

Wisconsin Elections Commission

Special Meeting

Tuesday, December 19, 2023

11:00 A.M.

OPEN AND CLOSED SESSION AGENDA

- A. Call to Order**
- B. Administrator’s Report of Appropriate Meeting Notice**
- C. Approval of Previous Meeting Minutes**
 - 1. November 2, 2023** **1**
- D. Discussion and Appointment of Commission Secretary**
- E. Discussion, Review, and Possible Action Pertaining to Ballot Templates for Spring 2024 Primary and Election, and Communication of Preliminary Ballot Order to County Clerks** **13**
- F. Discussion, Review, and Possible Action Pertaining to the Uniform Instructions for Wisconsin Absentee Voters** **17**
- G. Discussion, Review, and Possible Action Pertaining to the Election Administration, Election Day, Caucus, and SVD Manuals for County and Municipal Clerks** **27**
- H. Review and Potential Action on the Election Observer Draft Administrative Rule** **38**
- I. Consideration and Possible Action Pertaining to the Waiver of the Delegation of Authority and Commission Determinations on Wis. Stat. § 5.06 Complaints** **77**
 - 1. Matt Roeser v. Celestine Jeffreys (EL 22-37)**
 - 2. Eugene Wojciechowski v. Rebecca Grill (EL 22-58)**
 - 3. Dawn M. Martin v. Rebecca Grill (EL 23-38)**

- J. Commission Consideration and Possible Action on Existing Ballot Return Guidance Document**

- K. Commission Discussion and Possible Action on Administrative Rules**
 - 1. Declaration of Candidacy Challenges (ss 089-23 and 090-23)**
 - 2. Nomination Paper Challenges (ss 091-233 and 092-23)**
 - 3. Mandatory Use of Uniform Instructions for Absentee Voting (ss 093-23 and 094-23)**

- L. Closed Session**
 - 1. Advisory Opinion Consideration and Potential Action**
 - 2. Wis. Stat. § 5.05 Complaints**
 - 3. Litigation Update and Consideration of Potential Litigation**
 - 4. Closed Session Minutes Approval**

- M. Adjourn**



Wisconsin Elections Commission

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

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.¹

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).

¹ 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.

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|-----------------|-------------|-----|-----------|-----|
| 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.

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|-----------------|-------------|-----|-----------|-----|
| 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.

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|-----------------|-------------|-----|-----------|-----|
| 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.

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|-----------------|-------------|-----|-----------|-----|
| 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.

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|-----------------|-------------|-----|-----------|-----|
| 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.

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

Motion carried 6-0.

The Commission adjourned at 5:05 p.m.

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

Anna Langdon, Help Desk Staff

November 4, 2023

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

Commission Secretary

December 19, 2023



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 December 19, 2023, Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Meagan Wolfe
Administrator

SUBJECT: 2024 Spring Primary and Spring Election Ballot Templates

Samples of the ballot templates for the 2024 Spring Primary and Spring Election accompany this memorandum and are submitted to the Wisconsin Elections Commission for approval.

These templates reflect the same ballot format and layout used in the 2023 Spring Election cycle but have been updated to include the Presidential Preference Primary contest. The current design continues to be acceptable to county clerks, voters, ballot printers, and equipment vendors.

Recommended Motion:

The Commission approves the ballot design presented by staff and directs staff to utilize the ballot design for the 2024 Spring Primary and Spring Election.

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

Official Primary Ballot

Nonpartisan Office

February 20, 2024

Notice to Voters: If you are voting on Election Day, your ballot must be initialed by two election inspectors. If you are voting absentee, your ballot must be initialed by the municipal clerk or deputy clerk. Your ballot may not be counted without initials. (See end of ballot for initials).

| Instructions to Voters | County | Municipal (cont.) |
|--|--|---|
| <p>If you make a mistake on your ballot or have a question, ask an election inspector for help. (Absentee voters: contact your municipal clerk).</p> <p>To vote for a name on the ballot, make an "X" or other mark in the square next to the name like this: <input checked="" type="checkbox"/></p> <p>To vote for a name that is not on the ballot, write the name on the line marked "write-in."</p> | County Executive Vote for 1 | City Treasurer Vote for 1 |
| | <input type="checkbox"/> Candidate | <input type="checkbox"/> Candidate |
| | <input type="checkbox"/> Candidate | <input type="checkbox"/> Candidate |
| | <input type="checkbox"/> Candidate | <input type="checkbox"/> Candidate |
| | Write-in: | Write-in: |
| Judicial | County Supervisor District _____ Vote for 1 | Aldersperson District _____ Vote for 1 |
| Court of Appeals Judge District _____ Vote for 1 | <input type="checkbox"/> Candidate | <input type="checkbox"/> Candidate |
| <input type="checkbox"/> Candidate | <input type="checkbox"/> Candidate | <input type="checkbox"/> Candidate |
| <input type="checkbox"/> Candidate | <input type="checkbox"/> Candidate | <input type="checkbox"/> Candidate |
| <input type="checkbox"/> Candidate | <input type="checkbox"/> Candidate | <input type="checkbox"/> Candidate |
| Write-in: | Write-in: | Write-in: |
| | Municipal | School District |
| Circuit Court Judge Branch _____ Vote for 1 | Mayor Vote for 1 | School Board Member Vote for not more than 2 |
| <input type="checkbox"/> Candidate | <input type="checkbox"/> Candidate | <input type="checkbox"/> Candidate |
| <input type="checkbox"/> Candidate | <input type="checkbox"/> Candidate | <input type="checkbox"/> Candidate |
| <input type="checkbox"/> Candidate | <input type="checkbox"/> Candidate | <input type="checkbox"/> Candidate |
| <input type="checkbox"/> Candidate | <input type="checkbox"/> Candidate | <input type="checkbox"/> Candidate |
| Write-in: | Write-in: | <input type="checkbox"/> Candidate |
| Write-in: | Continue voting at top of next column. | <input type="checkbox"/> Candidate |
| | | <input type="checkbox"/> Candidate |
| | | <input type="checkbox"/> Candidate |
| Continue voting at top of next column. | | Write-in: |
| | | Write-in: |

Official Ballot

Presidential Preference Vote

Nonpartisan Office and Referendum

April 2, 2024

Notice to voters: if you are voting on Election Day, your ballot must be initialed by two (2) election inspectors. If you are voting absentee, your ballot must be initialed by the municipal clerk or deputy clerk. Your ballot may not be counted without initials (see end of ballot for initials).

| General Instructions | Presidential Preference Vote | Judicial |
|--|---|--|
| <p>If you make a mistake on your ballot or have a question, ask an election inspector for help (absentee voters: contact your municipal clerk).</p> <p>To vote for a name on the ballot, fill in the oval next to the name like this: <input type="radio"/></p> <p>To vote for a name that is not on the ballot, write the name on the line marked "write-in" and fill in the oval next to the name like this: <input type="radio"/></p> | <p style="text-align: center;">Choose a party in which to vote</p> <p>Fill in the oval next to your party choice, like this: <input type="radio"/> Choose only ONE</p> | <p>Court of Appeals Judge District __ Vote for 1</p> |
| | <p><input type="radio"/> Democratic</p> <p><input type="radio"/> Republican</p> | <p><input type="radio"/> Candidate</p> <p><input type="radio"/> Candidate</p> |
| | <p style="text-align: center;">Democratic Party Primary</p> <p><i>If you vote in this party's primary, you may not vote in any other party's primary.</i></p> | <p><input type="radio"/> write-in:</p> |
| <p style="text-align: center;">Presidential Preference Vote</p> | <p style="text-align: center;">President of the United States Vote for 1</p> | <p>Circuit Court Judge District __ Vote for 1</p> |
| <p>In the Presidential Preference Vote:</p> <ul style="list-style-type: none"> You may vote for only ONE candidate. You may vote in only ONE party. If you choose a party, votes cast in that party will be counted. Votes cast in any other party will not be counted. If you do not choose a party, and you vote in more than one party, no votes will be counted. | <p><input type="radio"/> Candidate</p> <p><input type="radio"/> Candidate</p> | <p><input type="radio"/> Candidate</p> <p><input type="radio"/> Candidate</p> |
| | <p><input type="radio"/> Uninstructed Delegation</p> <p><input type="radio"/> write-in:</p> | <p><input type="radio"/> write-in:</p> |
| | <p style="text-align: center;">Special Instructions for Presidential Preference Vote</p> | <p style="text-align: center;">Republican Party Primary</p> <p><i>If you vote in this party's primary, you may not vote in any other party's primary.</i></p> |
| <p>Choose the party in which you will vote. Within the party you have chosen, you will have ONE of three choices:</p> <ol style="list-style-type: none"> Vote for a candidate whose name is printed on this ballot in the party you have chosen. Vote for an uninstructed delegation from Wisconsin to the national convention of the party you have chosen. Write in the name of another person to become the presidential candidate of the party you have chosen. <p style="text-align: center;">Fill in ONE oval in ONE party.</p> | <p style="text-align: center;">President of the United States Vote for 1</p> | <p>County Executive Vote for 1</p> |
| | <p><input type="radio"/> Candidate</p> <p><input type="radio"/> Candidate</p> | <p><input type="radio"/> Candidate</p> <p><input type="radio"/> Candidate</p> |
| | <p><input type="radio"/> Uninstructed Delegation</p> <p><input type="radio"/> write-in:</p> | <p><input type="radio"/> write-in:</p> |
| | <p style="text-align: center;">End Democratic Party Primary</p> | <p>County Supervisor Vote for 1</p> |
| | <p style="text-align: center;">End Republican Party Primary</p> | <p><input type="radio"/> Candidate</p> <p><input type="radio"/> Candidate</p> |
| | <p style="text-align: center;">End Presidential Preference Vote</p> | <p><input type="radio"/> write-in:</p> |
| <p style="text-align: center;">Presidential Preference Vote begins at top of next column.</p> | <p style="text-align: center;">Nonpartisan offices begin at top of next column.</p> | <p style="text-align: center;">Continue voting on back of ballot.</p> |

