal of Written Comments

Anyone may attend the hearing and provide a perspective on the proposed rule amendments. Oral comments will be limited to a 4 minute presentation per person.

The proposed permanent rule may be reviewed at: <https://elections.wi.gov/draft-rule-chapter-el-13-training-election-inspectors-special-voting-deputies>

Please send written comments to angela.sharpe@wisconsin.gov no later than 4:30 p.m. on Thursday, October 3, 2024. Comments may also be submitted at <https://docs.legis.wisconsin.gov/code/chr/comment>, or mailed to:

Angela Sharpe
P.O. Box 7984
Madison, WI 53707-7984

Initial Regulatory Flexibility Analysis

The proposed rule will not have an effect on small businesses, as defined under s. 227.114 (1).

Notice of Possible Quorum

Wisconsin Elections Commission

Public Hearing Seeking Comment on Administrative Rule Final Rule Order
Thursday, October 3, 2024
1:00 p.m.

A quorum of the members of the Wisconsin Elections Commission may be present at the agency’s public hearing seeking comment relating to a proposed rule concerning approval and security of electronic voting equipment and ballot security.

Notice is hereby given that the above gathering may constitute a meeting of the Wisconsin Elections Commission. However, no items are on an agenda for Commission consideration, nor will action be taken by the Commission.

Approved: September 11, 2024

/s/
Marge Bostelmann, Commission Secretary



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

DATE: Prepared for the September 11, 2024, Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Prepared and Presented by:
Angela O'Brien Sharpe, Staff Attorney

SUBJECT: EL Ch. 13 – Election Inspector & Special Voting Deputy Training Requirements

ATTACHMENTS: **Attachment A:** Economic Impact Analysis Comment Period Documentation

Attachment B: Draft Final Rule Order

Attachment C: Economic Impact Analysis & Fiscal Estimate

Attachment D: Notice of Submittal of Proposed Rule to Legislative Council Rules Clearinghouse

Attachment E: Notice of Public Hearing and Comment Period

Introduction:

On June 27, 2024, the Commission approved the final text of the proposed administrative rules relating to election inspector and special voting deputy training requirements. Staff have taken steps since then to proceed with the rulemaking promulgation.

On August 1, 2024, staff published a draft of the EL 13 Training for Election Inspectors and Special Voting Deputies Rule Order and Economic Impact Analysis as a clerk communication, which contained links to the documents on the Commission website and a description of how comments on the EIA could be submitted. A reminder about the EIA comment period was also included in the Commission's newsletter on August 9, 2024. On August 5, 2024, a notice of a comment period on the EIA was published in the administrative register, which also contained links for the public to submit economic comments. Individuals could provide any comments on the EIA until August 19, 2024.

One comment was received during the EIA comment period, but did not address the economic impact of the proposed rule. The comment, along with documentation related to the comment period for the EIA is included as **Attachment A**.

Expiration of Scope Statement

The scope statement for proposed EL 13 expires on **October 4, 2024**. Scope statements expire 30 months after the date on which they were initially published in the Administrative Register. Wis. Stat. § 227.135(5). Staff

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

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expect that the last step in the rulemaking process that can be completed before the scope statement expires is submission of the rule order and economic impact analysis to the Rules Clearinghouse, and possibly scheduling a comment period and public hearing on October 3, 2024.

However, because this rule would promulgate existing Commission guidance and was directed by the Legislative Audit Bureau, staff recommend that the Commission reauthorize the commencement of rulemaking when the scope statement expires next month. The reauthorized rulemaking would take much less time because many of the drafting steps are already complete. Additionally, the reauthorized rulemaking would presumably benefit from the analysis from the Legislative Council, and possibly public comment as well, meaning staff could implement those edits in the draft rule after the Commission reapproves the scope statement.

Next Steps:

Staff now ask the Commission to review and approve the draft Rule Order, the EIA, and Fiscal Estimate for submission to the Rules Clearinghouse. Staff also ask the Commission to consider a draft notice of submission to the Rules Clearinghouse. The Commission should consider whether it wishes to make any final changes to the Rule Order or the EIA.

Draft Rule Order and Economic Impact Analysis

The Commission must finalize the Draft Rule Order and the EIA before staff can submit them to the appropriate offices. Those documents have been included as **Attachment B** and **Attachment C**.

Submission to the Legislative Council's Rules Clearinghouse

If the Commission approves the rule order and EIA at today's meeting, the next step is for staff to submit those documents to the Legislative Council pursuant to § 227.15(1). Staff must also submit a Notice of Submittal of Proposed Rule to the Legislative Council Clearinghouse along with these documents to the LRB and to the secretary of administration. Wis. Stat. § 227.15(1). A copy of this notice is included as **Attachment D**.

Public Comment Period and Hearing

Normally, the next step after submission to the Rules Clearinghouse would be to hold a public hearing and comment period on the substance of the rule. However, that hearing cannot be held until the Legislative Council issues its analysis, or until the initial review period of 20 working days has expired, whichever comes first. Wis. Stat. § 227.15(1). In addition, notice for the public hearing must be given at least 10 days prior to the date set for the hearing. Wis. Stat. § 227.17(2).

Staff recommend that the Commission approve the date for a public hearing on the last day it can be held before the scope statement expires—**October 3, 2024 from 1 p.m. to 3 p.m.**—in case staff receive the analysis from the Legislative Council prior to 20 working days. If the hearing were set for October 3, 2024, notice would have to be given no later than Monday, September 23. If the materials were submitted to the Rules Clearinghouse on September 12, 2024, the Legislative Council would have 14 working days to submit their analysis so the hearing could be held on October 3. Staff will request that the Legislative Council expedite their review in consideration of the scope statement expiration date. The hearing would only be held if staff receive the Legislative Council's analysis on or before October 2, 2024. The Commission cannot hold the hearing on October 3 if it doesn't receive the Legislative Council's analysis early because the 20-working day period would run until October 9, 2024. Wis. Stat. § 227.15(1).

The notice for this hearing must be approved by the Commission, and the Commission must publish the notice in the Administrative Register, send it to the secretary of administration, and provide whatever notice it believes is necessary to interested persons. Wis. Stat. § 227.17(1) & (2m). Consistent with other rulemaking procedures, staff recommend publishing the notice on the Commission's website under the rules section and within the calendar, as well as publishing a clerk communication with a link to the notice. A copy of the proposed notice has been included as Attachment E. Staff will include a disclaimer on each notice that this public hearing is contingent upon receiving analysis from the Legislative Council on or before October 2, 2024, and that the hearing will be cancelled if the report from the Legislative Council staff is not received.

Recommended Motion: Staff shall update the draft Rule Order and finalize the EIA as directed by the Commission during this meeting, if necessary. Staff shall finalize the draft notice for the hearing and comment period and the draft notice of submission to the rules clearinghouse as directed by the Commission during this meeting, and take all necessary steps to publish those notices in the administrative register and as needed to provide the public with notice of the hearing as directed during this meeting. Staff shall send the notice of hearing to the secretary of administration. Staff shall submit the EIA to the Department of Administration, the governor, and to the chief clerks of each house of the Legislature. Staff shall submit the Draft Rule Order and EIA and Fiscal Estimate to the Legislative Council's Rules Clearinghouse. Since the Commission will not be able to submit the rule to the Legislature pursuant to Wis. Stat. § 227.19 before the scope statement expires on October 4, 2024, the Commission reauthorizes the rulemaking on this topic and directs staff to bring a new scope statement and notice of public hearing and comment period for Commission review at the next available meeting.

**WISCONSIN ELECTIONS
COMMISSION**

Economic Impact Analysis—Ch. EL 13 Revisions Relating to Training for Election Inspectors and Special Voting Deputies

Thursday, August 1, 2024

To: City of Milwaukee Election Commission Milwaukee County Election Commission
Wisconsin County Clerks Wisconsin Municipal Clerks

Priority: Timely Attention

On June 27, 2024, the Commission members voted to approve the draft language of the proposed emergency and permanent rules relating to training for election inspectors and special voting deputies (SVD).

The current step for both proposed permanent rules is the Economic Impact Analysis. Please take a look at the documents posted here: <https://elections.wi.gov/draft-rule-chapter-el-13-training-election-inspectors-special-voting-deputies>.

The documents are the Scope Statement, the draft rule order, which contains the full text of the permanent rule as approved by the Commission, draft Economic Impact Analysis, and a notice inviting individuals affected by the rule to comment on any economic impacts that might stem from the rule.

This round of comments is focused exclusively on economic impacts. The round of comments after this will be a public hearing and comment period, and the Commission will then accept all comments on the text of the rule. Though you may prepare comments on the text and substance of the rule using this draft, please do not submit comments on the rule text until the public hearing and comment period has been noticed by the Commission. You will receive another notice once the Commission has approved a public hearing and comment period.

Economic impact comments will be accepted until 5 p.m. on Monday, August 19, 2024, and can be emailed to Angela O'Brien Sharpe at angela.sharpe@wisconsin.gov. Please let us know if you wish to collaborate with us on the Economic Impact Analysis.

Memo Type: Clerk Communication

Full text of the specified Administrative Register, except Inserted Chapters published in the Register.

Wisconsin Administrative Register No. 824A1

Published every Monday by the Legislative Reference Bureau under s. 35.93, Wis. Stats.

Publication Date: August 5, 2024

Subscribe to receive email notification of changes to Administrative Code chapters or of selected notices published in the Administrative Register.

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- Emergency Rules in Effect
- Statements of Scope
- Notices of Public Hearing and Comment Period for Statements of Scope
- Notices of Submittal of Rules to Legislature in Final Draft Form
- Public Notices

Emergency Rules in Effect

(Includes Rules Filed With Legislative Reference Bureau not yet in effect indicated below as "Pending")

EmR2406

Expires: **October 3, 2024**

Department of Natural Resources (NR)

Chs. NR 1-99; Fish, Game and Enforcement, Forestry and Recreation

ch. NR 20

Minocqua Chain walleye harvest regulations (Ch. NR 20)

EmR2405

Expires: **September 4, 2024**

Department of Natural Resources (NR)

Chs. NR 1-99; Fish, Game and Enforcement, Forestry and Recreation

ch. NR 47

Federal funding for the Urban and Community Forestry Grant Program

EmR2404

Expires: **August 14, 2024**

Department of Revenue (Tax)

ch. Tax 3

Income, franchise, and corporate income tax exemption for income derived from commercial loans

EmR2402

Expires: **August 11, 2024**

First Extension

Naturopathic Medicine Examining Board (Nat Med)

ch. Nat Med 1

Licensure requirements for naturopathic doctors and limited-scope naturopathic doctors

EmR2401

Expires: **August 8, 2024**

First Extension

Department of Natural Resources (NR)

Chs. NR 1-99; Fish, Game and Enforcement, Forestry and Recreation

ch. NR 20

ch. NR 25

Lake Superior cisco and lake trout regulations

EmR2111

Expires: **The date on which rules promulgated pursuant to s. 94.55 (3w), Stats., take effect.**

Department of Agriculture, Trade and Consumer Protection (ATCP)

Chs. ATCP 20-54; Agricultural Resource Management

ch. ATCP 22

Hemp and affecting small businesses

EmR1210

Expires: **The date on which the permanent rules take effect, as provided in 2011 Wisconsin Act 169, section 21.**

Department of Natural Resources (NR)

Chs. NR 1-99; Fish, Game and Enforcement, Forestry and Recreation

ch. NR 10

ch. NR 12

ch. NR 19

The wolf hunting and trapping season and regulations and a depredation program.

