



# Wisconsin Elections Commission

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## Wisconsin Elections Commission

### Quarterly Meeting

201 W. Washington Avenue, Second Floor

Madison, Wisconsin

10:00 a.m. November 2, 2023

### 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, in person in Room 412E of the Wisconsin State Capitol.

**Staff present:** Kennedy Cutts, Joel DeSpain, Sharrie Hauge, Brandon Hunzicker, Robert Kehoe, Anna Langdon, Jon Nelson, Riley Vetterkind, Riley Willman, Jim Witecha, and Meagan Wolfe, in person in Room 412E of the Wisconsin State Capitol.

## **A. Call to Order**

Commission Chair Millis called the meeting to order at 10:02 a.m. and called the roll. All Commissioners were present.

## **B. Administrator's Report of Appropriate Meeting Notice**

Administrator Meagan Wolfe informed the Commission that the meeting was noticed in accordance with Wisconsin's open meetings laws. She noted that the agenda was revised the day before under emergency provisions to add Item Q.

## **C. Public Comment**

### **Scott McDonnell**

Scott McDonnell, Dane County Clerk, appeared in person and provided comment on the petition for approval of the Democracy Suite 5.17 and 5.17S electronic voting system, advocating for its approval, and Badger Book program updates.

### **Denise Jess**

Denise Jess, Executive Director of the Wisconsin Council of the Blind & Visually Impaired, member of the WEC Accessibility Advisory Committee, and member of the WEC Voting Equipment Review Panel, appeared via Zoom and provided comment on the petition for approval of the Democracy Suite 5.17 and 5.17S electronic voting system. She recommended certification of the ballot marking device

*Wisconsin Elections Commissioners*

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

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Administrator  
Meagan Wolfe

and that the accessible voting equipment subgrant program be modified to reimburse the new system rather than the auxiliary screen.

Chair Millis noted that Denise Jess also submitted written comment.

Discussion.

### **Anna Anderson**

Anna Anderson, Voting Rights Coordinator for Disability Rights Wisconsin, appeared via Zoom and provided comment on the petition for approval of the Democracy Suite 5.17 and 5.17S electronic voting system. She seconded Denise Jess's comments on the certification of the ballot marking device and the subgrant.

Chair Millis noted that Anna Anderson also submitted written comment.

Discussion.

### **Delany Zimmer**

Delany Zimmer, Voter Services Coordinator for the League of Women Voters, appeared via Zoom and provided comment on the petition for approval of the Democracy Suite 5.17 and 5.17S electronic voting system. She echoed Denise Jess and Anna Anderson's comments on the certification of the ballot marking device and the subgrant.

### **Luke Bunting**

Luke Bunting, Election Integrity Counsel for the Republican National Committee, appeared via zoom and provided comment on the Election Observer Administrative Rule, recommending the rejection of 4.05(2)(b), 4.05(4)(e), and 4.05 (6)(b) and adoption of 4.05(2)(a) and 4.05(6)(c).

Discussion.

### **Elizabeth Blackburn**

Elizabeth Blackburn appeared via Zoom and provided comment on the approved absentee ballot certificate envelopes, expressing concern that otherwise voted ballots in a nonstandard envelope submitted by overseas voters would not be counted.

Administrator Wolfe clarified that the e-delivery option is still available to overseas voters and that the allowances for UOCAVA voters returning their ballots in nonstandard envelopes remain with the approval of the new envelopes.

Chair Millis invited Elizabeth Blackburn to email any written comments to Riley Vetterkind to distribute to the Commission.

## **D. Written Comments**

Chair Millis noted that the Commission also received written comment from the Madison City Clerk, comments sent to the Secretary of State that cc'd the Commission, and comments from other individuals concerning an administrative rule that was not on the agenda.

**E. Emergency Agenda Item: Movement of Virtual Public Hearing and Comment Period on Scope Statements SS 089-23 Through SS 094-23 from 11/3/23 to Date Approved by the Commission**

(originally item Q on the amended notice)

Administrator Wolfe asked the Commission to allow staff to reschedule the public hearing for Scope Statements SS 089-23 through SS 094-23 to the following week.