| Municipal | School District | Official Ballot Presidential Preference Vote Nonpartisan Office and Referendum April 2, 2024 for <hr/> Municipality and ward number(s) | |
|---|--|--|--|
| Mayor Vote for 1 | Name of School District (optional) School Board Member Vote for not more than... | | |
| <input type="radio"/> Candidate | <input type="radio"/> Candidate | Absentee ballot issued by <hr/> Initials of Municipal Clerk or Deputy Clerk <hr/> If issued by SVDs, both must initial | |
| <input type="radio"/> Candidate | <input type="radio"/> Candidate | | |
| <input type="radio"/> write-in: | <input type="radio"/> Candidate | For Official Use Only Inspectors: Identify ballots required to be remade: <input type="checkbox"/> Overvoted <input type="checkbox"/> Damaged <input type="checkbox"/> Other | |
| City Clerk Vote for 1 | <input type="radio"/> Candidate | | |
| <input type="radio"/> Candidate | <input type="radio"/> write-in: | <hr/> Initials of inspectors who remade ballot | |
| <input type="radio"/> Candidate | <input type="radio"/> write-in: | | |
| <input type="radio"/> write-in: | | | |
| City Treasurer Vote for 1 | Referendum To vote in favor of a question, fill in the oval next to "Yes," like this: <input checked="" type="radio"/> | | |
| <input type="radio"/> Candidate | To vote against a question, fill in the oval next to "No," like this: <input checked="" type="radio"/> | | |
| <input type="radio"/> Candidate | Level of government conducting referendum (State, tech college, county, municipal, school district) | | |
| <input type="radio"/> write-in: | Question (number if necessary) | | |
| Aldersperson At Large Vote for 1 | Shall the...? | | |
| <input type="radio"/> Candidate | <input type="radio"/> Yes | | |
| <input type="radio"/> Candidate | <input type="radio"/> No | | |
| <input type="radio"/> Candidate | | | |
| <input type="radio"/> write-in: | | | |
| Municipal Judge Vote for 1 | | | |
| <input type="radio"/> Candidate | | | |
| <input type="radio"/> Candidate | | | |
| <input type="radio"/> write-in: | | | |
| | | | |
| Continue voting at top of next column. | | | |



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 December 19, 2023, Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Meagan Wolfe
Administrator

Prepared and Presented by:
WEC Staff

SUBJECT: Revised Uniform Instructions for Consideration and Approval

1. Background

At its November 2, 2023, meeting the Wisconsin Elections Commission (“the Commission”) directed staff to complete usability testing and development of final revised Uniform Instructions for Commission review at the December 19 meeting. The final draft version of the revised Uniform Instructions is attached to these materials as Appendix F.1., F.2., and F.3.

2. Usability Testing

In general, feedback on the design from municipal and county clerks has been uniformly positive. Recent usability testing with voters likewise produced positive feedback. Commission staff conducted usability testing over a six-week period employing two techniques: (1) in-person assessments at various locations around the state; and (2) remote assessments conducted through the mail with volunteer voters. Staff designed testing protocols to evaluate the effectiveness of the new design and to identify any potential sources of voter confusion not previously noted.

General Feedback.

Overall feedback was universally positive, with many voters commenting on a favorable font size, the amount of text on the page, and the overall layout. The design was repeatedly described as “easy to read” and several voters lauded the use of “plain language” on the form. Voters familiar with the previous version of the instructions were especially complimentary, with all concluding the new version was a significant improvement. One woman remarked that the revised instructions were, “Just so much better; they’re wonderful.”

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

There were no negative comments on the overall design; however, one voter felt the instructions should explain if the certificate envelope may be filled out in pen or pencil.

Page 1 (Steps) Feedback.

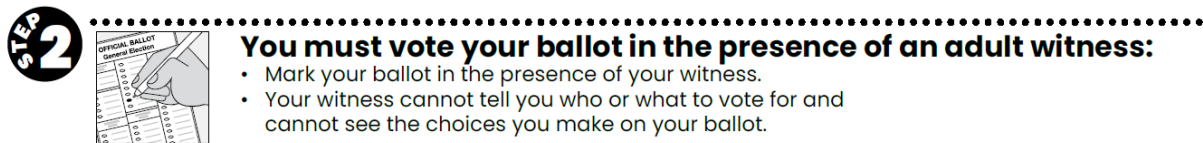
While the step-by-step instructions on page one were generally well received, there were some elements that caused concern for voters.

Several voters felt that the cautionary language in Step 1 was intimidating. Step 1 reads as follows:



The voters voicing this concern said that the warning felt “heavy-handed” and perhaps should be moved to the back page or omitted entirely. However, another voter specifically highlighted the cautionary language as a positive element, noting that, “it gets your attention,” and helped make clear the importance of the instructions. Because of the conflicting feedback on this item, staff elected not to propose any changes to the section.

Step 2, regarding witness requirements, produced the largest volume of feedback. Step 2 reads as follows:



| | |
|---|--|
| Who can be a witness? <ul style="list-style-type: none"><input checked="" type="checkbox"/> A witness must a U.S. Citizen who is at least 18 years old.<input checked="" type="checkbox"/> For military or overseas voters, your witness must be at least 18 years old but is not required to be a U.S. Citizen.<input checked="" type="checkbox"/> A witness can be a friend, spouse, family member, neighbor, etc. | Who cannot be a witness? <ul style="list-style-type: none"><input checked="" type="checkbox"/> A candidate on the ballot for this election. |
|---|--|

If you're having trouble finding a witness or have questions about the witness requirement, please contact your municipal clerk.

A handful of voters felt that Step 2 was too lengthy and suggested moving much of the language to the back page of instructions. At least two voters asked about a “witness date” and felt the instructions should clarify whether the witness must record a date. One voter felt that the light gray box made the text harder to read. However, staff also received feedback that “Step 2 is clear,” and that, “Witness instructions are good and clear.”

Steps 3, 4, and 5 received only positive feedback.

Finally, three voters expressed concerns about Step 6, which describes the ballot return process. Two voters felt the Step 6 section was too text heavy and found the number of options “confusing.” One voter wanted to know what qualified as a disability and felt that the instructions should contain a list of qualifying medical conditions. One voter felt the instructions should say something about drop boxes.

Step 6 appears as shown below.

STEP 6
Return your ballot.

Unless you are a voter with a disability, you must personally return your own ballot and it must be received in time to be delivered to your polling place **no later than 8:00 p.m. on Election Day.**

- Mail it back. Allow at least **one week** for mail.
- Drop it off at your municipal clerk’s office.
- Drop it off at your polling place or central count location.
- Voters with disabilities have the right to assistance in returning an absentee ballot. The voter’s assistant can be anyone who is not the voter’s employer, an agent of the employer, a representative of their labor union, or a candidate on the ballot.
- **Absentee ballots may not be returned by email or fax.**

Staff did not prepare any revisions for the Commission, however there is one additional exception that the Commission may wish to consider in the Step 6 instructions.

Under Wis. Stat. § 6.86(3), hospitalized voters may also have an agent return their ballot. This section also references “physical disability” as the reason for assistance.¹ Thus, the proposed language in Step 6 may suffice as-is since disabilities are already referenced. In the alternative, the Commission may wish to specifically highlight hospitalized voters in the instructions. For example, the fourth bullet above could be modified to begin: “Voters with disabilities, to include hospitalized voters, have the right to assistance in returning an absentee ballot.”

Page 2 (Instructions) Feedback.

Page 2 instructions received only positive feedback. Voters felt the instructions were clear, concise, and “to the point.”

Mailing Tests

Testing conducted through the mail mirrored the in-person testing results. Voters in eight jurisdictions volunteered to receive, complete, and return test ballots using the draft instructions. Feedback from voters was similar to in-person feedback, and the section producing the most concern in live testing – Step 2 – also produced the most difficulty in mail testing.

¹ See, e.g., Wis. Stat. § 6.86(3)(a)1, which states in part, that any elector signing a ballot application on a hospitalized elector's behalf shall attest to a statement that the application is made on request and by authorization of the hospitalized elector, “*who is unable to sign the application due to physical disability.*” (emphasis added).

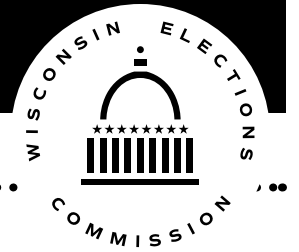
Two participating voters failed to correctly follow the instructions. One voter failed to have a witness sign the certificate envelope. A second voter in a different jurisdiction returned a certificate envelope with a witness address that said, “same as above.”

Staff have not prepared any alternatives based on these results; however, the Commission may wish to examine the language in Step 2 more closely based on this voter feedback. For example, Step 2 could be re-phrased to explicitly emphasize the importance of obtaining a witness *signature*, in addition to having a witness present.

3. Proposed Motion

The Wisconsin Elections Commission approves and prescribes the Revised Uniform Instructions, as shown in Appendix F.1, F.2, and F.3, for all future elections. Staff are directed to update all Commission resources with this guidance and to notify clerks of this change.

Uniform Instructions for Wisconsin Absentee Voters



STEP 1 Read and follow the instructions on your ballot. Mistakes may prevent your votes from being counted.

STEP 2 You must vote your ballot in the presence of an adult witness:

- Mark your ballot in the presence of your witness.
- Your witness cannot tell you who or what to vote for and cannot see the choices you make on your ballot.



Who can be a witness?