Statements of Scope

SS 084-24

Department of Workforce Development (DWD)

Chs. DWD 295-296; Apprenticeship

ch. DWD 278

Human trafficking crimes training to every employee who is likely to interact with the public and vulnerable individuals, and affecting small business, as defined under s. 227.114

(1)

SS 085-24

Department of Workforce Development (DWD)

Chs. DWD 801-810; Employment and Training

ch. DWD 802

Technical education equipment grants

SS 086-24

Controlled Substances Board (CSB)

ch. CSB 2

Scheduling 5 synthetic cannabinoids

SS 087-24

Controlled Substances Board (CSB)

ch. CSB 2

Scheduling ADB-BUTINACA, a-PIHP, and 3-MMC

SS 088-24

Controlled Substances Board (CSB)

ch. CSB 2

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SS 089-24

Pharmacy Examining Board (Phar)

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Notices of Public Hearing and Comment Period for Statements of Scope

Department of Children and Families (DCF)
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ch. DCF 21
ch. DCF 37
ch. DCF 50
ch. DCF 55
ch. DCF 58

Extension of kinship care and long-term kinship care payments to like-kin and the definition of out-of-home care in child welfare rules

SS 084-24 Notice of Preliminary Public Hearing

Department of Workforce Development (DWD)
Chs. DWD 295-296; Apprenticeship
ch. DWD 278

Human trafficking crimes training to every employee who is likely to interact with the public and vulnerable individuals, and affecting small business, as defined under s. 227.114
(1)

SS 085-24 Notice of Preliminary Public Hearing

Department of Workforce Development (DWD)
Chs. DWD 801-810; Employment and Training
ch. DWD 802

Technical education equipment grants

Notices of Submittal of Rules to Legislature in Final Draft Form

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Department of Corrections (DOC)
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ch. DOC 376

Chapter DOC 376, security in Type 1 secured correctional facilities

CR 24-033

Controlled Substances Board (CSB)
ch. CSB 4

Monitored prescription drug history reports

CR 24-043

Elections Commission (EL)
ch. EL 12

Certification and training of municipal clerks

CR 24-044

Examining Board of Architects, Landscape Architects, Professional Engineers, Designers, Professional Land Surveyors, and Registered Interior Designers
(A-E)

ch. A-E 8

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CR 24-048

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ch. CSB 2

Transferring flualprazolam and scheduling 4 other synthetic benzodiazepine substances

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Public Notice: Request for Comments on an EIA re. Deer Management

Department of Natural Resources (NR)

An economic impact analysis (EIA) for proposed rules relating to the deer management assistance program

Public Notice: Request for Comments on an EIA re. Election Inspectors

Elections Commission (EL)

Proposed permanent rule relating to training for election inspectors and special voting deputies (SVDs)

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Links to Admin. Code and Statutes in this Register are to current versions, which may not be the version that was referred to in the original published document.

From: [elizabethbruders](#)
To: [Sharpe, Angela B - ELECTIONS](#)
Subject: Proposed permanent rule relating to training for election inspectors and special voting deputies (SVDs)
Date: Monday, August 19, 2024 3:08:58 PM

**CAUTION: This email originated from outside the organization.
Do not click links or open attachments unless you recognize the sender and know the content is safe.**

Dear WEC,

I have served as an SVD in the last two elections. Here are some of my comments regarding these proposed permanent rules:

"The proposed administrative rule will codify training standards for election officials that currently only exist as recommendations in Wisconsin Elections Commission manuals."

I do not think that WEC (which is an unelected commission) should have the ability to create permanent rules or to codify training standards for election officials. In 2020, WEC created rules and guidelines for election officials and SVDs that did not follow Wisconsin election laws. It took years of expensive litigation to finally stop their unlawful rules. This process wasted taxpayer money. We need election commission and administrator who can be held accountable to follow Wisconsin election laws without expensive litigation.

I felt that the SVD training designed by WEC did not give enough information to adequately cover my all responsibilities as an SVD. The manual gives more guidance but was not required as training.

I think that "chain of custody" is a topic that should be defined based on EAC guidelines. I think that there should be better ballot security procedures that laid out for SVDs. The ballots should be transported to and from the care facilities by a member of each political party (Republican and Democrat), rather than just one person. Transport is part of the election process and should be performed according to Wisconsin law.

Sincerely,
Elizabeth Bruders
Waukesha, WI

Stock Photo.



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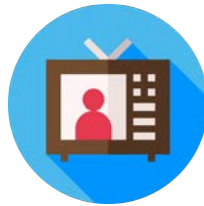
- A message from Administrator Wolfe
- **Badger Books:** Purchasing, Software Update.
- Independent Candidates for President File Paperwork
- What to know on Crossover Voting
- Make Sure Voters Can Find You - Update Your Info
- Upcoming Events

Recent Clerk Communications



August 1

[Application and Interpretation of Wis. Constitution article III, § 7\(2\).](#)



August 1

[Economic Impact Analysis: Ch. EL 13 Revisions Relating to Training for Election Inspectors and Special Voting Deputies](#)
(<https://elections.wi.gov/memo/economic-impact-analysis-ch-el-13-revisions-relating-training-election-inspectors-and-special/>)



July 31

[Litigation Update: Oldenburg v. WEC RE: Official Absentee Ballot Application / Certification \(EL-340 122\); absentee ballot return](#)

July 23

[Administrative Rules Update: Suspension of Emergency Rules Currently in Effect](#)

July 12

[August 2024 Partisan Primary Social Media Posts for Clerks Now Available](#)

July 11

[Litigation Update: Priorities USA v. WEC](#)

A Quick Word from Administrator Meagan Wolfe



WEC Administrator
Meagan Wolfe

Hello, Wisconsin clerks!

Here comes the Partisan Primary, and we are with you all the way!

Greetings to municipal and county clerks across Wisconsin! On behalf of our entire agency, I want to offer encouragement and good wishes to you all as we head into the final days ahead of the Aug. 13 Partisan Primary.

Like every major election year, the 2024 cycle has featured plenty of twists and turns, prompting us all to pivot at times, and then even pivot again.

To remind you on just a couple key changes that have transpired recently:

- **Drop boxes** are again an option for August and November following the Wisconsin Supreme Court's ruling that overturned its previous decision in part.
- The **EL-122 Absentee Ballot Application and Certificate** has also been confirmed to comply with Wisconsin law following a recent Marinette County Circuit Court decision that lifted a temporary injunction.

We, of course, have shared Clerk Communications on those topics and others tied to upcoming elections. Thank you for your attention on those key matters as you prepare for Aug. 13. And you all know well that post-Aug. 13, the November General Election will be fast approaching.

At the WEC, we appreciate your efforts in so many ways. Please let us know how we can help as we all move together through this election season.

WEC Accepting Economic Impact Comments on Proposed Election Inspector and SVD Training Rules Until Aug. 19

On June 27, 2024, the Commission members voted to approve the draft language of the proposed emergency and permanent rules relating to training for election inspectors and special voting deputies (SVD).

The current step for both proposed permanent rules is the Economic Impact Analysis. Please take a look at the [documents posted here](https://elections.wi.gov/draft-rule-chapter-el-13-training-election-inspectors-special-voting-deputies) (<https://elections.wi.gov/draft-rule-chapter-el-13-training-election-inspectors-special-voting-deputies>).

The documents are the Scope Statement, the draft rule order, which contains the full text of the permanent rule as approved by the Commission, draft Economic Impact Analysis, and a notice inviting individuals affected by the rule to comment on any economic impacts that might stem from the rule.

This round of comments is focused exclusively on economic impacts. The round of comments after this will be a public hearing and comment period, and the Commission will then accept all comments on the text of the rule. Though you may prepare comments on the text and substance of the rule using this draft, please do not submit comments on the rule text until the public hearing and comment period has been noticed by the Commission. You will receive another notice once the Commission has approved a public hearing and comment period.

Economic impact comments will be accepted until 5 p.m. on Monday, August 19, 2024, and can be emailed to Angela O'Brien Sharpe at angela.sharpe@wisconsin.gov. Please let us know if you wish to collaborate with us on the Economic Impact Analysis.

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One of WEC's training Badger Book kits, waiting to be updated *after* the Primary. WEC Staff photo.

From the Badger Book Team

Purchasing and Software Update. It's That Time!

First things first, thank you to the newest Badger Book municipalities for your patience waiting for the newest hardware to get finalized and shipped out.

Now on to business!

There is an optional software update available to download in WisVote. An email was sent with details about the update and the instructions for completing it on July 18. **If you have not completed the update by the end of the day, Friday, August 9, plan not to use the software update for the primary.** After that, we will be assisting clerks with other Badger Book questions and will not have time to troubleshoot software updates.

In preparation for the election, please be sure to reference and use the checklists that were sent on July 29. If you cannot find the email, they are also attached to the [Election Resources for Badger Books](https://electiontraining.wi.gov/group/136) (<https://electiontraining.wi.gov/group/136>) training in ElectEd.

Finally, if you are planning to or have already purchased Badger Books AND intend to use them for the first time in 2025, we need to know. Please email us at epollbook@wi.gov (<mailto:epollbook@wi.gov>) as we are already starting to plan training.

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Photo by Thomas Hawk via [Creative Commons](#)

Independent Candidates for President File Paperwork

Four independent presidential candidates filed signatures and paperwork with the Wisconsin Elections Commission by Tuesday's 5 p.m. deadline to request their names be placed on the ballot in Wisconsin for President of the United States for the Nov. 5 General Election.

Under Wisconsin law, independent presidential candidates can get on the ballot by filing a minimum of 2,000 valid signatures of Wisconsin electors on nomination papers, as well as a Declaration of Candidacy form for both the presidential and vice-presidential candidates.

Cornel West and his vice-presidential pick Melina Abdullah filed their paperwork on Thursday, Aug. 1. Claudia De la Cruz and her vice-presidential pick Karina Garcia turned in paperwork on Monday, Aug. 5. Robert F. Kennedy Jr. and his running mate Nicole Shanahan filed their paperwork Tuesday, Aug. 6. Shiva Ayyadurai and running mate Crystal Ellis also turned in paperwork on Aug. 6.

The Commission plans to meet virtually in open session on Aug. 27 to consider each candidate's paperwork, any nomination paper challenges filed, and approve placement on the ballot for independent presidential candidates.

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Cybersecurity News



Stock photo.

Continuing into the 2024 election year, some of the most important strategies for protecting yourself against cyber threats are the most basic. One of these strategies is to stay on the lookout for emails with suspicious subject lines, links, or attachments. These emails could contain phishing attacks or other threats to your cybersecurity.

Even if you recognize the sender, exercise caution if you are not expecting the contact or if it is a response to a months-old email. Hover over links instead of clicking on them to ensure they will take you to a legitimate place that makes sense within the context of the email.

If a link or attachment seems suspicious, call the sender to verify its legitimacy before clicking. If you think the email is suspicious, contact your IT support immediately.