**MOTION:** Move the public hearing on the administrative rules from November 3 to November 9, 2023.

Moved by Commissioner Jacobs. Seconded by Commissioner Spindell.

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

Motion carried 6-0.

**F. Approval of Previous Meeting Minutes**  
**a. August 30, 2023**  
**b. September 7, 2023**  
**c. September 14, 2023**  
**d. September 29, 2023**

**MOTION:** In the September 7, 2023 minutes, add as part of the discussion in Item Q that Commissioner Spindell discussed adamant opposition to this motion.

Moved by Commissioner Spindell. Seconded by Chair Millis.

**FRIENDLY AMENDMENT:** Remove the word “adamant.”

Proposed by Commissioner Jacobs. Agreed to by Commissioner Spindell and Chair Millis.

Discussion.

**FINAL MOTION:** In the September 7, 2023 minutes, add as part of the discussion in Item Q that Commissioner Spindell discussed opposition to this motion.

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

Motion carried 6-0.

**MOTION:** Approve the September 7, 2023, minutes as amended, as well as the August 30, 2023, September 14, 2023, and September 29, 2023, meeting minutes.

Moved by Commissioner Jacobs. Seconded by Commissioner Bostelmann.

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

Motion carried 6-0.

### **G. Petition for Approval of Electronic Voting System: Dominion Voting Systems, Inc. – Democracy Suite 5.17 and 5.17S**

Elections Specialist Cody Davies presented an overview of staff’s recommendation to approve the Democracy Suite 5.17 and 5.17S for use in Wisconsin. He noted that Phil Schmidt from Dominion Voting Systems and Chad Trice from Command Central were present to take questions from the Commission.

Discussion.

**MOTION:** The Wisconsin Elections Commission adopts the staff’s recommendations for approval of the Dominion Voting Systems Application for Approval of Democracy Suite 5.17 in compliance with US EAC certificate DVS-DemSuite5.17 including the conditions described above, and the Dominion Voting Systems Application for Approval of Democracy Suite 5.17S including the conditions described above. Recommendation 6 is amended to say, “All tabulator settings shall by default be configured to turn off ‘red drop’ function and to accept all colors.”

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.

### **H. Discussion and Adoption of a 2024 Meeting Schedule**

Administrator Wolfe provided an overview of the agenda item.

Discussion.

**MOTION:** The Commission adopts the quarterly meeting schedule as follows for 2024: The Quarter 1 meeting will be held on February 8, 2024 at 10:00 a.m. in-person, the Quarter 2 meeting will be held on June 27, 2024 at 10:00 a.m. in-person, the Quarter 3 meeting will be held on September 11, 2024 at 10:00 a.m. in-person, and the Quarter 4 meeting will be held on October 4, 2024 at 10:00 a.m. in-person.

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.

Discussion.

**MOTION:** The statutorily required meetings will be held on January 9, 2024 at 8:00a.m., June 10, 2024 at 12:00 p.m., and August 27, 2024 at 11:00 a.m. The meetings will be held remotely.

Moved by Commissioner Jacobs. Seconded by Commissioner Spindell.

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

Motion carried 6-0.

Discussion.

The Commission did not tentatively schedule further meetings.

## **I. Badger Book Program Updates and Possible Commission Directives**

Deputy Administrator Robert Kehoe provided background information on the directives concerning BadgerBook connectivity, training, and hardware to the Commission.

Discussion.

**MOTION:** The Commission directs staff to develop and assess several options to permit limited, secure, and regulated connection of Badger Books to external networks for the purpose of receiving software updates or other data necessary to improve their functionality and security. Staff shall report their findings to the Commission no later than March 31, 2024.

The Commission directs staff to develop recommended minimum training standards that must be attained for new Badger Book jurisdictions before first use in an election. Staff shall provide their recommended standards to the Commission no later than March 31, 2023.