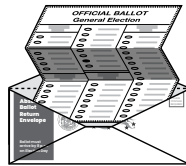
- A witness must be a U.S. Citizen who is at least 18 years old.
- For military or overseas voters, your witness must be at least 18 years old but is not required to be a U.S. Citizen.
- A witness can be a friend, spouse, family member, neighbor, etc.

Who cannot be a witness?

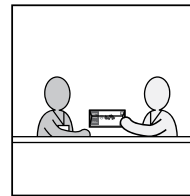
- A candidate on the ballot for this election.

If you're having trouble finding a witness or have questions about the witness requirement, please contact your municipal clerk.

STEP 3 Refold your voted ballot and place it inside of the return envelope.



STEP 4 Seal the envelope in the presence of your witness.



Make sure your envelope is completely sealed

STEP 5 Fill out the required sections of the absentee return envelope.

STEP 6 Return your ballot.

Required Elements

VOTER

Your voter information (may already be complete)

Signature

WITNESS

Signature

Printed Name

Address

Official Absentee Ballot Certificate & Application

CLERK OR DENITY: Clerk Denity Absentee voter Non or mail PO Absentee voter Absentee voter

1 CLERK OR VOTER must complete this part

Voter Information

City Name: _____ Election Date (mm/dd/yyyy): _____

Willage Name: _____

Town Name: _____

Name (Last, First, Middle): _____

Street Address: _____

County: _____ City: _____

State: _____ Zip: _____ Word: _____ A&S Dist: _____

2 VOTER must complete this part

I certify, subject to the penalties for false statements of Wis. Stats. § 22.02(7), that:

- I am a resident of the ward or of the aldermanic district of the municipality in the county of the state of Wisconsin indicated herein.
- I am entitled to vote in the ward or aldermanic district of the election indicated herein.
- I am not voting at any other location in this election.
- I am unable or unwilling to appear at the polling place in the ward or Election Day, or I have changed my residence within the state from one ward to another less than 28 days before the election.
- I displayed the ballot unmarked to the witness and in the presence of no other person marked the ballot and enclosed and sealed it in this envelope in a manner that no one but myself and an assistant under s. 22.12, if requested assistance, could have looked.
- I requested this ballot and this is the original or a copy of that request.

X

Voter Signature

Certification of Assistant (if applicable)

I certify that the voter is unable to sign their name due to a disability and that I signed the voter's name on the direction and request of the voter.

Assistant Signature: _____

3 WITNESS must complete this part

I, the undersigned witness, subject to the penalties for false statements of Wis. Stats. § 22.02(7), certify that:

- I am an adult U.S. citizen.
- The above statements are true and the voting procedure was established as stated.
- I am not a candidate for any office (or an incumbent municipal clerk).
- I did not assist or advise the elector to vote for or against any candidate or measure.

WITNESS REQUIRED

X

Witness Signature

Witness Printed Name: _____

Witness Address (Number, Street Name, City): _____

Unless you are a voter with a disability, you must personally return your own ballot and it must be received in time to be delivered to your polling place **no later than 8:00 p.m. on Election Day.**

- Mail it back. Allow at least **one week** for mail.
- Drop it off at your municipal clerk's office.
- Drop it off at your polling place or central count location.
- Voters with disabilities have the right to assistance in returning an absentee ballot. The voter's assistant can be anyone who is not the voter's employer, an agent of the employer, a representative of their labor union, or a candidate on the ballot.
- **Absentee ballots may not be returned by email or fax.**

Getting Assistance

If you need help reading or filling out your ballot or absentee return envelope, you may ask for assistance from anyone who is not your employer or a representative of your labor union. **Your assistant may also serve as your witness.** Explaining how to fill out your ballot or return envelope is not “assistance.”

| With your ballot | With your absentee return envelope |
|--|--|
| <ul style="list-style-type: none">• If someone signs your absentee return envelope on your behalf, make sure they also sign in the <i>Certification of Assistant</i> section.• Your assistant may also serve as your witness. | <ul style="list-style-type: none">• Your assistant must sign in the <i>Certification of Voter Assistance</i> section.• Your assistant can read your ballot to you or fill out your ballot under your direction but cannot tell you how to vote. |

Ballot Damage & Mistakes

If you make a mistake while marking your ballot or completing the return envelope, **please contact your municipal clerk.** They can also field questions about how to request a new ballot and return it if you make a mistake.

You can find their information below or by scanning the QR code.



Voter Photo ID

- If you have received your ballot, then a copy of your photo ID is already on file or you are exempt from the requirement. You do not need to provide another copy of photo ID unless instructed by your clerk.

myvote.wi.gov/en-us/My-Municipal-Clerk

If you have any questions, please contact your municipal clerk for assistance.

Municipal Clerk Contact Information

(Name of Municipal Clerk)

(Name of Municipality)

Phone:

Email:

Fax:

State Election Official Contact Information Wisconsin Elections Commission

Help Desk: (608) 261-2028
Email: elections@wi.gov



Check absentee ballot return status, find voter information, and more on MyVote.wi.gov

Uniform Instructions for Military & Overseas Absentee Voters (Email & Fax)



- STEP 1**
Print both your ballot and absentee ballot certificate you received from your municipal clerk.
- STEP 2**
Read and follow the instructions on your ballot.
 Mistakes may prevent your votes from being counted.
- STEP 3**
You must vote your ballot in the presence of an adult witness:
 - Mark your ballot in the presence of your witness.
 - Your witness cannot tell you who or what to vote for and cannot see the choices you make on your ballot.

Who can be a witness?

- For military or overseas voters, your witness must be at least 18 years old but is not required to be a U.S. Citizen.
- A witness can be a friend, spouse, family member, neighbor, etc.

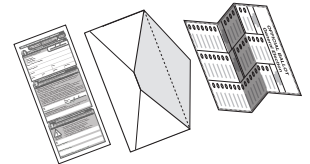
Who cannot be a witness?

- A candidate on the ballot for this election.

If you're having trouble finding a witness or have questions about the witness requirement, please contact your municipal clerk.

- STEP 4**
Fold and stuff
 Fold the ballot and place it inside of a regular, non-window envelope. Return your entire ballot. If the ballot was sent as two pages, return both pages including the page containing the municipal clerk's initials. Seal the envelope in the presence of your witness.

- STEP 6**
Affix Certificate
 Glue or tape the certificate form to the envelope containing the ballot.



See the directions on page 3

- STEP 5**
Fill out the required sections of the absentee return envelope.

- STEP 7**
Put the envelope with the certificate form attached into a larger envelope and address it to your clerk.

Required Elements

| | |
|-----------------------|---|
| VOTER | Your voter information <i>(may already be complete)</i> |
| | Birth Date* Signature |
| *Military Voters Only | |
| WITNESS | Signature |
| | Printed Name |
| | Address |

Official Absentee Ballot Certificate & Application

1 CLERK or VOTER must complete this part

Voter Information

City Name: _____ Election Date (mm/dd/yyyy): _____
 Village Name: _____
 Town Name: _____
 Name (Last, First, Middle): _____
 Street Address: _____
 County: _____ City: _____
 State: _____ Zip: _____ Ward: _____ Ald. Dist: _____

2 VOTER must complete this part

I certify, subject to the penalties for false statements of Wis. Stat. § 12.60(1)(b), that:

- I am a resident of the ward or of the absentee district of the municipality in the county of the state of Wisconsin indicated herein (or I am a resident of the ward or absentee district of the election indicated herein).
- I am not voting at any other location in this election.
- I am unable or unwilling to appear at the polling place in the ward on Election Day, or I have changed my residence with the clerk from the ward to another less than 28 days before the election.
- No one else has marked the ballot and enclosed and sealed it in this envelope, or I have marked the ballot myself and an assistant under § 8.87 (5), if I received the ballot, could know how I voted.
- I have retained this ballot.

I am not voting at any other location in this election.

I am unable or unwilling to appear at the polling place in the ward on Election Day, or I have changed my residence with the clerk from the ward to another less than 28 days before the election.

No one else has marked the ballot and enclosed and sealed it in this envelope, or I have marked the ballot myself and an assistant under § 8.87 (5), if I received the ballot, could know how I voted.

I have retained this ballot.

Date of Birth: _____
 Voter Signature: _____
 Certification of Assistant (if applicable): _____
(certify that the voter is unable to sign their name due to a disability and that I signed the voter's name at the direction and request of the voter)

Assistant signature: _____

3 WITNESS must complete this part

I, the undersigned witness, subject to the penalties for false statements of Wis. Stat. § 12.60(1)(b), certify that:

- I am not related by blood to the voter.
- The above statements are true and the voting procedure was executed as stated.
- I am not a candidate for any office on the enclosed ballot (except in the case of an incumbent municipal clerk).
- I did not solicit or advise the voter to vote for or against any candidate or measure.

WITNESS REQUIRED

Witness Signature: _____
 Witness Printed Name: _____
 Witness Address (Number, Street Name, City): _____

- STEP 8**
Postage
 Place appropriate postage on the exterior envelope. If you are on active military duty, you can drop off your ballot at a U.S. Consulate to be returned for free.

- STEP 9**
Return your ballot.
 - Your ballot must be received in time to be delivered to your polling place or central count location **no later than 8:00 p.m. on Election Day.**
 - Mail it back. Allow enough time for it to reach its destination
 - If you are unable to use public mail or parcel services, consider commercial alternatives.

Absentee ballots may not be returned by email or fax.

If any of the required information above is missing, your ballot will not be counted.

Getting Assistance

If you need help reading or filling out your ballot or absentee return envelope, you may ask for assistance from anyone who is not your employer or a representative of your labor union. **Your assistant may also serve as your witness.** Explaining how to fill out your ballot or return envelope is not “assistance.”