For more details, review the Security Awareness Training course in ElectEd (<https://electiontraining.wi.gov/>) and stay tuned for more insights and strategies to enhance cybersecurity in our upcoming newsletters.

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Antique demonstration voting machine showing votes across party lines. Voters should only vote in one party's primary. WEC Photo

What to know on Crossover Voting

Voters in the Partisan Primary select one political party and may only vote in that party's primary. An August ballot with contest selections for more than one party, and no party preference selected, is considered a crossover vote.

How August is different

Where optical scan ballots are used, the Party Preference Section of the ballot helps protect a voter's contest selections in the event they make selections in more than one party.

- If a voter chose a party in the Party Preference Section, and voted in more than one party's primary, the votes within the party of their choice will be counted, while those in the other party are not counted.
- If a voter did not choose a party, and voted in more than one party's primary, no votes will be counted for any partisan contest.

Where hand-count paper ballots are used, the voter identifies their party preference when he or she chooses one party ballot on which to vote.

The Notice of Crossover Voting is one of the posted notices that must be present at the polling place on Election Day for Partisan Primaries.

Unlike August's Partisan Primary, voters in November's General Election may vote for candidates in more than one party, if they choose.

Additional Resources

For poll workers encountering crossover votes this August, the "Processing Overvoted and Crossover Voted Ballots" section of the [Election Day Manual](https://elections.wi.gov/resources/manuals/election-day-manual/) (<https://elections.wi.gov/resources/manuals/election-day-manual/>) should be especially useful. The [Counting Votes Manual](https://elections.wi.gov/resources/manuals/counting-votes-manuals/) (<https://elections.wi.gov/resources/manuals/counting-votes-manuals/>) is also a handy resource.

For more information on this topic, and others related to next week's election, the [August Partisan Primary 2024](#)

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Make Sure Voters Can Find You!

Check your staff info on MyVote

Maintaining your contact information and staff list in WisVote is crucial for ensuring that voters can contact your office, and that only active election officials have access to this sensitive database. You can easily verify that your municipality's clerk contact information is correct by using MyVote. Click on the "[Find My Clerk](https://myvote.wi.gov/en-us/My-Municipal-Clerk)" (<https://myvote.wi.gov/en-us/My-Municipal-Clerk>)" link in the footer and enter a local address.

Also, as a matter of routine, please keep the WEC Helpdesk aware of any incoming staff members who need WisVote access, or outgoing staff members whose access should be removed, and the dates to change their access.

Please contact the WEC Helpdesk if you have any questions about your staff's WisVote.

[Check Info](#)

[Update Info](#)

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Next Statewide Election:

Polls open at 7 a.m. on August 13, 2024

Upcoming Dates & Deadlines

Upcoming Events

- **August 27, 2024** – Filing deadline for referenda to be placed on November ballots.
- **September 12, 2024** – 30 day post-election requested pause on processing registration alerts ends.
- **September 19, 2024** – Deadline for municipal clerks to send absentee ballots to electors with valid requests on file for the General Election.

Upcoming Commission Meetings

- Aug. 27, 2024 – Special Meeting
- Sept. 11, 2024 – Quarterly Meeting

Upcoming Elections

- August 13, 2024 – Primary Election
- November 5, 2024 – General Election

DRAFT ORDER OF THE WISCONSIN ELECTIONS COMMISSION

The Wisconsin Elections Commission adopts the following permanent rule to create EL 13, relating to training for election inspectors and special voting deputies (SVD).

The statement of scope for this rule, SS 030-22, was approved by the Office of Wisconsin Governor Tony Evers on March 31, 2022, published in Register No. 796A1, on April 4, 2022, and approved by the Wisconsin Elections Commission on July 22, 2022.

RULE ANALYSIS

Statutes Interpreted:

Sections 7.31 and 7.315, Stats.

Statutory Authority:

Sections 5.05(1), 7.31(1), 7.315(1), and 227.11(2)(a), Stats.

Related Statutes:

Sections 7.15(1)(e), (1m), (11), 7.10(9), 7.30(2)(c), Stats.

Plain Language Analysis:

The proposed administrative rule will codify training standards for election officials that currently only exist as recommendations in Wisconsin Elections Commission manuals. The proposed rule provides specific substantive training requirements for election inspectors and special voting deputies and establishes requirements for how frequently election officials must attend training to maintain their certification. The proposed rule assigns responsibility for training election officials to municipal clerks. The proposed rule does not mandate that municipal clerks use Wisconsin Elections Commission materials for training, but requires all training materials or summaries to be submitted to the Wisconsin Elections Commission for review and approval prior to training.

Summary of, and Comparison With, Existing or Proposed Federal Regulations:

The Help America Vote Act (“HAVA”) provides that States shall use funds provided under HAVA to perform various federal election-related functions, including training election officials, poll workers, and election volunteers. 42 U.S.C. §§ 15301(b)(1)(D), 15421(b)(2). HAVA also provides that State plans for administering federal elections must include information about how the “State will provide for programs for voter education, election official education and training, and poll worker training which will assist the State” in administering uniform and nondiscriminatory elections. 42 U.S.C. § 15404(a)(3). Finally, HAVA also provides funds to states to “support training in the use of voting systems and technologies[.]” 42 U.S.C. § 15461(c)(1)-(2).

The proposed rules are consistent with these federal provisions, and such rule would help the Commission further effectuate these federal requirements as well as the state statutory requirements under Wis. Stat. § 7.315.

Summary of Comments Received During Preliminary Comment Period and at Public Hearing on Statement of Scope

No members of the public attended the November 9, 2023 public meeting to offer comments on the statement of scope for the proposed rule. The Commission received two written comments specific to the scope statements for this rule. Both written comments were supportive of the scope statements for this proposed rulemaking, specifically because they claimed the rule would lead to clearer, more consistent instruction to voters across the state. Neither comment offered any suggested changes. The Commission reviewed the two written comments and voted to approve the scope statement as written on December 19, 2023.

Comparison with Similar Rules in Illinois, Iowa, Michigan, and Minnesota

Illinois requires election officials to undergo training from either a city, village or incorporated town Board of Election Commissioners or, in the case of unincorporated towns, a County Clerk. 10 ILCS 5/6-21, 13-2.1, 14-4.1. Training for election officials must involve at least four hours of instruction and a final exam which tests basic literacy and math skills as well as knowledge of election laws. 10 ILCS 5/14-4.1, 13-2.1, 13-2.2. The State Board of Elections is required to distribute a manual which local Boards of Election Commissioners and County Clerks shall use to prepare their own training courses. 10 ILCS 5/1A-8(3). All changes to the manual made by local Boards of Election Commissioners or County Clerks must receive approval from the State Board. *Id.* While Illinois has not codified its specific training requirements in an administrative rule, the training provided in the State Board of Elections manual is in line with the training requirements imposed by the proposed administrative rule. In addition, the proposed rule provides the Wisconsin Elections Commission with review and approval powers substantially identical to those of the Illinois State Board of Elections.

Iowa County Auditors serve as Commissioners of Elections and are required to conduct a training course for all election personnel no later than the day before an election. The Iowa Secretary of State serves as the State Commissioner of Elections and is required to both provide a training manual for commissioners and promulgate administrative rules outlining instruction requirements for election officials. IOWA CODE § 49.124, 49.126. At this time, however, the Secretary of State has only promulgated a rule requiring the state commissioner to “create and maintain training materials for poll workers related to voter identification and the use of electronic poll books.” Iowa Admin Code r. 721.21.76. The general election official training manual is not readily accessible on the Iowa Secretary of State’s website, but a 2020 version can be found on the Mahaska County website. https://www.mahaskacountyia.gov/files/auditor/peo_guide_2020_53625.pdf. The training provided by the 2020 manual is in line with the training required by the proposed administrative rule, and there is no reason to suspect that training standards in Iowa have radically deviated from Wisconsin since.

The Michigan Director of Elections is responsible for conducting training schools throughout the state before each November election for county clerks. Mich. Comp. Laws § 168.33(1). The Director of Elections is also responsible for year-round training of all county, city, and township clerks who are involved in the training of precinct inspectors, as well as all precinct inspectors in counties where no clerk has been accredited to conduct training schools. Mich. Comp. Laws § 168.33(2–3). County, city, township, and village clerks are required to complete continuing election education training once every 2 years to maintain accreditation as a clerk. Mich. Comp. Laws § 168.33(4). Individual election inspectors are themselves required to have either attended

an election school or passed an examination given by a city or town election commission and approved by the Secretary of State within the last two years to serve at an election. Mich. Comp. Laws § 168.683. The Michigan Secretary of State is required to establish comprehensive curricula for training all county, city, township, and village officials responsible for conducting elections, as well as all precinct inspectors. Mich. Comp. Laws § 168.31(1)(j), (m).

Michigan's training frequency requirements for election officials are virtually identical to those in the proposed rule, with the lone exception that election inspectors and special voting deputies in Wisconsin will be required to receive at least two hours of training each election cycle in addition to the two year recertification requirement. The Secretary of State's training manual also provides instruction that is in line with the training required by the proposed administrative rule. <https://www.michigan.gov/sos/elections/admin-info>. While the proposed rule provides the Wisconsin Elections Commission with more explicit review and approval powers than the Michigan Director of Elections or Secretary of State, it also provides more explicit flexibility to local election officials to amend Wisconsin Elections Commission guidance for local needs.

Minnesota county auditors are responsible for providing training for all election officials appointed to serve at any election. Minn. Stat. § 204B.25 subdivision 1. County auditors may delegate responsibility for training election judges within municipalities or school districts to a municipal election official. *Id.* The Minnesota Secretary of State is responsible for developing a training program for county auditors and providing county auditors with materials to be used in training local election officials. Minn. Stat. § 204B.27 subdivision 10. Election officials are required to undergo training once every two years in order to maintain their certification. Minn Stat. § 204B.25 subdivision 4.

The Minnesota Secretary of State has promulgated a significant number of administrative rules elaborating on training requirements for election officials. Minn. R. 8240. Election officials are required to go through at least a two hour basic training course which covers specific information. Minn. R. 8240.1600. Specific training requirements are also set out for head election officials and election officials assisting with absentee voting in a health care facility. Minn. Rs. 8240.1750, 8240.1800. While the specific training requirements for Wisconsin officials contained in the proposed administrative rule are more specific, the substance of the requirements are the same.

Summary of Factual Data and Analytical Methodologies

Commission staff did not perform empirical analysis for this rule as the rule simply promulgates existing guidance that has been published in comprehensive manuals that clerks use to train their election inspectors, election registration officials, and special voting deputies.

Analysis and Supporting Documents used to Determine Effect on Small Business

There is no anticipated effect on small business. No specific analysis was performed for the fiscal estimate, nor were any supporting documents generated, because there is no anticipated effect on any fiscal liabilities and revenue, and no anticipated costs to be incurred by the private sector.