The Commission directs staff to evaluate alternative hardware models, to include commercial E-Poll Book systems, for possible future use in Wisconsin. This analysis should include assessments of technical compatibility, security, costs, training, and technical support. Staff shall report their findings to the Commission no later than June 30, 2024.

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.

## **J. Voter Felon Audit Updates**

Deputy Administrator Kehoe presented an update on voter felon audits

Discussion.

**MOTION:** Move into closed session pursuant to Wis. Stat. § 19.85(1)(f), § 19.85(1)(g), § 19.85(1)(h), and § 19.851.

Moved by Commissioner Thomsen. Seconded by Commissioner Jacobs.

Chair Millis indicated that the Commission would return to open session in an hour and a half to two hours.

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

Motion carried 6-0.

The Commission moved into closed session at 12:10 p.m.

## **K. Review and Potential Action on the Election Observer Administrative Rule**

The Commission returned to open session at 2:20 p.m.

Chair Millis introduced the agenda item. The Commission discussed changes made by Chair Millis and Commissioner Jacobs in their redlined versions of the proposed rule draft.<sup>1</sup>

Chair Millis agreed with Commissioner Jacobs' edit of 4.02(19) defining "voting area."

Commissioner Spindell stated that he would like to see the definition of "voting area" more defined.

Commissioner Jacobs agreed with Chair Millis' edit of 4.02(5) changing "communications media" to "communications media member."

Commissioner Jacobs agreed with Chair Millis' edit that "A communications media member may elect to be an observer, but when so doing is subject to the provisions of this rule." She clarified that she thought an individual should not be a communications media member and an observer at the same time.

Chair Millis proposed his edit to 4.07(1): "The designated election official may limit the amount of time any communication media member use video and still cameras. Any limitations, rules and regulations imposed on communications media members shall be uniformly applied." Commissioner Jacobs suggested it be created as a subsection (2).

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<sup>1</sup> This section may be clarified prior to the February 8, 2024, Commission meeting.

Commissioner Jacobs recommended that Chair Millis' final edit on 4.07(1) be created as a subsection (3): "A communications media member may act as an observer, but when so doing is subject to the provisions of this rule."

Commissioner Jacobs suggested that the definition of "communication media members" be clarified to state, "they are not observers under this chapter subject to 4.07(3)," and 4.07(3) would read: "A communication media member may elect to be an observer, but when so doing is subject to the provisions of this rule as applied to observers."

Commissioner Jacobs and Chair Millis suggested for 4.02(5): "An individual who reports to the designated election official seeking to report or record information outside the voting area. Except as provided in 4.07(3), communication media individuals are not observers under this chapter."

Chair Millis proposed his edit to 4.02(6): "'Confidential information' does not include the type of document that is offered as photo identification and/or proof of residency."

Commissioner Jacobs proposed the addition, "but does include the information provided thereon." Chair Millis agreed.

Commissioner Jacobs proposed her edits to 4.03(1): removing "there are no alternatives" and replacing "and" with "and/or."

Chair Millis suggested adding to the last sentence of 4.03(1), "and the designated election official shall document the actions that he or she has taken and the reasons why." Agreed to by Commissioner Thomsen, Commissioner Spindell, and Commissioner Jacobs.

Commissioner Jacobs suggested making the language in 4.03(14)(d) parallel.

Commissioner Bostelmann agreed with Chair Millis' suggestion.

Commissioner Jacobs reviewed her further edits to 4.03(1), creating 4.03(2).

Chair Millis suggested for 4.03(3) (4.03(4) on Commissioner Jacobs' redline): "The distance described in this paragraph shall be applied unless the clerk determines it would interfere with voting activity." Commissioner Jacobs did not agree.

**MOTION:** The redline, "The 3-foot distance described in this paragraph shall be applied unless it would interfere with voting activities due to the physical limitations of the observable location," be stricken.

Moved by Commissioner Thomsen. Seconded by Commissioner Jacobs.

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

Motion failed 3-3.