With your ballot

- If someone signs your absentee return envelope on your behalf, make sure they also sign in the *Certification of Assistant* section.
- Your assistant may also serve as your witness.

With your absentee return envelope

- Your assistant must sign in the *Certification of Assistant* section.
- Your assistant can read your ballot to you or fill out your ballot under your direction but cannot tell you how to vote.

Ballot Damage & Mistakes

If you make a mistake while marking your ballot or completing the return envelope, **please contact your municipal clerk.** They can also field questions about how to request a new ballot and return it if you make a mistake.

You can find their information below or by scanning the QR code.



Voter Photo ID

- If you have received your ballot, then a copy of your photo ID is already on file or you are exempt from the requirement. You do not need to provide another copy of photo ID unless instructed by your clerk.

myvote.wi.gov/en-us/My-Municipal-Clerk

If you have any questions, please contact your municipal clerk for assistance.

Municipal Clerk Contact Information

(Name of Municipal Clerk)

(Name of Municipality)

Phone:

Email:

Fax:

State Election Official Contact Information Wisconsin Elections Commission

Help Desk: (608) 261-2028

Email: elections@wi.gov



Check absentee ballot return status, find voter information, and more on MyVote.wi.gov

Getting Assistance

If you need help reading or filling out your ballot or absentee return envelope, you may ask for assistance from anyone who is not your employer or a representative of your labor union. **Your assistant may also serve as your witness.** Explaining how to fill out your ballot or return envelope is not “assistance.”

| With your ballot | With your absentee return envelope |
|--|---|
| <ul style="list-style-type: none">• If someone signs your absentee return envelope on your behalf, make sure they also sign in the <i>Certification of Assistant</i> section.• Your assistant may also serve as your witness. | <ul style="list-style-type: none">• Your assistant must sign in the <i>Certification of Assistant</i> section.• Your assistant can read your ballot to you or fill out your ballot under your direction but cannot tell you how to vote. |

Ballot Damage & Mistakes

If you make a mistake while marking your ballot or completing the return envelope, **please contact your municipal clerk.** They can also field questions about how to request a new ballot and return it if you make a mistake.

You can find their information below or by scanning the QR code.



myvote.wi.gov/en-us/My-Municipal-Clerk

Voter Photo ID

- If you have received your ballot, then a copy of your photo ID is already on file or you are exempt from the requirement. You do not need to provide another copy of photo ID unless instructed by your clerk.

If you have any questions, please contact your municipal clerk for assistance.

Municipal Clerk Contact Information

(Name of Municipal Clerk)

(Name of Municipality)

Phone:

Email:

Fax:

State Election Official Contact Information Wisconsin Elections Commission

Help Desk: (608) 261-2028
Email: elections@wi.gov



Check absentee ballot return status, find voter information, and more on MyVote.wi.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

DATE: For the December 19, 2023, Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Meagan Wolfe
Administrator

Prepared and Presented by:
WEC Staff

SUBJECT: Manual Updates

Purpose & Orientation

This memorandum and its attachments present suggested edits to four manuals that the Commission currently provides to election officials at all levels of government. While most of the proposed changes are simple, the number of edits and the large size of some manuals make this a challenging topic to navigate. To facilitate understanding of this agenda item, the information is presented in five sections.

- (1) **Memorandum.** This document provides an overview of the types of edits proposed, the rationale for the proposed edits, and recommended motions associated with each proposal. This memo further identifies specific decision items for the Commission, where significant changes are required, generally based on court decisions.
- (2) **Appendix A** (Election Day Manual).
- (3) **Appendix B** (Elections Administration Manual)
- (4) **Appendix C** (Absentee Voting in Residential Care Facilities and Retirement Homes Manual)
- (5) **Appendix D** (Caucus Manual)

In the electronic version of this material, each appendix is provided as a stand-alone file. Current and complete versions of each manual are available on the Elections Commission website here: <https://elections.wi.gov/clerks/manuals>.

How to Navigate the Appendices

Each appendix begins with a table listing each revision, its location, and the nature of the change. Following the table, chapter excerpts with a redlined version of the text are provided. To locate a specific change in the table, locate the Chapter and Page number found in the header of the chapter excerpt.

For example, the table in Appendix A lists a minor change on page 19 of the Election Day manual that clarifies language and spells out the Americans with Disabilities Act as the basis for the requirement.

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

| Chapter | Page | Action Taken | Material | Type of Update |
|-------------------|------|--------------|--------------------------------------|----------------|
| Pre-election prep | 19 | modify | sentence revisions, full name of ADA | staff updated |

To locate the referenced change, turn to the chapter excerpts and look for the chapter title and page number found in the header.

Appendix A – Election Day section 1 - Pre-Election Preparations
 Page 19

Once on the correct page, scrolling down will reveal the proposed change.

- b. One booth at every polling place must [have an entrance that is](#) at least 30 inches wide with a writing surface between 28 and 34 inches high to meet [accessibility-Americans with Disabilities Act \(ADA\)](#) standards.
- c. Election inspectors must be trained to set up [and use](#) electronic voting equipment, including accessible voting components.

NOTE: the page numbers in each excerpt match the page numbers in the current manual. Therefore, the excerpt pages do not necessarily begin with 1.

Background

A key function of the Wisconsin Elections Commissions training outreach to local election officials is producing and maintaining manuals. They are used by both county and municipal clerks to train themselves and their poll workers. Manuals also serve as a helpful tool to educate the public about election processes. Over the years, WEC staff have written and updated many manuals covering a wide range of election topics. A similar review of the Recount manual is being conducted and the Recount manual will be presented for Commission approval at a future meeting.

The two largest WEC manuals are the Election Administration (EA) manual and the Election Day (ED) manual. The EA manual covers the entire election process from a clerk’s perspective. It serves to inform and explain what clerks both at the county and municipal level need to do to prepare for an upcoming election. This includes how to conduct the election, and finally how to certify and close out an election. The ED manual is dedicated to the tasks that need to be completed in the days surrounding the election, the processes both clerk and poll workers need to follow at the polling place, and finally how to canvass their election. Both manuals are frequently referenced by clerks, clerk staff, poll workers, and members of the public who are interested in learning more about the election process.

The Caucus manual and the Absentee Voting in Care Facilities manuals specifically focus on the caucus and special voting deputy (SVD) processes. They are used in individualized circumstances and focus on the tasks that must be completed during either a caucus meeting or an SVD visit.

To prepare for the upcoming 2024 election cycle, staff have made suggested updates to these manuals. Clerks and election inspectors rely on these manuals to ensure they are complying with statute, court decisions, and suggested best practices which have been provided by other clerks and election inspectors.

Categories of Changes to the Manuals

I. Formatting and Drafting Updates

After new legislation is signed into law or court decisions impact an election process, staff confer with the WEC legal team to identify areas of the manuals that require updates, and draft suggested language for the updates. Staff also keep track of suggested updates from clerks as they are provided throughout the year.

These updates are jointly compiled into a tracker that staff reference when reviewing manuals and identifying edits and updates. The updates included in the attached appendices were created by WEC training staff, legal staff, and staff who have significant experience in subjects such as voting equipment, absentee voting, accessible voting, and more.

Updates to the manuals can also be necessary due to a Commission directive such as updated forms and document names. Items like the new absentee envelope designs, lists of approved voting equipment systems, the Wisconsin Ethics Commission renaming the Campaign Registration Statement form, and guidance approved by the Commission are all included in the proposed new edition of the manuals. These updates are identified in blue in the attached appendices.

There are also occasionally areas of the manuals that need to be corrected because of a typo, incorrect punctuation, or to adjust the overall formatting of the manual. These updates are shown in yellow in the attached appendices. The proposed updates listed in yellow did not have any changes to the information they describe and reflect the same process or requirement that has been in previous manuals.

Recommended Motion #1: The Wisconsin Elections Commission directs staff to implement the suggested drafting changes to the *Election Day manual* as reflected in the Election Day chart #1-27, 29, 32-33, 35-41, and 44-54.

Recommended Motion #2: The Wisconsin Elections Commission directs staff to implement the suggested drafting changes to the *Election Administration manual* as reflected in the Election Administration chart #1, 5-29, 31, 33, 35, 37, 39, 41, 43, 45, 49-55, and 57-89.

Recommended Motion #3: The Wisconsin Elections Commission directs staff to implement the suggested drafting changes to the *Special Voting Deputy manual* as reflected in the SVD Voting in Care Facilities chart #1-3.

Recommended Motion #4: The Wisconsin Elections Commission directs staff to implement the suggested drafting changes to the *Caucus manual* as reflected in the Caucus manual chart.

II. Updates due to Legislation or Court Decisions

Updates to the manuals due to new legislation, the Legislative Audit Bureau's findings, and court decisions are listed in the attached appendices in white. As these updates required significant legal review, staff wanted to provide the background on how certain larger-scale updates were discussed and potential language for the manuals was determined.

These topics include:

1. What constitutes a "returned ballot" in relation to the absentee ballot spoiling process?
2. Who can return an absentee ballot?
3. Updates to the witness field on the absentee certificate envelope.
4. Whether the name of the care facility is required on the absentee certificate envelope used by Special Voting Deputies.
5. Who can provide missing witness address information on an absentee certificate envelope, and if the original witness needs to be present when providing this missing information?
6. Information about clerk-monitored drop boxes.
7. Language for transmitting partisan-nominated election inspectors lists to governing bodies.
8. Municipal clerks adding missing information to the absentee certificate.

As these updates are more complicated than a simple fix of a typo or clarification on long-time election procedures, WEC staff believe that specific motions on these topics should be presented to the Commission along with the statutory and legal background for the potential language for the manuals. The remaining sections of this memorandum discuss specific issues of policy and/or law that require Commission direction.