Agency Contact Person:

Angela O'Brien Sharpe, Staff Attorney
Wisconsin Elections Commission

RULE TEXT

13.01 Election Official Training. (1) Definitions. In this chapter:

- (a) “Commission” means the Wisconsin Elections Commission.
- (b) “Election cycle” means the period beginning on January 1 of an even-numbered year and continuing through December 31 of the following odd-numbered year.
- (c) “Election” has the meaning given in s. 5.02(4), Stats.
- (d) “Election observer” means a member of the public who has signed in as an observer at an observable location and is present at an observable location to observe an election or the absentee ballot voting process.
- (e) “Municipal clerk” has the meaning given in s. 5.02(10), Stats.
- (f) “Election official” has the meaning given in s. 5.02(4e), Stats.

13.02 Municipal clerk training responsibilities.

- (1) The municipal clerk is responsible for providing training opportunities for election inspectors, chief election inspectors, election registration officials, and special voting deputies.
- (2) The municipal clerk may utilize the commission, another election official who uses the commission materials, or another election official who has received training material approval as described in this section for such 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 ten business 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.
- (3) The clerk or election official conducting any training for chief inspectors, election inspectors, election registration officials and special voting deputies must have

completed, at a minimum, their own core curricula of training as prescribed by the commission for their position.

- (4) The municipal clerk shall maintain records that document the attendance at training sessions by chief inspectors, election inspectors, election registration officials, and special voting deputies. The training records, which are open to public inspection, shall include the date, location, and duration of the training event, as well as the full name, attendance record, dates, courses, and the election official's title for all relevant attendees of these trainings.

13.05 Election inspector training.

- (1) The content and curriculum of the training required of election inspectors shall be prescribed by the commission as described in sub. (2).
- (2) The training shall include, no less than, the following elements:
 - (a) Instruction on polling place preparation, including detailed instruction on the set up, operation, and use of voting equipment. Training may also be provided by county clerks, equipment vendors of approved election equipment, subject matter experts, and law enforcement.
 - (b) Information on determining elector residence and qualifications to vote.
 - (c) Instruction on registering electors at the polling place, including directions on the proper completion of the voter registration application form. Specific consideration should be given to the registration methods being utilized by that municipality, such as an electronic pollbook.
 - (d) Direction on recording elector information on the poll list, including special notations for absentee, challenged, and provisional voters and voters who have been convicted of a felony. Specific consideration should be given to the methods being utilized by that municipality, such as an electronic pollbook.
 - (e) Direction on maintaining ballot security and issuing ballots to voters.
 - (f) Instruction on provisional voting procedures.
 - (g) Instruction on assisting electors.
 - (h) Instruction on processing absentee ballots. Specific consideration should be given to the specifics of local absentee ballot processing, such as the use of central count, runners, or other methods and procedures.
 - (i) Instruction on procedures for challenging electors.

- (j) Instruction on maintaining order at the polling place, including instruction on dispute resolution and de-escalation. This training may include the use of outside subject matter experts or law enforcement.
 - (k) Information on the rights and responsibilities of election observers.
 - (l) Instruction on the procedures for closing the polling place, including instruction on disaster preparedness.
 - (m) Instruction on the procedures for reconciling voter lists.
 - (n) Instruction on the procedures for counting ballots.
 - (o) Instruction on determining voter intent.
 - (p) Instruction on the proper use and completion of the inspectors' statement.
 - (q) Instruction on the proper completion of forms used at the polling place, including direction on the requirement that the information on forms be legible.
 - (r) Instruction on the procedures for securing and delivering completed election materials.
 - (s) Instruction on the consequences of failing to follow prescribed procedures.
- (3) Any other information prescribed by the commission.

13.10 Special voting deputy training.

- (1) The content and curriculum of the training required of special voting deputies shall be prescribed by the commission as described in sub. (2).
- (2) The training shall include the following elements:
 - (a) Information on the absentee voting process for residents of nursing homes, retirement homes, and community-based residential facilities.
 - (b) Information on determining elector residence and qualifications to vote.
 - (c) Instruction on registering electors, including directions on the proper completion of the voter registration application form, if the special voting deputy is also an election registration official.
 - (d) Direction on completing the absentee ballot certificate envelope.
 - (e) Direction on maintaining ballot security and issuing ballots to voters.

- (f) Instruction on assisting electors to vote.
 - (g) Instruction on the procedures for challenging electors.
 - (h) Instruction on maintaining order at the voting location, including instruction on dispute resolution and de-escalation. This training may include the use of outside subject matter experts or law enforcement.
 - (i) Information on the rights and responsibilities of election observers.
 - (j) Instruction on the procedures for securing and delivering completed election materials.
 - (k) Instruction on the consequences for failing to follow prescribed procedures.
- (3) Any other information prescribed by the commission.

13.15 Election official training requirements.

- (1) Election inspectors shall receive training from the municipal clerk within two years of any election at which they serve. Chief inspectors shall also attend “baseline chief inspector” training to be certified for elections in the current term. To recertify, chief inspectors shall complete six hours of elections commission-approved continuing election education during the current term. Chief inspector training shall be in accordance with s. 7.31, Stats., and the provisions of this ch. EL 13, Wis. Admin. Code. Municipal clerks are responsible for administering and tracking chief inspector training.
- (2) Special voting deputies shall attend training every two years and shall have attended training within two years of any election at which they serve.
- (3) Election registration officials shall receive training from the municipal clerk within two years of any election at which they serve. Municipal clerks shall be responsible for providing adequate training for the registration officials’ duties.
- (4) Municipal clerks shall arrange for election inspectors and special voting deputies to receive at least two hours of training in an election cycle.
- (5) Election inspectors and special voting deputies may not serve as an election official until completing the training required by this chapter.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date 8/1/2024
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Chapter EL 13, Training for Election Inspectors and Sepecial Voting Deputies (SVDs)	
4. Subject The proposed administrative rule will codify training standards for election officials that currently only exist as recommendations in Wisconsin Elections Commission manuals. The proposed rule provides specific substantive training requirements for election inspectors and special voting deputies and establishes requirements for how frequently election officials must attend training to maintain their certification. The proposed rule assigns responsibility for training election officials to municipal clerks. The proposed rule does not mandate that municipal clerks use Wisconsin Elections Commission materials for training, but requires all training materials or summaries to be submitted to the Wisconsin Elections Commission for review and approval prior to training.	
5. Fund Sources Affected <input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected Wis. Stat. s. 20.510
7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget	
8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0.00	
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
11. Policy Problem Addressed by the Rule The proposed rule was initiated as part of the Commission's response to a Legislative Audit Bureau directive. Currently, the Commission provides training guidance in comprehensive manuals that clerks utilize to train their election officials and SVDs. The proposed rule will codify that guidance to give it the force of law in order to standardize training requirements for election officials statewide.	
12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. None, the proposed rule will affect clerks and election officials, although it is likely to provide necessary clarity and authority with respect to training requirements. The proposed rule will do so by codifying existing practices and will require minimal compliance outreach and training to clerks because of their familiarity with the Commission's existing guidance on election official training. As such, there will be little to no financial impact on local officials or small businesses.	
13. Identify the Local Governmental Units that Participated in the Development of this EIA. No local government units participated in the development of this draft EIA.	
14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) None. Local clerks and elections officials have likely already been performing these or similar functions, and this codification of the process will not result in additional economic burden.	

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The greatest benefit to implementing the rule is the codification of training standards for election officials. The rule will provide substantive training requirements, and specifies how frequently that training must be completed. Both of these rule features will bring uniformity to the training of election officials statewide, and will ensure that all Wisconsin election officials are completing regular training.

16. Long Range Implications of Implementing the Rule

The proposed rules do not impose any financial or compliance burdens that will have a significant effect on small businesses or a significant economic impact.

17. Compare With Approaches Being Used by Federal Government

The Help America Vote Act (“HAVA”) provides that States shall use funds provided under HAVA to perform various federal election-related functions, including training election officials, poll workers, and election volunteers. 42 U.S.C. §§ 15301(b)(1)(D), 15421(b)(2). HAVA also provides that State plans for administering federal elections must include information about how the “State will provide for programs for voter education, election official education and training, and poll worker training which will assist the State” in administering uniform and nondiscriminatory elections. 42 U.S.C. § 15404(a)(3). Finally, HAVA also provides funds to states to “support training in the use of voting systems and technologies[.]” 42 U.S.C. § 15461(c)(1)-(2).

The proposed rules are consistent with these federal provisions, and such rule would help the Commission further effectuate these federal requirements as well as the state statutory requirements under Wis. Stat. § 7.315.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois requires election officials to undergo training from either a city, village or incorporated town Board of Election Commissioners or, in the case of unincorporated towns, a County Clerk. 10 ILCS 5/6-21, 13-2.1, 14-4.1. Training for election officials must involve at least four hours of instruction and a final exam which tests basic literacy and math skills as well as knowledge of election laws. 10 ILCS 5/14-4.1, 13-2.1, 13-2.2. The State Board of Elections is required to distribute a manual which local Boards of Election Commissioners and County Clerks shall use to prepare their own training courses. 10 ILCS 5/1A-8(3). All changes to the manual made by local Boards of Election Commissioners or County Clerks must receive approval from the State Board. *Id.* While Illinois has not codified its specific training requirements in an administrative rule, the training provided in the State Board of Elections manual is in line with the training requirements imposed by the proposed administrative rule. In addition, the proposed rule provides the Wisconsin Elections Commission with review and approval powers substantially identical to those of the Illinois State Board of Elections.

Iowa County Auditors serve as Commissioners of Elections and are required to conduct a training course for all election personnel no later than the day before an election. The Iowa Secretary of State serves as the State Commissioner of Elections and is required to both provide a training manual for commissioners and promulgate administrative rules outlining instruction requirements for election officials. IOWA CODE § 49.124, 49.126. At this time, however, the Secretary of State has only promulgated a rule requiring the state commissioner to “create and maintain training materials for poll workers related to voter identification and the use of electronic poll books.” Iowa Admin Code r. 721.21.76. The general election official training manual is not readily accessible on the Iowa Secretary of State’s website, but a 2020 version can be found on the Mahaska County website.

https://www.mahaskacountyia.gov/files/auditor/peo_guide_2020_53625.pdf. The training provided by the 2020 manual is in line with the training required by the proposed administrative rule, and there is no reason to suspect that training standards in Iowa have radically deviated from Wisconsin since.

The Michigan Director of Elections is responsible for conducting training schools throughout the state before each November election for county clerks. Mich. Comp. Laws § 168.33(1). The Director of Elections is also responsible for year-round training of all county, city, and township clerks who are involved in the training of precinct inspectors, as

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

well as all precinct inspectors in counties where no clerk has been accredited to conduct training schools. Mich. Comp. Laws § 168.33(2–3). County, city, township, and village clerks are required to complete continuing election education training once every 2 years to maintain accreditation as a clerk. Mich. Comp. Laws § 168.33(4). Individual election inspectors are themselves required to have either attended an election school or passed an examination given by a city or town election commission and approved by the Secretary of State within the last two years to serve at an election. Mich. Comp. Laws § 168.683. The Michigan Secretary of State is required to establish comprehensive curricula for training all county, city, township, and village officials responsible for conducting elections, as well as all precinct inspectors. Mich. Comp. Laws § 168.31(1)(j), (m).