Commissioner Millis suggested removing “as time permits” from 4.03(10). Agreed to by Commissioner Spindell and Commissioner Jacobs.

Commissioner Jacobs noted her edits to 4.03(14), adding the words “verbally” and “the” and removing “who shall proceed under this section.” Commissioner Spindell agreed with removing that language.

Chair Millis suggested “verbally” be changed to “verbally or in writing.”

Commissioner Jacobs noted her edits to 4.04(4): striking “All questions shall be answered by the designated election official in a timely manner.”

Commissioner Spindell suggested adding “if possible” to the proposed stricken language.

Commissioner Bostelmann suggested changing the sentence to “All questions shall be directed to the designated election official.” Chair Millis suggested adding, “to the extent reasonable.”

Attorney Hunzicker determined there was consensus to strike “in a timely manner.”

Chair Millis did not take issue with the “discretion of the designated election official” language in 4.04(6) following Attorney Hunzicker’s explanation that an observer could file a complaint with the WEC if they were removed by a designated election official for no reason.

Commissioner Jacobs noted her edits to 4.04(6) and (7), moving “that, in the discretion of the designated election official, threatens the orderly conduct of the election or interferes with voting or registration” from (7) to (6) and adding “An observer shall not” and “of any observable location except as expressly permitted” to (7). She noted that this edit is prevalent in the rest of her redline.

Commissioner Jacobs noted she removed “as needed” in 4.04(15).

Commissioner Jacobs noted her and Chair Millis’ edits to 4.05(1), agreeing with Chair Millis’ edit, adding “If any observer is allowed access outside of the time frame provided herein, all observers shall be allowed the same access.”

**MOTION:** Strike 4.05(2)(a) and adopt 4.05(2)(b).

Moved by Commissioner Thomsen. Seconded by Commissioner Jacobs.

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

Motion failed 3-3.

Commissioner Jacobs noted that she struck 4.05(2)(c): Observers representing the same organization shall not be limited to less than two observers per municipal clerk’s office located in a public building or alternate site. She also noted that (d) was struck because it was dealt with elsewhere in the redline.

**MOTION:** That 4.05(2)(c) not be included in the rule.



Moved by Commissioner Jacobs. Seconded by Commissioner Thomsen.

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

Motion failed 3-3.

Chair Millis and Commissioner Spindell suggested that staff flesh out that part of the rule with possibly more guidelines.

Chair Millis noted that 4.05(2)(d) had already been moved out by another change.

Commissioner Jacobs and Chair Millis noted the similarities in their edits to 4.05(3): striking (b) and renumbering (c) to (b)

Attorney Hunzicker clarified with Commissioner Jacobs that the language she added in 4.05(6)(c) applied to the Board of Absentee Ballot Canvassers.

Commissioner Jacobs requested that the language from 4.02(19) be applied to the language concerning photography.

Chair Millis clarified that Commissioner Jacobs wanted to take the language she added to (6)(c) and add it to (b), and modify it to specify that it applies to when the voter is doing the things listed in 4.02(19): receiving, preparing, or depositing their ballots, or casting their votes on a voting machine.

Chair Millis noted the edits to 4.05(4)(d) and (e) in his redline and noted that Commissioner Jacobs made no edits to that subsection.

Chair Millis, Commissioner Jacobs, and Commissioner Spindell asked Attorney Hunzicker to draft language for 4.05(4)(e) two ways, one where the voter is asked whether they wish to permit the observers to come into their room and if not the observer watches from the doorway, and another where if the voter asks the observer to leave their room, they must leave.

Commissioner Jacobs noted a typo in 4.05(5)(b): changing “under” to “pursuant to.”

Commissioner Jacobs suggested it be made clear that petitioners are not considered observers. Attorney Hunzicker suggested that that be included in the definitions section. Chair Millis indicated that would be fine or that recounts not be addressed in the rule.

Chair Millis proposed striking 4.05(6)(b). Commissioner Jacobs agreed.