Question #1: What constitutes a "returned ballot" in relation to the absentee ballot spoiling process?

Draft Manual Text:

Statute permits only two ways for an elector to return and receive a second ballot. An elector may return an absentee ballot that is spoiled or damaged to the clerk and obtain a replacement, so long as there is still time to accomplish that before election day. Wis. Stat. § 6.86(5). Additionally, if the municipal clerk receives a returned absentee ballot with an improperly completed certificate, the clerk may return that incomplete ballot to the elector in a sealed envelope, as long as time permits the elector to remedy the problem and return it to the clerk before election day. Wis. Stat. § 6.86(5).

A circuit court has recently concluded on a motion for summary judgment that there is no statutory authority for a clerk to return or spoil an otherwise complete, undamaged ballot that was properly returned by an elector. *Kormanik v. WEC* (2022CV001395, Nov. 29, 2023). If a ballot is complete and in totally acceptable condition and was properly returned in an unspoiled and undamaged state, "the statutes provide no basis upon which the voter may ever possess that ballot again." *Kormanik*, at 13.

The circuit court concluded that the only way to read § 6.86(5) is that the spoiling or damaging were already done when the ballot was returned. The circuit court also seemed to conclude that a ballot that is not damaged or spoiled, and is otherwise complete, is “returned” when it arrives at the clerk’s office. The circuit court noted that § 6.88(1) “requires that upon arrival at the clerk’s office, the ballot shall be sealed in a carrier envelope and must be opened when and where election day votes are being cast...Once the clerk has that returned ballot, it is to be sealed until election day.” Kormanik, at 13.

Litigation Note: As of December 2023, the *Kormanik* matter is still open, and this section of the manual will be updated and/or supplemented consistent with further updates in that case. The Commission is expecting a final order from the circuit court in January 2024. In the event of a decision resulting from an appeal, this section of the manual will be further updated and/or supplemented, if necessary.

Note for Commission: The *Kormanik* summary judgment decision does not appear to define what constitutes a spoiled ballot, and does not give clear guidance on when a ballot is “returned” when an elector is attempting to notify the clerk that he/she intends to attempt to spoil the ballot due to a mistake or other issue. The Commission should decide whether to provide this guidance to clerks, or whether it should wait for a final resolution in *Kormanik*.

Potential Motion for Question 1 A: The Wisconsin Elections Commission directs staff to include the above Draft Manual Text in the *Election Administration and Election Day manuals*.

Potential Motion for Question 1 B: The Wisconsin Elections Commission directs staff to not include the above Draft Manual Text in the *Election Administration and Election Day manuals* until there is a final resolution in *Kormanik*

Question #2: Who can return an absentee ballot?

Draft Manual Text:

Only the voter may lawfully return his or her completed absentee ballot, either by mail or in person to the office of the municipal clerk, subject to two exceptions. Wis. Stat. § 6.87(4)(b)(1); *Teigen v. Wis. Elections Comm’n*, 2022 WI 64, 59, 403 Wis. 2d 607, 976 N.W.2d 519.

First, pursuant to the Voting Rights Act, any Wisconsin voter who requires assistance with mailing or delivering their absentee ballot to the municipal clerk because of a disability must be permitted to receive such assistance by a person of the voter’s choice, other than the voter’s employer or agent of that employer or officer or agent of the voter’s union. *Carey v. Wis. Elections Comm’n*, 624 F. Supp. 3d 1020 (W.D. WI 2022).

Second, pursuant to section 6.86(3)(a)1., an agent may return a completed absentee ballot on behalf of a disabled voter by following the procedures required by that section.

When an election official is presented with an absentee ballot delivered in-person, the Commission believes that the official may ask the following questions:

- Are you the voter? If not, then:

- Are you delivering the voter's ballot because the voter has determined that they require assistance returning their ballot due to their disability? If yes, then:
- Are you someone other than the voter's employer, an agent of that employer, or an officer or agent of the voter's union? If yes, then the ballot can be accepted.¹

Litigation Note: On July 20, 2023, a complaint was filed in the matter of *Priorities USA et al v. Wis. Elections Comm'n* (2023CV001900) in Dane County. The complaint seeks declaratory judgment that Commission guidance is invalid to the extent that it prohibits the use of drop boxes for the return of absentee ballots. As of December 2023, no judgement or order has been entered on the merits of this litigation. The *Priorities USA* matter is still being litigated, and this section of the manual will be updated and/or supplemented consistent with further updates in that case, if any.

Potential Motion for Question 2: The Wisconsin Elections Commission directs staff to include the above Draft Manual Text in the *Election Administration and Election Day manuals*.

Question #3: Updates to the witness field on the absentee certificate envelope.

Draft Manual Text:

On December 1, 2021, the Commission voted unanimously to pass the following motion: "That a space for the witness to provide their printed name be included in the ballot envelope redesign."² This decision was in response to the Legislative Audit Bureau's Recommendation #14, which specifically addressed the field where the absentee ballot witness prints their name.

Litigation Note: On July 20, 2023, a complaint was filed in the matter of *Priorities USA et al v. Wis. Elections Comm'n* (2023CV001900) in Dane County. The complaint seeks declaratory judgment that the witness requirement for absentee voting is invalid. As of December 2023, no judgement or order has been entered on the merits of this litigation. The *Priorities USA* matter is still being litigated, and this section of the manual will be updated and/or supplemented consistent with further updates in that case, if any.

Disclaimer: If an absentee certificate is missing the witness's printed name, the clerk should decide how to proceed because the Commission does not have a statutory role in receiving and accepting ballots from electors. If a clerk receives an absentee ballot with an improperly completed certificate, § 6.87(9) states that they may return the ballot to the elector whenever time permits the elector to correct the defect. A ballot may also be rejected under § 6.88(3)(b) if the "certification is insufficient." Statute directs that the absentee ballot certificate language appear in "substantially" the form listed in § 6.87(2), which includes a field for a witness's printed name, in addition to their signature. A clerk should determine whether a missing witness printed address renders the certification "insufficient" when determining if they should take action under § 6.88(3)(b).

Note for Commission – The Commission should decide what language appears in the manual.

¹ This guidance was approved by the Commission on September 6, 2022, and is available here: <https://elections.wi.gov/news/guidance-absentee-ballot-return-options>.

² Minutes and materials for this meeting are available here: <https://elections.wi.gov/event/wec-december-2021-meeting>

- Option 1 – Include solely the paragraphs above (without the disclaimer) because that is consistent with how the Commission responded to the LAB audit.
- Option 2 – Include paragraph 1 plus the disclaimer above because the Commission's LAB response did not specifically address what clerks should do if the witness's printed name is missing from the certificate envelope.
- Option 3 – Leave all of this out of the manual, and do not address what a clerk should do if the witness printed name is missing.

Potential Motion for Question 3 A: The Wisconsin Elections Commission directs staff to include Option 1 in the Election Administration and Election Day manuals.

Potential Motion for Question 3 B: The Wisconsin Elections Commission directs staff to include Option 2 in the Election Administration and Election Day manuals.

Potential Motion for Question 3 C: The Wisconsin Elections Commission directs staff to include Option 3 in the Election Administration and Election Day manuals.

Question #4: Whether the name of the care facility is required on the absentee certificate envelope used by Special Voting Deputies.

Draft Manual Text:

Section 6.87(5) requires the authorized representative to certify that the facility or home is certified or registered as required by law. The certification language approved by the Commission on the EL 122 Special³ states: "I certify I am an authorized representative of the facility listed. I further certify that this facility is registered or certified as required by law..."

The Commission accordingly recommends that clerks provide the name of the care facility on the certificate before sending it to the voter to avoid a scenario where the authorized representative fails to include it on the certificate. If the clerk is a WisVote user, the name of the care facility should be input into Line 1 of the address field so that it can be generated on the sticker used for this certificate envelope. If the clerk is not a WisVote user, the clerk should write the name of the care facility on the first line of the address field on the certificate envelope.

Note for Commission: Staff recommend that the Commission approve the language above because directing clerks to include the name of the facility in the address field will ensure the name of the facility is never missing from the certificate envelope.

Potential Motion for Question 4: The Wisconsin Elections Commission directs staff to include the Draft Manual Text above in the Election Administration and Election Day manuals.

³ The Commission adopted the revised EL-122 Special form and instructions on November 2, 2023. Commission materials for that meeting are available here: <https://elections.wi.gov/event/wisconsin-elections-commission-november-2023-meeting>

Question #5: Who can provide missing witness address information on an absentee certificate envelope, and if the original witness needs to be present when providing this missing information?

Draft Manual Text:

The Commission is permanently prohibited and enjoined from advising, guiding, instructing, publishing, or otherwise communicating information to Wisconsin municipal clerks and local elections officials that clerks or local election officials have the duty or ability to modify or add information to incomplete absentee ballot certifications. *White et al v. Wis. Elections Comm'n et al* (2022CV1008, October 3, 2022). If a clerk believes that an absentee ballot has an improperly completed certificate, the clerk should determine whether to follow the steps laid out in § 6.87(9) or § 6.88(3)(b), if applicable.

Litigation Note: On July 20, 2023, a complaint was filed in the matter of *Priorities USA et al v. Wis. Elections Comm'n* (2023CV001900) in Dane County. The complaint seeks declaratory judgment that Commission guidance is invalid to the extent that it requires voters to correct defects on their absentee ballot certificates by 8 p.m. on election day. As of December 2023, no judgement or order has been entered on the merits of this litigation. The *Priorities USA* matter is still being litigated, and this section of the manual will be updated and/or supplemented consistent with further updates in that case, if any.

Note for Commission: The Commission should decide what language appears in the manual. The various options depend on how the Commission interprets the permanent injunction entered in *White v. Wis. Elections Comm'n*.