Michigan’s training frequency requirements for election officials are virtually identical to those in the proposed rule, with the lone exception that election inspectors and special voting deputies in Wisconsin will be required to receive at least two hours of training each election cycle in addition to the two year recertification requirement. The Secretary of State’s training manual also provides instruction that is in line with the training required by the proposed administrative rule. <https://www.michigan.gov/sos/elections/admin-info>. While the proposed rule provides the Wisconsin Elections Commission with more explicit review and approval powers than the Michigan Director of Elections or Secretary of State, it also provides more explicit flexibility to local election officials to amend Wisconsin Elections Commission guidance for local needs.

Minnesota county auditors are responsible for providing training for all election officials appointed to serve at any election. Minn. Stat. § 204B.25 subdivision 1. County auditors may delegate responsibility for training election judges within municipalities or school districts to a municipal election official. Id. The Minnesota Secretary of State is responsible for developing a training program for county auditors and providing county auditors with materials to be used in training local election officials. Minn. Stat. § 204B.27 subdivision 10. Election officials are required to undergo training once every two years in order to maintain their certification. Minn Stat. § 204B.25 subdivision 4.

The Minnesota Secretary of State has promulgated a significant number of administrative rules elaborating on training requirements for election officials. Minn. R. 8240. Election officials are required to go through at least a two hour basic training course which covers specific information. Minn. R. 8240.1600. Specific training requirements are also set out for head election officials and election officials assisting with absentee voting in a health care facility. Minn. Rs. 8240.1750, 8240.1800. While the specific training requirements for Wisconsin officials contained in the proposed administrative rule are more specific, the substance of the requirements are the same.

19. Contact Name	20. Contact Phone Number
Angela O'Brien Sharpe, Staff Attorney	608-264-6764

This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

N/A

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

N/A

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

N/A

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

N/A

5. Describe the Rule's Enforcement Provisions

This rule may be enforced pursuant to an administrative complaint brought under ss. 5.06 or 5.05. This rule may be enforced through an action or proceeding to test the validity of any decision, action or failure to act on the part of any election official with respect to any matter specified in s. 5.06(1) provided that the condition in s. 5.06(2) is also satisfied.

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
-

Notice of Submittal of Proposed Rule to Legislative Council Rules Clearinghouse

On September 12, 2024, the Wisconsin Elections Commission submitted a proposed rule to the Wisconsin Legislative Council Clearinghouse pursuant to s. 227.15 (1), Wis. Stats.

Analysis

The proposed rule would create Wis. Admin Code Ch. EL 13, relating to training for election inspectors and special voting deputies (SVD).

Statement of Scope

The scope statement for this rule, SS 030-22, was approved by the Office of Wisconsin Governor Tony Evers on March 31, 2022, published in Register No. 796A1, on April 4, 2022, and approved by the Wisconsin Elections Commission on June 22, 2022.

Agency Procedure for Promulgation

A public hearing is required and is scheduled to be held on October 3, 2024, at 1 p.m. on Zoom.

This hearing is contingent upon the Commission receiving the written report of the legislative council staff review of the proposed rule under Wis. Stat. § 227.15(1) on or before Wednesday, October 2, 2024. If the report is not received on or before October 2, this hearing will be cancelled and staff will provide notice of the cancellation.

Materials related to the proposed rule can be found on the Commission's website at this link: <https://elections.wi.gov/draft-rule-chapter-el-13-training-election-inspectors-special-voting-deputies>

Agency Organizational Unit Primarily Responsible for Promulgating Rule

Wisconsin Elections Commission

Agency Contact Person

Angela O'Brien Sharpe – Staff Attorney
angela.sharpe@wisconsin.gov
P.O. Box 7984, Madison, WI 53703-7984
608-264-6764

Notice of Hearing

The Wisconsin Elections Commission (“the Commission”) announces that Commission staff will hold a public hearing on a permanent rule to create Wis. Admin Code EL Ch. 13 relating to training for election inspectors and special voting deputies (SVD).

This hearing is contingent upon the Commission receiving the written report of the legislative council staff review of the proposed rule under Wis. Stat. § 227.15(1) on or before Wednesday, October 2, 2024. If the report is not received on or before October 2, this hearing will be cancelled and staff will provide notice of the cancellation.

Hearing Information

Date: Thursday, October 3, 2024

Time: 1:00 p.m.

Location: *See below for virtual attendance options*

[Insert Zoom Info]

Accessibility

This meeting will include the option for captioning. Additional accessibility considerations may be available and can be requested by contacting elections@wisconsin.gov.

Appearances at the Hearing and Submittal of Written Comments

Anyone may attend the hearing and provide a perspective on the proposed rule amendments. Oral comments will be limited to a 4 minute presentation per person.

The proposed permanent rule may be reviewed at: <https://elections.wi.gov/draft-rule-chapter-el-13-training-election-inspectors-special-voting-deputies>

Please send written comments to angela.sharpe@wisconsin.gov no later than 4:30 p.m. on Thursday, October 3, 2024. Comments may also be submitted at <https://docs.legis.wisconsin.gov/code/chr/comment>, or mailed to:

Angela Sharpe
P.O. Box 7984
Madison, WI 53707-7984

Initial Regulatory Flexibility Analysis

The proposed rule will not have an effect on small businesses, as defined under s. 227.114 (1).

Notice of Possible Quorum

Wisconsin Elections Commission

Public Hearing Seeking Comment on Administrative Rule Final Rule Order
Thursday, October 3, 2024
1:00 p.m.

A quorum of the members of the Wisconsin Elections Commission may be present at the agency’s public hearing seeking comment relating to a proposed rule concerning training for election inspectors and special voting deputies (SVD).

Notice is hereby given that the above gathering may constitute a meeting of the Wisconsin Elections Commission. However, no items are on an agenda for Commission consideration, nor will action be taken by the Commission.

Approved: September 11, 2024

/s/
Marge Bostelmann, Commission Secretary



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

DATE: Prepared for the September 11, 2024, Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Prepared and Presented by:
Brandon Hunzicker, Staff Attorney

SUBJECT: Commission Complaint Form Redesign

Introduction:

During the July 30, 2024, Commission meeting, the Commission considered a draft of a redesigned complaint form and gave staff feedback concerning how to complete the redesign. Those changes have been made, and a final draft follows this brief memo for Commission consideration and approval.

Discussion:

At the last meeting, the Commission decided to move forward with redesigning the complaint form as a combined form that included an option for unsworn declarations under Wis. Stat. § 887.015. The Commission asked that several edits be applied to the general redesign presented by staff. The Commission asked that:

- The §§ 5.05, 5.06, and 5.061 citations be hyperlinks to allow easy reference.
- A note be added to section 3 explaining that the respondent for a § 5.06 complaint must be an election official.
- A complainant be able to sign the complaint form electronically or by hand in step 6.
- A step be created to allow a complainant to complete the form using a notary *or* an unsworn declaration.

Staff added the hyperlinks and the note. Staff also made it possible for a complainant to click and follow directions to add an electronic signature to the form. If the form is printed, the same box can be used to apply a written signature. Staff have added steps 6a and 6b along with a description explaining that a complainant must either follow the unsworn statement instructions or the sworn statement instructions to complete the form. Staff have attempted to make it as clear as possible that these sub-steps fall under step 6, and that only one of the two needs to be completed. The Commission should review the draft form that follows this memo and determine if any further edits should be made.

Recommended Motion:

The Commission approves the attached complaint form as edited by staff in a manner consistent with the discussion during today's meeting. Staff shall make the form available on the Commission website and update the instructions to facilitate proper use of the form.

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

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Official Election Complaint Form



STEP 1

Complaint Type

Please select the statutory process that governs your complaint:

Note: you should choose only one statutory process per complaint; if you feel that your allegations fall under more than one statutory process, you should submit separate complaints under each process.

[5.05 \(Election Law Violation\)](#)

[5.06 \(Violations of or Appeals of Decisions of Election Officials\)](#)

[5.061 \(Help America Vote Act Violation\)](#)

STEP 2

Complainant Contact Information

Please provide the following information about yourself.

Note: Anyone filing this complaint with you can add their information on a separate page (see page 4).

First Name	Last Name
Residential Address	
Mailing Address (if different)	
Telephone (optional)	Email

STEP 3

Respondent

Please provide the following information about the individual or individuals whom you allege violated or improperly administered election laws:

Note: For 5.06 complaints, each respondent must be an election official. If there are multiple respondents, you can add their information on a separate page (see page 5).

Respondent Name	Respondent Title (5.06 complaints)
Mailing Address	
Telephone (if available)	Email (if available)

STEP 4

Applicable Statutes

Please cite each statute within Chapters 5 to 10 and 12 of the Wisconsin Statutes, as well as any other laws relating to elections, other than laws relating to campaign financing, that you allege were violated or improperly administered.

Note: The Commission cannot accept a complaint that does not cite specific provisions, including the correct subsections, of election law.

STEP 5

Allegations

Set forth in detail the facts that establish probable cause to believe that a violation occurred. Be as specific as possible as it relates to dates, times, individuals, and actions involved. Use as many separate pages as needed and attach copies of any supporting documentation, evidence, or affidavits.

STEP 6

Sign

Each complainant must complete **either** step 6a, "Unsworn Statement," or Step 6b "Sworn Statement." For either option, you may enter your digital signature by clicking the box and following the instructions, or you may print the form and sign it.

STEP 6a

Unsworn Statement

I declare under penalty of false swearing under the law of Wisconsin that the foregoing is true and correct. Signed on the _____ day of _____, _____ at _____ (city or other location and state or country).

Printed Name

Signature

STEP 6b

Sworn Statement (to be completed in the presence of a notary)

I, _____, being first duly sworn, on oath, state that I personally read the above complaint, and that the above allegations are true based on my personal knowledge and, as to those stated on information and belief, I believe them to be true.

Complainant's Signature

Note: Each complainant listed above in section 6b must have this form sworn before a notary or other official able to swear oaths.

STATE OF WISCONSIN

County of, _____ (county of notarization)

Sworn to before me this day of, _____.

Stamp Here

(Signature of person authorized to administer oaths)

My commission expires on _____, or is permanent.

Notary Public or _____ (official title if not notary)



.....
Filing the Complaint

Please send this completed form to the Wisconsin Elections Commission

Email:

elections@wi.gov

Please put your name and
"Complaint" in the email
subject field

Mail:

Wisconsin Elections
Commission
P.O. Box 7984
Madison, WI 53707-7984

Fax:

608-267-0500

Additional Complainants

First Name

Last Name

Residential Address

Mailing Address (if different)

Telephone (optional)

Email

First Name

Last Name

Residential Address

Mailing Address (if different)

Telephone (optional)

Email

First Name

Last Name

Residential Address

Mailing Address (if different)

Telephone (optional)

Email

Additional Respondents

Respondent Name

Respondent Title (5.06 complaints)

Mailing Address

Telephone (if available)

Email (if available)

Respondent Name

Respondent Title (5.06 complaints)

Mailing Address

Telephone (if available)

Email (if available)

Respondent Name

Respondent Title (5.06 complaints)

Mailing Address

Telephone (if available)

Email (if available)

Respondent Name

Respondent Title (5.06 complaints)

Mailing Address

Telephone (if available)

Email (if available)



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

DATE: For the September 11, 2024 Commission Meeting

TO: Commissioners, Wisconsin Elections Commission

FROM: Meagan Wolfe, Administrator
Wisconsin Elections Commission

Prepared by Elections Commission Staff

SUBJECT: Voter Felon Audit

The Voter Felon Audit is a required post-election comparison of voters who cast a ballot at an election with the list of persons who were under Department of Corrections (DOC) supervision for a felony conviction at the time the vote was cast. Wis. Stat. §6.56(3m). The audit is conducted for any election that has a state or federal office on the ballot.