Commissioner Thomsen requested that the Commission be provided with a new draft with the disputed items redlined.

The Commission took a break at 4:29 p.m.

## **L. Commission Discussion and Possible Action on Voter Registration Form Prescription**

The Commission returned at 4:44 p.m.

Chief Legal Counsel Jim Witecha presented an overview of the Commission's options concerning prescription of the National Mail Voter Registration Form.

Discussion.

**MOTION:** The Wisconsin Elections Commission prescribes the National Mail Voter Registration Form for use in the limited circumstances of being used by Military and Overseas (UOCAVA) voters in the 45 days prior to an election. UOCAVA voters, who are eligible to use the federal form for this limited purpose, shall be identified by designating themselves as a UOCAVA voter on their registration or absentee application, or by the use of an overseas address on their election materials.

Moved by Commissioner Spindell. Seconded by Commissioner Bostelmann.

Attorney Witecha proposed including the clerk's personal knowledge as a way of identifying UOCAVA voters. Commissioner Spindell and Commissioner Bostelmann agreed to this.

**FINAL MOTION:** The Wisconsin Elections Commission prescribes the National Mail Voter Registration Form for use in the limited circumstances of being used by Military and Overseas (UOCAVA) voters in the 45 days prior to an election. UOCAVA voters, who are eligible to use the federal form for this limited purpose, shall be identified by designating themselves as a UOCAVA voter on their registration or absentee application, by the use of an overseas address on their election materials, or if the clerk has direct personal knowledge of the voter's UOCAVA status.

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

Motion carried 6-0.

## **M. Review and Possible Action on Absentee Ballot Certificate Envelopes Pertaining to Care Facilities and Questions**

Attorney Hunzicker presented the agenda item.

**MOTION:** The Commission adopts the revised EL-122 Special form in Appendix 2 and the instructions in Appendix 3 for use by municipal clerks as needed to comply with Wis. Stat. § 6.87(4)(b)5. Staff shall make the form and instructions available on the WEC website and shall edit the Election Administration Manual and Absentee Voting in Residential Care Facilities and Retirement Homes Manual as necessary to implement this form and instructions.

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

Motion carried 6-0.

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

Chair Millis postponed discussion of this item to a future meeting.

**O. Discussion, Review, and Possible Action Pertaining to the Uniform Instructions for Wisconsin Absentee Voters**

Deputy Administrator Kehoe updated the Commission on staff’s usability testing and reviewed the recommended motion.

Discussion.

**MOTION:** The Wisconsin Elections Commission directs staff to complete usability testing and development of final revised Uniform Instructions for Commission review in December as described in this memorandum. The Commission also schedules a meeting for December 19, 2023, at 11:00 am for this purpose.

Moved by Commissioner Jacobs. Seconded by Commissioner Riepl.

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

Motion carried 6-0.

**P. Review and Possible Action on Indefinite Confinement Status After and Unreturned Absentee Ballot**

Staff Attorney Brandon Hunzicker explained the possible actions to be taken by the Commission concerning indefinitely confined status after an indefinitely confined voter does not return an absentee ballot.

**MOTION:** Staff shall apply the Commission’s current guidance when it updates WisVote to allow clerks to manage sending notices to Indefinitely Confined voters when such voters fail to return an absentee ballot for any Spring, General, or Special Election.

Moved by Commissioner Spindell. Seconded by Commissioner Jacobs.

Discussion.

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

Motion carried 6-0.

**Q. WEC Staff Update**

Chair Millis postponed discussion of this item to a future meeting.

**R. Adjourn**

**MOTION:** To adjourn.

Moved by Commissioner Thomsen. Seconded by Commissioner Spindell.

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

Motion carried 6-0.

The Commission adjourned at 5:05 p.m.

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November 2, 2023, Wisconsin Election Commission meeting minutes prepared by:



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Anna Langdon, Help Desk Staff

November 4, 2023

November 2, 2023, Wisconsin Election Commission meeting minutes certified by:



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Carrie Riepl, Commission Secretary

December 19, 2023