- Option 1 – Do not include any guidance in the manual relating to curing missing information on the absentee certificate envelope because that would be consistent with a strict reading of the *White* injunction. Because *White* enjoined the Commission from issuing any guidance contrary to § 6.87(9), it's possible that the *White* court thinks that the only remedy for missing certificate information is for the clerk to take the steps laid out in § 6.87(9), and that the Commission has no role in interpreting § 6.87(9).
- Option 2 – Include the Draft Manual Text above because it would be consistent with a cautious reading of the *White* injunction. The information above essentially states what *White* held, which is that the Commission cannot tell clerks that clerks can fill in missing absentee certification information to “cure” the ballot. Directing clerks to follow § 6.87(9) is not inconsistent with the injunction because the Commission is not taking any position that is contrary to what § 6.87(9) says.
- Option 3 – Revise the Draft Manual Text above to include previous Commission guidance that a ballot can be cured if both the witness and voter are physically present to correct the information. This option carries the most risk of the Commission being found out of compliance with the *White* injunction.

Potential Motion for Question 5 A: The Wisconsin Elections Commission directs staff to pursue Option 1.

Potential Motion for Question 5 B: The Wisconsin Elections Commission directs staff to include Option 2 in the *Election Administration and Election Day manuals*.

Potential Motion for Question 5 C: The Wisconsin Elections Commission directs staff to include Option 3 in the *Election Administration and Election Day manuals*. Specifically, the Commission directs staff to include the following language in addition to the Draft Manual Text above:

Question #6: Information about clerk-monitored drop boxes.

Note for Commission: The *Teigen* court addressed the legality of unattended drop boxes, and concluded they were not allowed. The *Teigen* decision does not address whether the same conclusion is true of drop boxes that are staffed by municipal clerks. The *Teigen* decision also does not address what physical spaces are included under the umbrella of “the office of the municipal clerk.” The Commission should decide what language appears in the manual:

- Option 1:
 - Draft Manual Text: The use of drop boxes is not permitted unless the drop box is staffed by the clerk and located in the office of the clerk or a properly designated alternate absentee voting site. Wis. Stat. § 6.855; *Tiegen v. Wis. Elections Comm’n*, 2022 WI 64, 403 Wis. 2d 607, 976 N.W.2d 519.
 - Staff Note: This option states what *Teigen* says but does not provide further clarity to clerks for ambiguous situations (i.e. is the hallway outside the clerk’s door part of the “office of the municipal clerk”)
- Option 2
 - Draft Manual Text: The use of drop boxes is not permitted unless the drop box is staffed by the clerk and located in the office of the clerk or a properly designated alternate absentee voting site. Wis. Stat. § 6.855; *Tiegen v. Wis. Elections Comm’n*, 2022 WI 64, 403 Wis. 2d 607, 976 N.W.2d 519. The drop box must be attended by the municipal clerk at all times, and must be placed within the “four walls” of the office of the municipal clerk or the alternate absentee voting site. This means that the drop box, even if attended, cannot be placed in the hallway, a borrowed conference room, the lobby of the municipal building, or outside on the sidewalk.
 - Staff Note: This option is consistent with a strict reading of *Teigen*, and would only permit attended drop boxes that are literally, physically located in the office of the clerk or at the alternate absentee voting site.
- Option 3
 - Draft Manual Text: The use of drop boxes is not permitted unless the drop box is staffed by the clerk and located in the office of the clerk or a properly designated alternate absentee voting site. Wis. Stat. § 6.855; *Tiegen v. Wis. Elections Comm’n*, 2022 WI 64, 403 Wis. 2d 607, 976 N.W.2d 519. The office of the municipal clerk means any physical area that is controlled by, and exclusively used by, the municipal clerk in order to carry out their statutory duties.
 - Staff Note: This option is consistent with a broader reading of *Teigen* by recognizing that *Teigen* did not address which physical spaces fall within the “office of the municipal clerk.” This option could provide clarity to clerks, though

it's also possible that a court could disagree with the Commission's interpretation of *Teigen* in this way.

Potential Motion for Question 6 A: The Wisconsin Elections Commission directs staff to include the Draft Manual Text in Option 1 above in the Election Administration and Election Day manuals.

Potential Motion for Question 6 B: The Wisconsin Elections Commission directs staff to include the Draft Manual Text in Option 2 above in the Election Administration and Election Day manuals.

Potential Motion for Question 6 C: The Wisconsin Elections Commission directs staff to include the Draft Manual Text in Option 3 above in the Election Administration and Election Day manuals.

Question #7: Language for transmitting partisan-nominated election inspectors lists to governing bodies.

Draft Manual Text:

The two dominant political parties are directed to submit a list of names from which all appointees to inspector positions, except those appointed by municipalities under § 7.30(1)(b), shall be chosen. Wis. Stat. § 7.30(4)(b). The list of names should be submitted by November 30 of each odd-numbered year. Wis. Stat. § 7.30(4)(c). If the list of appointed election inspectors is emailed in order to comply with the statutory deadline, Administrative Rule EL § 6.04(3) requires that, in addition, the signed original of the document must also be received, either postmarked or delivered by, the filing deadline.

Note to Commission: This language reflects that the appointment of partisan election inspectors is required if properly submitted, and further clarifies that a political party can submit their list electronically as long as the signed original of the document is postmarked or delivered by the filing deadline. The Commission should decide whether to include the above language in the manual.

Potential Motion for Question 7: The Wisconsin Elections Commission directs staff to include the Draft Manual Text above in the Election Administration and Election Day manuals.

Question #8: Municipal clerks adding missing information to the absentee certificate.

Note to the Commission: The Commission is permanently prohibited and enjoined from advising, guiding, instructing, publishing, or otherwise communicating information to Wisconsin municipal clerks and local elections officials that clerks or local election officials have the duty or ability to modify for add information to incomplete absentee ballot certifications. *White et al v. Wis. Elections Comm'n et al* (2022CV1008, October 3, 2022). The Commission should decide how we approach this topic in the manual.

- Option 1 – Include no language on this topic because 1) the manual is intended to provide instructions to clerks on what they should do, not what they can't do; and 2) because the *White* injunction may limit our ability to provide useful, clear instructions to clerks on this topic.

- Option 2 – Include the Draft Manual Text below because it is essentially telling clerks that a court has ruled that we cannot advise that they add information to incomplete absentee ballot certifications.
 - Draft Manual Text: The Commission is permanently prohibited and enjoined from advising, guiding, instructing, publishing, or otherwise communicating information to Wisconsin municipal clerks and local elections officials that clerks or local election officials have the duty or ability to modify for add information to incomplete absentee ballot certifications. *White et al v. Wis. Elections Comm'n et al* (2022CV1008, October 3, 2022).

Potential Motion for Question 8 A: The Wisconsin Elections Commission directs staff to pursue Option 1.

Potential Motion for Question 8 B: The Wisconsin Elections Commission directs staff to include the Draft Manual Text in Option 2 in the Election Administration and Election Day manuals.

Ongoing Information and Potential for Additional Updates in 2024

The list of legislative and court decision updates reflects the status of signed legislation and decisions as of December 7, 2023. As noted above, staff are aware that multiple court cases are still being actively litigated, and that multiple elections-related bills passed by the Legislature are still unsigned by the governor. Staff will continue to work with the legal team as court decisions are issued and pending bills are signed by the governor.

The manuals also discuss processes and policies that are actively going through the administrative rule process. As these potential administrative rules have not been fully promulgated at this time, staff have not edited these topics.

If staff, along with input from county and municipal clerks, determine that an updated version of the manual should be created to reflect new legislation, court decisions, and administrative rules, staff will bring the redlined suggested edits to the Commission for discussion and potential approval.

Conclusion

Once the Commission has decided on individual implementation options, approval of the entirety of the manual is useful so that WEC staff can publish the new manuals with a version date of December 2023. Once the new versions of the manuals have been approved, WEC staff will also send a communication to clerks, which includes a chart similar to the one attached, explaining the changes that have been made and approved by the Commission.

Potential Motion: The Wisconsin Elections Commission directs staff to approve the above approved redlined changes in the Election Administration manual, the Election Day manual, the Caucus manual, and the Absentee Voting in Care Facilities manuals. In addition, the Commission directs staff to edit the manuals consistent with the motions approved above for questions (1) through (8).



Wisconsin Elections Commission

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DATE: For the December 19, 2023, Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Brandon Hunzicker, Staff Attorney

SUBJECT: Draft Election Observer Rule

Introduction:

The Commission refined the draft of the observer rule at meetings on September 7 and November 2. The draft following this memo—in redlined and clean versions—addresses the Commission’s remaining questions. Each draft section that failed to find a consensus at the November 2 meeting is copied below, along with corresponding discussion. These sections appear in gray in the redlined and clean drafts. Though this memo only covers the questions raised at the last meeting and the edits made by staff, the Commission would need to vote to send the rule as a whole to the next stage of promulgation. Though the Commission will have at least two more opportunities to edit this draft rule—once prior to approving the rulemaking order for submission to the Rules Clearinghouse, and again after receiving public comments following an official hearing—staff’s intention is to finalize the content of the draft during this meeting and for the next two reviews to address any drafting or (very unlikely) economic concerns, and then any thoughts or concerns raised by the public during the public hearing and comment period.

Discussion:

This memo first discusses edits made since the November 2 meeting, then the remaining draft sections that need a consensus from the Commission, and finally the next steps that the rule must take toward promulgation. Appendix A is a redlined version showing all edits made by staff and Appendix B is a clean copy. However, both Appendix A and Appendix B contain text in gray. This is the text that has not attained consensus from the Commission, and which is copied in full into this memo for discussion below. Though only certain parts of the draft rule are discussed in this memo, any Commissioner may still raise any concern or suggest any edit to the document. The rule as a whole will require approval for staff to proceed beyond the initial drafting stage.