The Voter Felon Audit occurs in several stages. First the matches are reviewed by DOC; the next stage is a review from municipal clerks, who also provide any pertinent documentation, and then WEC staff perform the final review and provide consolidated notes on each record prior to making referrals to county district attorneys, who then conduct their own investigations. The process provides the Commission the ability to identify any potential voter/felon matches and it also allows the Commission to identify any discrepancies with the matches. It is the final check in identifying potential felon participation in an election, should such activity not be caught earlier through other statutory required processes such as the felon list check by election officials at the polls. The process also ensures that election officials at all levels have performed their due diligence before cases are referred to a district attorney.

If a district attorney does not provide an update within six years of the election date, staff is to consider the referral closed and discontinue providing updates to the Commission – the Commission unanimously approved this motion at the September 21, 2022, meeting. The 2018 Spring Election had one remaining record in which the DA provided no updates. The 2018 Partisan Primary Election has three remaining records in which the DA provided no updates. Both elections will now be removed from these reports.

As of August 22, 2024, Voter Felon Audits have been performed for all previous elections through the July 30, 2024, Special Election for State Senate District 4. The 2024 Partisan Primary is not yet included due to how recently the election was conducted. If no potential matches are identified for a statewide or federal election, it will not appear on the open voter felon audits table provided in the material. There were no matches identified for the 2024 Spring Primary, the Special Partisan Primary for State Senate District 4, nor for the Special Election for State Senate District 4. There were six potential matches for the 2024 Spring

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

Election and Presidential Preference Vote election. These potential matches have been provided to DOC for their review/feedback and staff are awaiting their reply.

Staff is also providing its update on the status of the past Voter Felon Audits and District Attorney response information. Attached to this memorandum are statistics regarding the number of initial matches between records of voters and records of felons, as well as the disposition of the cases referred to district attorneys that the Commission has been made aware of. Additional details regarding specific cases are included in the Commission's supplemental materials folder.

ELECTION	Number of voters matched with felons per Election	Number of matches referred to district attorneys	Number of referrals closed by DA without charges	Number of referrals resulting in a conviction	Number of remaining referrals with current charges filed status	Number of matches or cases referred remaining open or under investigation	Number of matches closed	Total number of voters	Referrals as a percentage of total number of voters
2024 Special Election State Senate District 4	0	0	0	0	0	0	0	5,080	0.0000%
2024 Special Partisan Primary State Senate District 4	0	0	0	0	0	0	0	7,150	0.0000%
2024 Spring Election and Presidential Preference	6	unknown at this time	-	-	-	-	-	1,234,291	unknown at this time
2024 Spring Primary	0	0	0	0	0	0	0	145,452	0.0000%
2023 Spring Election	24	6	0	0	0	6	18	1,857,786	0.0003%
2023 Spring Primary	8	2	1	0	0	1	7	969,454	0.0002%
2022 General Election	50	28	5	0	1	22	27	2,668,891	0.0010%
2022 Partisan Primary	10	4	0	0	0	4	6	1,229,501	0.0010%
2022 Spring Election	12	8	3	0	0	5	7	982,884	0.0008%
2022 Spring Primary	6	4	2	0	0	2	4	241,450	0.0017%
2021 Spring Election	8	4	2	0	1	1	6	953,414	0.0004%
2021 Spring Primary	2	2	1	0	0	1	1	339,805	0.0006%
2020 General Election	147	102	43	19	5	35	107	3,297,524	0.0031%
2020 Partisan Primary	11	4	2	1	0	1	10	959,348	0.0004%
2020 Spring Election/Pres. Pref.	32	8	5	1	0	2	30	1,605,912	0.0005%
2020 Spring Primary	15	6	3	1	0	2	13	729,307	0.0008%
2019 Spring Primary	2	2	1	0	0	1	1	8,295	0.0241%
2018 General Election	79	52	32	4	1	15	63	2,688,879	0.0019%

*Yellow highlights denote an update to the record since materials were last presented.

DA Tracker - 2018 GENERAL ELECTION				
County	Stage	Date Notice Sent	DA REPORT	Status
BROWN	5 - Referred to DA	6/3/2019		
BROWN	5 - Referred to DA	8/27/2019		
BROWN	5 - Referred to DA	6/3/2019		
DANE	5 - Referred to DA	6/3/2019	1/27/2022	Under Investigation.
DANE	5 - Referred to DA	6/3/2019		
DANE	5 - Referred to DA	6/3/2019		
DANE	5 - Referred to DA	9/9/2019	6/10/2022	Under Investigation.
JACKSON	5 - Referred to DA	9/9/2019	9/19/2019	Under Investigation.
MILWAUKEE	5 - Referred to DA	6/4/2019	5/11/2023	Charges Filed.
PORTAGE	5 - Referred to DA	8/27/2019	5/12/2022	Under Investigation.
PORTAGE	5 - Referred to DA	8/27/2019	5/12/2022	Under Investigation.
RACINE	5 - Referred to DA	8/27/2019		
ST. CROIX	5 - Referred to DA	8/27/2019		
SAUK	5 - Referred to DA	6/6/2019		
SHEBOYGAN	5 - Referred to DA	8/27/2019		
WAUSHARA	5 - Referred to DA	8/27/2019		

DA Tracker - 2019 SPRING PRIMARY				
County	Stage	Date Notice Sent	DA REPORT	Status
BROWN	5 - Assigned to DA	9/9/2019		

DA Tracker - 2020 SPRING PRIMARY				
County	Stage	Date Notice Sent	DA REPORT	Status
DANE	5 - Referred to DA	4/12/22021		
CLARK	5 - Referred to DA	4/22/2022		

DA Tracker - 2020 SPRING ELECTION &				
County	Stage	Date Notice Sent	DA REPORT	Status
DANE	5 - Referred to DA	5/6/2021		
MILWAUKEE	5 - Referred to DA	4/15/2022	6/13/2024	Under Investigation.

DA Tracker - 2020 PARTISAN PRIMARY				
County	Stage	Date Notice Sent	DA REPORT	Status
DOOR	5 - Referred to DA	10/1/2021		

DA Tracker - 2020 GENERAL ELECTION				
County	Stage	Date Notice Sent	DA REPORT	Status

ASHLAND	5 – Referred to DA	8/23/2021		
BROWN	5 – Referred to DA	9/17/2021	1/4/2024	Charges Filed.
BROWN	5 – Referred to DA	9/17/2021	11/18/2021	Charges Filed.
COLUMBIA	5 – Referred to DA	8/26/2021	9/5/2021	Under Investigation.
COLUMBIA	5 – Referred to DA	8/20/2021		
COLUMBIA	5 – Referred to DA	8/25/2021		
DANE	5 – Referred to DA	8/20/2021	1/27/2022	Under Investigation.
DANE	5 – Referred to DA	9/16/2021	1/27/2022	Under Investigation.
DANE	5 – Referred to DA	8/20/2021	1/27/2022	Under Investigation.
DANE	5 – Referred to DA	8/20/2021	1/27/2022	Under Investigation.
DANE	5 – Referred to DA	8/23/2021	1/27/2022	Under Investigation.
DANE	5 – Referred to DA	8/23/2021	1/27/2022	Under Investigation.
DANE	5 – Referred to DA	8/23/2021	1/27/2022	Under Investigation.
DODGE	5 – Referred to DA	6/9/2022	8/28/2023	Charges Filed.
FLORENCE	5 – Referred to DA	8/20/2021		
FOND DU LAC	5 – Referred to DA	9/21/2021	1/27/2022	Charges Filed.
KENOSHA	5 – Referred to DA	4/22/2022	1/23/2024	Pending Charing Decision.
MARATHON	5 – Referred to DA	8/19/2021		
MILWAUKEE	5 – Referred to DA	2/24/2022	6/13/2024	Under Investigation.
MILWAUKEE	5 – Referred to DA	8/23/2021	6/13/2024	Under Investigation.
PIERCE	5 – Referred to DA	8/30/2021		
POLK	5 – Referred to DA	9/20/2021	3/16/2023	Charges Filed.
RACINE	5 – Referred to DA	8/20/2021		
RUSK	5 – Referred to DA	8/23/2021	8/17/2022	Under Investigation.
SHEBOYGAN	5 – Referred to DA	8/23/2021		
WALWORTH	5 - Referred to DA	3/1/2022		
WALWORTH	5 – Referred to DA	9/16/2021		
WALWORTH	5 – Referred to DA	8/20/2021	8/20/2021	Under Investigation.
WAUKESHA	5 – Referred to DA	8/19/2021		
WAUKESHA	5 – Referred to DA	8/20/2021	8/17/2022	Under Investigation.
WAUKESHA	5 – Referred to DA	8/27/2021		
WAUKESHA	5 – Referred to DA	9/8/2021		
WAUKESHA	5 – Referred to DA	8/23/2021		
WAUKESHA	5 – Referred to DA	8/20/2021		
WAUKESHA	5 – Referred to DA	9/16/2021		
WAUPACA	5 – Referred to DA	8/20/2021		
WAUPACA	5 – Referred to DA	9/17/2021		
WINNEBAGO	5 – Referred to DA	8/20/2021	6/22/2022	Under Investigation.
WINNEBAGO	5 – Referred to DA	8/20/2021	6/22/2022	Under Investigation.
WINNEBAGO	5 – Referred to DA	8/20/2021	6/22/2022	Under Investigation.

DA Tracker - 2021 SPRING PRIMARY

County	Stage	Date Notice Sent	DA REPORT	Status
MILWAUKEE	5 – Referred to DA	5/12/2022	6/13/2024	Under Investigation

DA Tracker - 2021 SPRING ELECTION

County	Stage	Date Notice Sent	DA REPORT	Status
OUTAGAMIE	5 – Referred to DA	11/9/2021	2/6/2023	Charges Filed.
MILWAUKEE	5 – Referred to DA	3/4/2022	6/13/2024	Under Investigation.

DA TRACKER - 2022 SPRING PRIMARY

County	Stage	Date Notice Sent	DA REPORT	Status
ASHLAND	5 - Referred to DA	6/15/2022		
MILWAUKEE	5 - Referred to DA	3/4/2022	6/13/2024	Under Investigation.

DA TRACKER - 2022 SPRING ELECTION

County	Stage	Date Notice Sent	DA REPORT	Status
DANE	5 - Referred to DA	4/10/2023		
MENOMINEE	5 - Referred to DA	8/3/2023		
MILWAUKEE	5 - Referred to DA	4/10/2023	6/13/2024	Under Investigation.
MILWAUKEE	5 - Referred to DA	4/10/2023	6/13/2024	Under Investigation.
WAUKESHA	5 - Referred to DA	4/10/2023		

DA TRACKER - 2022 PARTISAN PRIMARY

County	Stage	Date Notice Sent	DA REPORT	Status
CLARK	5 - Referred to DA	4/10/2023		
MILWAUKEE	5 - Referred to DA	5/3/2024	6/13/2024	Under Investigation.
MILWAUKEE	5 - Referred to DA	4/10/2023	6/13/2024	Under Investigation.
MILWAUKEE	5 - Referred to DA	4/10/2023	6/13/2024	Under Investigation.