Edits:

The edits made to the draft observer rule since the last meeting were intended to closely follow from points of consensus reached during the November 2 discussion. However, some interpretation was needed for some of the language, and staff did make several other edits for concision, clarity, and uniformity. It is possible that some edits either misunderstood what reached consensus from the Commission, or, in addressing one issue, created another. This section follows the order and edits contained in Appendix A and will very briefly list some of these

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

changes that should be reviewed. Commissioners should please review all redlines in Appendix A to ensure that all changes are agreeable.

- In § EL 4.02(5), staff changed the word “reports” to “communicates” along with a restrictive “that” to avoid an implication that “reporting to” means “working for.”
- Section EL 4.02(6) received additional edits to address photo IDs and proof of residency documents in one sentence rather than in two different places, which should aid clarity. Additionally, the phrase “but not limited to” was removed following section 1.07(3)(b)2. of the Administrative Rules Procedures Manual (the Admin. Rules Manual) published by the Wisconsin Legislative Council and the Wisconsin Legislative Reference Bureau (“[i]n definitions and in substantive provisions of a rule, ‘including, but not limited to,’ should be avoided because it has the same meaning as ‘including’”).
- In § EL 4.03(1), staff removed the “and/or” formulation and replaced it with an “or . . . or both” following section 1.08(1)(d) of the Admin. Rules Manual.
- For clarity, § EL 4.03(2) was reorganized to include subdivisions as well as paragraphs. Additionally, the second use of the word “observer” was changed to “member of the public intending to exercise the right to observe an election under s. 7.41, Stats.” This change was made to match the language used § EL 4.04(1) and to recognize that a member of the public becomes an observer after signing the observer log.
- The last sentence of § EL 4.03(11), “election officials shall not permit observers to create or transmit a photocopy, photograph, or video of the poll list on election day,” was removed due to the addition of § EL 4.04(7), containing a blanket ban on “create[ing] or transmit[ing] photographs, videos, or audio recordings” except where expressly allowed. Because poll lists are available only at polling places on election day, and because § EL 4.05(1) concerning polling places does not contain an exception to the blanket ban, that activity would already be prohibited. An observer could still look at the list and could request a copy on election day.
- Section EL 4.04(4), concerning questions directed to election officials, matches the language in § EL 4.03(2)(a)1., makes clear that observers are able to ask questions of election officials, and requires the designated election official to explain who questions may be directed to throughout the day. The “timely answers” section was removed following the November 2 discussion. This is an area that Commission guidance could later clarify further by discussing when are reasonable times to answer questions and how election officials can comply with the requirement that observers be able to ask questions.
- In § EL 4.04(10) staff changed the word “government official” to “election official.” Because an observer may be a government official, such as a mayor who is not on the ballot at the election, staff thought that this sentence should be narrowed to election official.
- Section 4.05(3)(b) was edited by staff to attempt to account for the specific type of voter interaction that may occur at a board of absentee ballot canvassers. An individual, who may be a confidential elector, could arrive at the observable location to deposit a ballot or to correct a deficiency on the certificate envelope. This language should allow clerks to make observers temporarily turn off or turn away recording

devices from this interaction. Observers may still observe it just the same as if it happened at a polling place or absentee site. Commission guidance on this point may be very helpful.

- In § EL 4.05(5)b., regarding recounts, staff applied the edits suggested by the Chair during the November 2 meeting. The language now fully incorporates the brief mention of observation in Wis. Stat. § 9.01(3) and exempts petitioners, candidates, interested individuals, and counsel from the observer rule, which should allow clerks to give those individuals the access that they need, including by limiting the number of other observers. There is very little in the remaining language that could be objectionable at this point, especially considering that many other provisions of the observer rule will not be applicable to recounts since there are no voters present, and thus no check-in tables or registration tables. The rule does not prevent recording devices and merely states that other observers are allowed and that there must be at least one observation area. Commission guidance may be able to clarify best practices for clerks in this area as well.

Several other edits were made by staff to comply with the recommendations of the Admin. Rules Manual. Specifically, staff changed many plural nouns to singular nouns if it would not alter the meaning of or add confusion to a sentence. This follows following section 1.05(1)(c) of the Admin. Rules Manual, which states:

Generally, use the singular form of a word and use the plural only when specifically referring to multiples of the word used. Under s. 990.001 (1), Stats., the singular includes the plural, and the plural includes the singular. Do not use “(s)” to indicate that the word may be singular or plural. Do not alternate between using the plural and singular. When regulating classes of people, the obligation to comply with the regulation is on each individual member of the group, not the group as a whole.

Additionally, staff edited prohibition language within the rule to comply with section 1.08(1)(b) of the Admin. Rules Manual, which states:

Use the word “shall” to denote a mandatory or absolute duty or directive. Use the word “may” to denote an optional or permissive privilege, right, or grant of discretionary authority. Avoid use of a negative subject with an affirmative “shall.” The term “No person shall” is incorrect. The correct way to express a prohibition is either “No person may . . .” or “A person may not”

Staff opted for the “No observer may” formulation, but this could be changed if the Commission prefers the alternate formulation.

Sections for Discussion:

Each rule section discussed below received a 3–3 vote during the November 2 Commission meeting. Staff have provided additional thoughts and possibilities regarding these sections. Staff wish to note that the Commission failing to reach an agreement concerning § EL 4.05(2)a. or b. (Section 2 below) would leave the draft text incomplete, and it is imperative that the Commission determine how to address that section. The Commission failing to reach an agreement concerning § EL 4.05(4)d. and e. (Section 4 below) would not necessarily leave the rule incomplete, but would leave significant questions to the realm of guidance, versus creating language with the force of law. Staff suggest taking votes during each discussion in this section.

Section One – Observation Distance Range

First, the last sentence within draft § EL 4.03(4) states that:

- (4) . . . 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.

After contemplating this section after the last meeting, staff does have a concern with this language based on Wis. Stat. § 227.11(2)(a)3., which states that:

A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

Wis. Stat. § 7.41(2) establishes a specific range of between 3 and 8 feet, which likely falls under the “specific standard, requirement, or threshold” language within § 227.11(2)(a)3. Whether a mandatory preference for the low end of a given range when the statute does not contain such a preference could be a violation is unclear, but it is at the very least arguable that this section could violate this statute, and that such a preference would need to appear in statute for the Commission to address it in a rule.

Given this rulemaking authority issue and the fact that the text as written still leaves considerable room for a clerk’s discretion, the staff suggested compromise on this issue is to remove the language from the draft rule, but to include this sentence—replacing “shall” with “should”—in future Commission guidance and training on this rule. It is also relevant that this section would still require clerks to establish observation areas so that “observers [may] readily observe all public aspects of the voting process,” meaning that while a clerk could not violate this section by placing an observation area anywhere within the 3 to 8 foot range, a clerk could still violate this section due to very poor placement of an observer area, such as behind a large obstacle.

Section Two – Observation of Return of Voted Absentee Ballots

Second, the Commission did not select either § EL 4.05(2) a. or b. which state:

- a. An observer shall be permitted to observe the in-person issuing and voting of absentee ballots under s. 6.86(1)(b), Stats., as well as the return of voted absentee ballots during the hours such activities may occur at a municipal clerk’s office whose office is located in a public building, or at an alternate absentee ballot site under s. 6.855, Stats.

and

- b. An observer shall be permitted to observe the in-person issuing and voting of absentee ballots under s. 6.86(1)(b), Stats., during the hours such activities may occur at a municipal clerk’s office whose office is located in a public building, or at an alternate absentee ballot site under s. 6.855, Stats. The return of voted by-mail absentee ballots to a municipal clerk’s office or

alternate site is not covered by this chapter unless it occurs in the same location and during the same hours as the issuing and voting of absentee ballots.

These options each attempt to address a question that many members of the Election Observer Advisory Committee felt was very significant. The easiest solution, which is not to say the best, would be for the Commission to instead opt to not address the question. Instead of providing clear guidance to municipalities concerning whether the in-person return of “by-mail” absentee ballots to clerk’s offices and alternate sites, if applicable, is a process that should fall under the Commission’s observer rule, the Commission could adopt language that mirrors the statute directly and retains the unclear language at issue. See Wis. Stat. § 7.41(1). Staff suggest that as a last resort, the Commission could agree to language such as:

An observer shall be permitted to observe in the office of any municipal clerk whose office is located in a public building or at an alternate site under s. 6.855, Stats., during the hours that absentee ballots may be cast in those observable locations.

This language would yield a complete and statutorily compliant rule, though an unhelpful one.

The issue in the statutory language, which option a. reads broadly and option b. reads narrowly, is the word “cast.” “Cast” is used throughout Chapters 5 to 10 and 12 of the Wisconsin Statutes, but it is not individually defined. Before a vote is counted, it has been cast, and not all votes that are cast will be counted, such as overvotes, but only a few statutes shed light on precisely *when* a ballot is cast.

Part of the issue is that the cross reference to Wis. Stat. § 6.855 does not provide clarity because it uses different terms, stating that an alternate site may be used as “the location from which electors of the municipality may request and vote absentee ballots and to which voted absentee ballots shall be returned by electors for any election.” However, on balance and after combing through each use of the word “cast” in Chapters 5 to 10 and 12, the most consistent use of the word “cast” means something like, “to make a choice or choices on a ballot and to have the ballot marked accordingly.” Overall, this meaning would support option b. because this activity does not take place when merely returning a ballot in a certificate envelope, which generally is described using the word “return.” Staff provide a number of relevant examples below.