DA TRACKER - 2022 GENERAL ELECTION

County	Stage	Date Notice Sent	DA REPORT	Status
COLUMBIA	5 - Referred to DA	8/7/2023		
DANE	5 - Referred to DA	9/20/2023		
DANE	5 - Referred to DA	9/14/2023		
DANE	5 - Referred to DA	9/12/2023		
DANE	5 - Referred to DA	8/11/2023		
FOND DU LAC	5 - Referred to DA	8/3/2023	5/15/2024	Charges Filed.
JACKSON	5 - Referred to DA	8/3/2023		
MILWAUKEE	5 - Referred to DA	8/3/2023	6/13/2024	Under Investigation.
MILWAUKEE	5 - Referred to DA	8/3/2023	6/13/2024	Under Investigation.
MILWAUKEE	5 - Referred to DA	8/3/2023	6/13/2024	Under Investigation.
MILWAUKEE	5 - Referred to DA	8/3/2023	6/13/2024	Under Investigation.
MILWAUKEE	5 - Referred to DA	8/3/2023	6/13/2024	Under Investigation.
MILWAUKEE	5 - Referred to DA	8/3/2023	6/13/2024	Under Investigation.
MILWAUKEE	5 - Referred to DA	8/3/2023	6/13/2024	Under Investigation.
MILWAUKEE	5 - Referred to DA	8/3/2023	6/13/2024	Under Investigation.
MILWAUKEE	5 - Referred to DA	8/3/2023	6/13/2024	Under Investigation.
MILWAUKEE	5 - Referred to DA	8/3/2023	6/13/2024	Under Investigation.

MILWAUKEE	5 - Referred to DA	8/3/2023		
RACINE	5 - Referred to DA	8/15/2023		
RACINE	5 - Referred to DA	8/3/2023		
ROCK	5 - Referred to DA	8/3/2023		
WAUKESHA	5 - Referred to DA	8/3/2023		

DA TRACKER - 2023 SPRING PRIMARY

County	Stage	Date Notice Sent	DA REPORT	Status
DANE	5 - Referred to DA	7/15/2024		

DA TRACKER - 2023 SPRING ELECTION

County	Stage	Date Notice Sent	DA REPORT	Status
MILWAUKEE	5 - Referred to DA	7/15/2024	6/13/2024	Under Investigation
MILWAUKEE	5 - Referred to DA	7/15/2024	6/13/2024	Under Investigation
MILWAUKEE	5 - Referred to DA	7/19/2024	6/13/2024	Under Investigation
MILWAUKEE	5 - Referred to DA	5/2/2024	6/13/2024	Under Investigation
MILWAUKEE	5 - Referred to DA	7/19/2024	6/13/2024	Under Investigation
WINNEBAGO	5 - Referred to DA	8/7/2023	6/28/2024	Under Investigation

DA TRACKER - 2024 SPRING PRIMARY

zero potential matches identified

DA TRACKER - 2024 SPECIAL PARTISAN PRIMARY STATE SENATE DISTRICT 4

zero potential matches identified

DA TRACKER - 2024 SPECIAL ELECTION STATE SENATE DISTRICT 4

zero potential matches identified

County	Stage	Date Notice Sent	DA REPORT	Status
MILWAUKEE	1 - DOC Review			
MILWAUKEE	1 - DOC Review			
MILWAUKEE	1 - DOC Review			
MONROE	1 - DOC Review			
RACINE	1 - DOC Review			
RACINE	1 - DOC Review			



Wisconsin Elections Commission

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DATE: For the September 11, 2024 Commission Meeting

TO: Commissioners, Wisconsin Elections Commission

FROM: Meagan Wolfe, Administrator
Wisconsin Elections Commission

Prepared by Elections Commission Staff

SUBJECT: Commission Staff Update

CONTENTS

NOTE: For this quarter's report, general updates are instead provided in the November General Election Preparation agenda materials. These sections are indicated with an asterisk "" below.

General Operations

1. Elections Team Report*
2. Voters Team Report*
3. Data Quality & Reporting
4. Accessible Voting*
5. Absentee Voting*
6. Addressing & Districts
7. Security*

Training & Equipment

8. Badger Book Report*
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Communications

11. Public Outreach*
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Administration

13. Financial Services
14. Procurements
15. Agency Meetings & Presentations

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

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GENERAL OPERATIONS

1. Elections

See the November General Election Preparation agenda materials.

2. Voters

See the November General Election Preparation agenda materials.

3. Data Quality & Reporting

Data quality queries are run every day in the months prior to an election for Commission staff to monitor potential data entry errors or missing information in WisVote. If errors or missing information are discovered, staff then contact and work with clerks to resolve the errors. Commission staff continuously work with municipal and county clerks to meet reporting requirements following all state and federal elections.

Each municipality is required to provide an initial report of election data (voter participation, registration, etc.) to the WEC no later than 30 days after an election, or 45 days after a General Election. In cases where a jurisdiction cannot reconcile voting statistics, Commission staff work with individual clerks to ensure all reasonable efforts are applied to ensure the accuracy of their data. Once the data has been reconciled and verified by municipalities, the data is then submitted to the U.S. Election Assistance Commission (EAC), which produces the Election Administration and Voting Statistics Report (EAVS). EAVS data is required to be submitted by every state after each General Election. The reports are posted for each state on the EAC's website eac.gov/research-and-data/studies-and-reports. The WEC also regularly publishes voting statistics (formerly EL-190 reports) that summarize the data submitted by municipal clerks. These reports are available on the WEC website at elections.wi.gov/statistics-data.

2024 Spring Election and Presidential Preference Vote

- 1,793 municipalities reconciled their voting statistics for all reporting units.
- 56 municipalities are outstanding to reconcile their voting statistics.

2024 Partisan Primary (as of August 26, 2024)

- 1157 municipalities reconciled their voting statistics for all reporting units.
- 692 municipalities are outstanding to reconcile their voting statistics

Election Day Registration (EDR) Postcard Statistics are required to be reported within 90 days of an election and updated by clerks as applicable. WEC staff post this data and track compliance on the WEC website at elections.wi.gov/statistics-data/voting-statistics up to a year post-election.

ERIC Movers Mailing

The Quarter 2 (Q2) 2024 Movers Mailing was sent out on June 28, 2024, to a total of 32,884 voters.

Table 1: Summary of Movers Mailings 2022 to present

Year, Quarter	Total Movers	Possible Movers ¹	Registered ²	Inactive ³	Requested Continuation at current address	Rate confirm current address
2024 Q2	32,884	24,003	5,038	3,843	346	1.1%
2024 Q1	37,593	23,217	6,942	7,434	352	0.9%
2023 Q4	52,333	27,902	12,336	12,095	550	1.1%
2023 Q3	53,416	26,578	12,879	13,959	488	0.9%
2023 Q2	29,721	17,559	4,618	7,544	269	0.9%
2023 Q1	32,551	15,181	8,072	9,298	288	0.9%
2022 Q4	31,187	13,774	6,635	10,778	147	0.5%
2022 Q3	57,555	17,176	25,720	14,659	502	0.9%
2022 Q2	61,012	16,638	28,135	16,239	607	1.0%
2022 Q1	55,032	17,247	28,477	9,308	824	1.5%

¹Movers postcard sent, no action taken by voter after receipt of postcard.

²Movers postcard sent. Voter subsequently requested continuation at their current address or updated their address. Includes voters who re-registered elsewhere in Wisconsin.

³Movers postcard sent. Postcard returned undeliverable, or voter registered out of state, or otherwise no longer active in Wisconsin.

Badger Voters Election Data Website

The Elections Commission Badger Voters website <https://badgervoters.wi.gov> provides a simple and automated way for the public to request voter lists, absentee records, and candidates nomination papers. Data can be sorted by election, office, county, municipality, ward, aldermanic district, and many more options. This allows the customer to receive only the data they are seeking. The voter list shows election activity back to 2006, when Wisconsin began using a statewide voter registration system, with the participation description of “at polls” or “absentee”.

Absentee ballot data is available from 2016 to the present. Absentee data purchases provide customers with application and ballot activity and allow the customer the option to “subscribe” for future updates to data they received, as well as the ability to receive new files at the frequency they select twice per week, weekly, every other week or monthly. With this add-on to the initial purchase, the \$25 base is waived for each subsequent file which costs \$5 per 1,000 new records.

Customers can also make custom requests for existing data that is not included in a standard request format or for statistics that are not posted to our Elections Commission website. The customer is provided an estimate of costs (developer time) to create and run the query and total number of records in the data set. If they choose to purchase the file, our developer will then produce the file.

Custom requests that take under a half-hour of developer time are only charged for the amount of records requested.

Finally, customers can use Badger Voters to access nomination papers and declarations of candidacy for candidates who file those documents ahead of scheduled elections. This is particularly useful for customers who are considering bringing ballot access challenges due to the tight deadlines associated with that process.

Customer satisfaction is generally high with this program as there is no wait time for accessing data needed, and the breadth of the data in standard files is very useful for many purposes. Most questions can be answered in our Frequently Asked questions (FAQ's) link on the Badger Voters website. This section also includes data element documents outlining what fields are included as well as sample files. Badger Voters often sees an increase in activity during the spring and fall election cycles, but activity occurs steadily throughout the year.

Fiscal Year	Total Number of Voter Data Requests	Requested Files Purchased	Percentage of Requests Purchased	Total Revenue	Total Number of Nomination Paper Requests
FY2024	1067	953	85.6%	\$444,871.00	1735
FY2021	368	328	89%	\$106,070.00	148
FY2020*	1291	1134	88%	\$654,557.00	402
FY2019	617	473	76.6%	\$328,015.00	NA
FY2018	706	517	73.2%	\$182,341.00	NA
FY2017	643	368	57%	\$234,537.35	NA
FY2016	789	435	55%	\$235,820.00	NA
FY2015	679	418	61.56%	\$242,801.25	NA
FY2014	371	249	67.12%	\$125,921.25	NA
FY2013	356	259	72.75%	\$254,840.00	NA
FY2012	428	354	78.04%	\$127,835.00	NA

The following statistics summarize voter data and nomination paper requests through July 31, 2024.

The Badger Voters system provides media, campaigns, researchers, and others with quality data they can use to conduct analysis, conclude extensive research and voter outreach. Prior to the updates to Badger Voters, many of the data queries had to be run manually by WEC staff. WEC has invested in the automation of this statutorily required system. This allows the public access to data without diverting staff resources and time from other projects. This means WEC staff can spend additional time working with local election officials and voters to prepare for November while still meeting the expectations of our customers and providing transparency in election data.

4. Accessibility

See the November General Election Preparation agenda materials.

5. Absentee

See the November General Election Preparation agenda materials.

6. Addressing & Districts

Staff updated WisVote to reflect the changes that occurred to the State Assembly and Senate lines because of Wisconsin 2023 Act 94, which was passed on February 19, 2024. As a result of these changes, staff updated the district assignments for the current wards in the system on April 15, 2024, prior to the nomination circulation period for the General Election. Adjustments for wards split by these new lines were completed by municipal clerks and updated once the nomination circulation period was completed on June 4, 2024.

Staff has also completed three annexation updates in WisVote so far this year. This was done to ensure that our systems stay up-to-date with current municipal boundaries and to create any new wards that are needed. The first update was completed in January before the 2024 Spring Primary and the final update before the 2024 Spring Election was finished at the beginning of March.

In preparation for the August election, staff once again updated municipal boundaries and wards in mid-July. Staff will complete one final annexation update to amend ward lines in early October to ensure that the district lines are accurate leading up to the November General Election.

7. Security

See the November General Election Preparation agenda materials.

TRAINING & EQUIPMENT

8. Clerk Training

See the November General Election Preparation agenda materials.

9. Badger Book Program

See the November General Election Preparation agenda materials.

10. Voting Technology

See the November General Election Preparation agenda materials.

COMMUNICATIONS

11. Outreach

See the November General Election Preparation agenda materials.

12. Elections Help Desk & Customer Service

The Elections Help Desk staff support more than 2,530 active WisVote users while also answering calls and emails from the public and election officials. Staff monitor state enterprise network and data center changes and status, and process voter cancelations and voter address verification postcards. Help Desk staff have served on and assisted with various projects and development teams. Staff continue to maintain WisVote user and clerk listserv email lists and contact information and administer WEC's O365 email system. The staff continue to administer and maintain security for the WisVote Active Directory system and the Elections Learning Center, which changed to ElectEd in January. Help Desk staff also provide critical support to the agency's Public Records Request program and run attorney-directed searches of state electronic records.

The Help Desk staff also routinely make clerk updates when they occur to ensure accurate information in WisVote. The agency's use of Zendesk has helped improve communications to clerks and voters in a timely matter. This platform was adopted over many months and directly addresses a recommendation from the Legislative Audit Bureau.

Customer Service Call Volume

June 2024	1,185
July 2024	2,445
August 2024 (1 st – 27 th)	3,220
Total for Reporting Period	7,850

Customer Service Email Volume

elections@wi.gov

June 2024	3,801
July 2024	4,419
August 2024 (1 st – 27 th)	4,800
Total for Reporting Period	13,020

Address Verification Postcards Mailed

June 2024	11,599
July 2024	35,017
August 2024 (1 st – 27 th)	51,915
Total for Reporting Period	98,531

Voter Cancellations Received by Email

June 2024	97
July 2024	35
August 2024 (1 st – 27 th)	92
Total for Reporting Period	224

ADMINISTRATION

13. Financial Services

The WEC financial staff have performed the following financial services activities since the June 27, 2024, Staff Update to the Commission:

- Staff continued to process the disbursement of federal Election Security grant funds through the renewed .gov municipal subgrant, the renewed Accessible Voting Equipment subgrant, and the Absentee Ballot Redesign subgrant (expired 06/30/2024) and follow up each disbursement with an email confirmation of expected funds and an award letter.
- Staff have performed all procurement and financial year-end activities for the state fiscal year (FY) 2024 June 30 close, running queries, inquiries, and reports, completing transaction and account reviews, and creating adjusting journal entries and budget journal entries when appropriate.
- On June 14, 2024, the WISBuy state procurement electronic portal was decommissioned by the Wisconsin's Department of Administration (DOA).
- On June 21, 2024, staff met with a representative from the Wisconsin Department of Military Affairs to reconcile the fiscal reports for our 2023 Homeland Security subgrant and plan the 2024 disbursement.
- On July 10, 2024, staff attended the final of three fiscal year close meeting with State Procurement to discuss and troubleshoot possible end of year issues.
- On July 11, 2024, staff attended the National Association of State Auditors, Comptrollers and Treasurers (NASACT) webinar "2024 GASB Review," for which they earned Continuing Professional Education (CPE) credits.
- On July 18, 2024, staff attended the Biennial Budget Training covering titles file maintenance and base reconciliation.
- On July 23, 2024, staff met with state IT STAR support to establish fiscal coding for the 2024 Election Security funds.
- On July 24, 2024, staff met with DOA's STAR team to participate in the user acceptance testing (UAT) of the new Purchasing Card (PCard) automatic approver.
- On July 24, 2024, staff determined and submitted to DOA that our agency will not lapse funds for state fiscal year (FY) 2024 and has no unencumbered ending balances to transfer.
- On July 26, 2024, staff submitted to the federal Election Assistance Commission (EAC) our third quarter Federal Financial Report (FFR) for our Election Security federal grant funds, reporting on cumulative activity through June 30, 2024.

- On August 1, 2024, staff attended NASACT’s “Overview of Statewide Cost Allocation Plans and Federal Cost Recovery” webinar, for which they earned CPE credits.
- On August 2, 2024, after thorough review and reconciliation, staff verified the FY24 Form 78 annual appropriation certification for each of our agency’s twenty appropriation, verifying all fiscal data for FY24.
- On August 7, 2024, staff received notice from the EAC that our 2024 Election Security Combined Budget revision had been approved.
- On August 22, 2024, staff received notice from the EAC that our third quarter 2024 Election Security FFR had been approved.
- On August 28, 2024, staff submitted, via the egrants system, our revised 2nd federal quarter 2024 financial report for our WEM/FEMA Election Cybersecurity subgrant.

In addition, staff has performed the following monthly:

- Staff continued to perform and submit to the SCO scheduled month-end close queries, inquiries, and reports. Staff conducted the necessary adjusting entries to resolve any discrepancies.
- Staff continued to validate Wisconsin Department of Administration (DOA)’s monthly Diverse Spend Reports.
- Staff continued to review and process our agency’s bi-weekly pension obligation bond allocations.
- Staff continued to participate in monthly DOA virtual user group webinars pertaining to Project Costing, Accounts Receivable and Billing, Accounts Payable, Travel and Expenses, and Asset Management.
- Staff continued to participate in the virtual PCard Administrators Group to discuss issues pertaining to the Wisconsin Purchasing Card (PCard) and in the State Agencies Purchasing Council (SAPC) to discuss procurement topics and updates.
- Staff continued to participate in the Financial Leadership Council meetings at SCO.

14. Procurements

The following nine Purchase Orders totaling \$274,985.09 have been processed since the June 27, 2024, Staff Update to the Commission:

- A \$4,025.00 Purchase Order was written to AT&T Mobility for RAVE Alert communications system.

- A \$315.00 Purchase Order was written to Lexis Nexis for staff online access to a legal research database.
- A \$19,808.50 Purchase Order was written to 22nd Century Technologies for temporary staff to answer incoming calls and emails for the August Primary and the November 2024 Elections.
- A \$25,353.61 Purchase Order was written to Beyond Vision Inc. to assist in answering incoming calls during the August Primary and the November 2024 Elections.
- A \$189.00 Purchase Order was written to Vanguard Computers for seven laptop computer backpacks.
- A \$115,640.00 Purchase Order was written to Knowledge Services for Software Engineer IT Developer services.
- A \$73,484.58 Purchase Order was written to Insight Public Sector for OPSWAT cybersecurity endpoint monitoring software.
- A \$27,394.40 Purchase Order was written to Tryfacta Inc. for temporary staff to answer incoming calls and emails for the August Primary and the November 2024 Elections.
- An \$8,775.00 Purchase Order was written to Personnel Specialists Ltd. for temporary staff to answer incoming calls and emails for the August Primary and the November 2024 Elections.

All purchases accurately followed the Wisconsin State Procurement Process.

15. Meetings and Presentations

WEC staff attended the following events since the last quarterly meeting of the Wisconsin Elections Commission.

July 2, 2024	WI-ISAC Cybersecurity Meeting Meeting with USPS
July 3, 2024	Disability Vote Coalition Meeting State IT Director's Meeting
July 9, 2024	Homeland Security Council Meeting
July 15, 2024	Wisconsin Clerk's Institute Training
July 17, 2024	Wisconsin Clerk's Institute Training: First Year Clerks EI-ISAC Meeting
July 22-25, 2024	National Association of State Elections Directors Conference

July 30, 2024	EI-ISAC Meeting Meeting with USPS
August 7, 2024	Disability Vote Coalition Meeting
August 12, 2024	Wisconsin Police Chief's Association Conference
August 15, 2024	Homeland Security Cybersecurity Committee Meeting
August 21, 2024	ERIC Board Meeting
August 22-23, 2024	Tabletop the Vote Cybersecurity Exercise
August 28, 2024	Homeland Security Council Meeting
September 4, 2024	Disability Vote Coalition Meeting State IT Director's Conference
September 10, 2024	Accessibility Advisory Committee Meeting City of Green Bay Election Security TTX Meeting with USPS



Wisconsin Elections Commission

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MEMORANDUM

DATE: For the September 11, 2024, Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Meagan Wolfe, Administrator
Wisconsin Elections Commission

Prepared by Elections Commission Staff

SUBJECT: CRM Licensing Renewal

Background

Since January 2016, Wisconsin election officials have used WisVote, the custom voter registration system developed by Wisconsin Elections Commission (WEC) staff for clerks to manage elections data. The WisVote interface is founded on Microsoft's Dynamics Customer Relationship Management (CRM) application. Using the Dynamics CRM application to access elections data, WisVote tracks each voter's registration and election participation history, manages absentee ballot requests and ballot statuses, provides printable absentee ballot labels and poll books, hosts the election reconciliation process, and performs dozens of other functions essential to the administration of elections.

WisVote receives input from over 2,500 trained users across the state who enter, merge, and review data such as voter registrations, absentee ballot requests, and registration list alerts. MyVote, Wisconsin's online voter portal, also relies on WisVote to process new registrations and absentee requests received from voters. Each time a voter attempts to register or request an absentee ballot, MyVote uses the same workflows a standard user does to create the appropriate records if all conditions (e.g. eligibility questions, DMV check passes, photo ID uploaded, etc.) are met during the request process.

Current Requirements: Subscription Renewal

Dynamics CRM software assurance is ordinarily licensed on a three-year schedule and was last renewed in September of 2021. Currently, the Commission budget funds \$300,000 for CRM licenses from GPR approved funds. CRM license costs for the next three-year term (2024-2027) remain unchanged and will fall within the allocated amount. Renewing all licenses for the next three-years will cost \$287,745.60, or \$95,915.20 per year.

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

As the foundation of WisVote, Dynamics CRM provides the interface for the database where all information is stored by Wisconsin's election officials. The State of Wisconsin assigns each of these users a license that grants them access to read and write new information into WisVote. Currently there are 2,542 enabled users in WisVote with an additional 478 spare licenses available for WEC, county, or municipal temporary staff hired during busy elections. Licenses are purchased once but require ongoing software assurance to remain in use.

Conclusion & Recommended Motion

To renew Dynamics CRM the Commission staff have obtained quotes through the appropriate procurement channels and the lowest bid is presented herein. We request your approval to purchase licensing renewal and software assurance for Dynamics CRM 364 for 3,020 users at a total cost of \$287,745.60. The next renewal will be in 2027.

Motion: The Wisconsin Elections Commission approves the purchase of licensing renewal and software assurance for Microsoft Dynamics CRM 364 through September 30, 2027, for 3,020 users at a total cost of \$287,745.60.