Wis. Stat. § 5.02(24w) provides that “[v]oting machine” means a machine which serves in lieu of a voting booth and which mechanically or electronically records the votes cast by electors, who depress levers or buttons located next to the choices listed on a ballot to cast their votes,” which suggests that “to cast” a vote means to select a choice on a ballot. Here and elsewhere, there is a distinction between the physical act of marking the ballot or recording the vote and the decision of an elector to cast a vote. This would tend to support the reading in option b. because voters voting in-person absentee in a clerk’s office or alternate site always select their choices on the ballots in those locations, whereas “by-mail” absentee voters never do.

Also arguably supporting this reading, though it should be noted that this statute applies only to polling places, is Wis. Stat. § 5.35(4), which states in part that: “[o]nly the proper election officials, persons observing the proceedings under s. 7.41, persons assisting voters under s. 6.82 (2) and electors receiving, preparing or depositing their ballots or casting their votes on the machines are permitted in the voting area.” This statute also connects “casting” a ballot with filling in choices using a voting machine and appears to distinguish that activity from “preparing or depositing” the ballot, though staff must add that it is difficult to see what distinction is intended

between a voter “preparing” a ballot and “casting” a vote. Notably, these first two examples refer to casting votes, whereas the language within § 7.41 refers to casting ballots.

Similar language but with “ballot” can be found in Wis. Stat. § 10.02(3)(a), which states that: “[u]pon being permitted to vote, the elector shall retire alone to a voting booth or machine and cast his or her ballot.” Again, this seems to indicate that the casting of a vote or a ballot is the decision and action of selecting a vote for a contest or contests on a ballot.

Potentially support of option a. is language such as in § 5.91(16), which states: “[the voting equipment] 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.” This language suggests that votes may be changed and spoiled ballots replaced before taking the final action of casting the ballot.

However, clearer language supports the narrower meaning of cast. Wis. Stat. § 6.86(1)(b) states that: “[t]he municipal clerk or an election official shall witness the certificate for any in-person absentee ballot cast.” This suggests that the casting of the ballot occurs before the witness signs the certificate envelope. Wis. Stat. § 6.86(2)(b) appears to distinguish between the casting and returning of a ballot, and states that, “[i]f an elector fails to cast and return an absentee ballot received under this subsection, the clerk shall notify the elector by 1st class letter or postcard that his or her name will be removed from the mailing list unless the clerk receives a renewal of the application within 30 days of the notification.”

Likely the most important example is in Wis. Stat. § 6.87(4)(b)1., which is the procedural statute for absentee voting, which states in part that “. . . [t]he absent elector, in the presence of the witness, shall mark the ballot in a manner that will not disclose how the elector’s vote is cast. . . . The envelope shall be mailed by the elector, or delivered in person, to the municipal clerk issuing the ballot or ballots.” This suggests that the casting of the absentee ballot is what occurs in the presence of the witness, and after the certificate has been signed the statute uses the words “mailed” and “delivered” when it comes to returning the ballot.

“Cast” sometimes seems to mean all votes that have been cast and counted rather than merely chosen on a ballot by an elector, such as in Wis. Stat. § 7.51(4)(a), which states that, “[t]he tally sheets shall state the total number of votes cast for each office and for each individual receiving votes for that office.” However, there are many statutes that separate these meanings, such as Wis. Stat. § 7.50, the statute that explains how election officials determine which votes that have been cast may be counted when there is an issue, which states in subsection (1)(a) that, “only ballots provided by the person authorized to have them printed shall be cast and counted in any election.”

Wis. Stat. § 7.51(1) makes a distinction between casting and receiving a ballot, and states in part that:

The canvass, whether conducted at the polling place or at a central counting location, shall continue without adjournment until the canvass of all ballots cast and received on or before election day is completed and the return statement is made or, in municipalities where absentee ballots are canvassed under s. 7.52, until the canvass of all absentee ballots cast and received on or before election day is completed and the return statement for those ballots is made.

This indicates that some ballots that have been cast will not be received by an election official.

Another particularly relevant statute is Wis. Stat. § 10.01(e), which describes the required content of the Type E notice and states in part that: “[t]he type E notice shall state . . . the office hours during which an elector may cast an absentee ballot in the municipal clerk’s office or at an alternate site under s. 6.855.” This has been taken to mean in-person absentee voting. One potential solution for the Commission could be to tie the election observer rule requirement explicitly to what a clerk has provided in this section, though that would very likely have the same effect as option b.

It may also be relevant to note that the closest instance of the use of “cast” that appears in § 7.41(2) may be in Wis. Stats. §§ 12.03 and 12.035 prohibiting electioneering and distributing election-related material at certain times and locations. Wis. Stat. § 12.03(1) states that: “[n]o municipal clerk or employee of the clerk may engage in electioneering in the clerk’s office or at the alternate site under s. 6.855 during the hours that ballots may be cast at those locations.” This section does not clarify “cast,” but a broad reading of very similar language would here dramatically expand the amount of time that speech would be restricted in these locations, which could come under constitutional scrutiny.

Option a. would expand the time range in which observation may occur in a clerk’s public office or alternate site from the 14 days before an election to at least 21 days before state-only elections and 47 days for any election containing a federal contest. *See*, Wis. Stat. § 7.15(1)(cm). It would require clerks to maintain observer logs and to have at least one area prepared for observers starting from that time and it would include a great deal of time when a clerk is not focused solely on voting and may only receive a few ballots per day, if any.

Though staff ultimately found a clear enough meaning of “cast” to suggest option b. or a similar formulation, another aspect of option a. should be mentioned. If there are individuals who wish to see electors or agents returning absentee ballots, in particular due to concerns that absentee ballots are being returned improperly, and the observer rule does not apply, that means that all of the protections for voters found in the observer rule do not apply, and clerks would be left entirely to rely on their own municipal authority to regulate their offices and alternate sites, if applicable. If the observer rule applied, observers could still observe and write down any behavior that they believe is improper, but they would need to sign-in with the clerk and could not confront or record videos of voters. Overall, needing to maintain an observer log and observer area for a longer period would need to be balanced against the transparency for observers and rules for observer conduct. Staff do not believe that these concerns can outweigh the lack of a broad meaning of “cast” found in Wis. Stat. § 7.41 and described in detail above. However, staff strongly believe that the Commission should issue guidance to clerks concerning this issue.

Section Three – Observation of Clerk Processing of Received Voted Absentee Ballots

Third, the Commission did not agree over the draft language of § EL 4.05(2)c., which states that:

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

The analysis of this section is similar to that described above for the word “cast.” Observers may be present when allowed by this statute and related statutes, and there is no language specifically connecting this activity to observation. Wisconsin Statute § 6.88(1) & (2) likely clarifies this situation by describing the process for securing

and delivering absentee ballots that are received by the municipal clerk. When an absentee ballot, which has necessarily already been cast as described above, is received by mail, there is no provision allowing observers to observe the process of securing the ballot.

However, the “public aspects of the voting process” in a clerk’s office or alternate site, again assuming option b. or similar is chosen, likely should include the processes described in § 6.88(1), which involves “enclosing [the ballot], unopened in a carrier envelope which shall be securely sealed and endorsed with the name and official title of the clerk” along with a description. The process of applying, receiving, casting, witnessing, and returning an absentee ballot are all observable when occurring in-person at a clerk’s office or alternate site. It is likely that the public aspects of the voting process should also include whatever next step the clerk takes after receiving a voted absentee ballot from a voter in person. After receiving the voted absentee ballot, the statute directs the clerk “enclose [the ballot] in a carrier envelope” before ensuring that the carrier envelope is subsequently securely sealed. However, any later steps the clerk takes after observation hours have ended, including securely sealing the carrier envelope(s) for the day, would not be observable by the public. Likewise, there are parts of § 6.88, such as the delivery of the package containing all absentee ballots to the election inspectors on election day, that are not covered by the observer statute. Staff suggest refining this language to cover only the enclosing of an in-person absentee ballot within the carrier envelope at an observable location such as: “an observer shall be permitted to observe the initial **enclosing** of an absentee ballot that is issued voted in-person in an observable location within the carrier envelope.”

Section Four – Observation in Nursing Homes or Certified Care Facilities

Fourth, the Commission sought an alternative to draft sections EL 4.05(4)d. and e., which state:

- d. An observer shall be permitted to observe the process of absentee ballot distribution in the common areas of the home or facility. Observers shall not be permitted to observe a voter or the special voting deputies providing assistance to a voter, filling out a ballot or expressing which candidates or referenda the voter selects.

and

- e. If voting occurs outside of the common areas of a facility served by special voting deputies, an observer shall not be permitted to enter a voter’s private room, however, the observers shall be permitted to observe such voting from a common area in accordance with sub. (4)(d).

The Commission asked staff to draft two versions to replace the language above, one in which a voter is asked whether they wish to permit any observers to come into their room and, if not, the observer would observe from the voter’s doorway, and another in which if the voter asks any observers to leave their room, they must leave.

Staff suggest that the first sentence of d., “[a]n observer shall be permitted to observe the process of absentee ballot distribution in the common areas of the home or facility,” be separated into its own sub-section and approved. Staff do not believe that any Commissioner disagreed with this aspect of the language.

Staff next suggest that the second sentence of d., “[o]bservers 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,” be replaced with language similar to the current Commission guidance covering this aspect, which was suggested by the Chair on November 2. This language should universally cover any voting occurring in an SVD-served facility, regardless of where it occurs. Staff suggest that the following be approved in its own sub-section:

The Special Voting Deputies may not permit an observer to hear any conversation between the elector and an individual who is assisting the elector in marking the ballot, whether the individual assisting the elector is a deputy or another individual. 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.

It should be noted that the 3-to-8-foot requirement in § EL 4.03(4) would generally apply to the check-in process except as necessary to preserve a secret ballot as described above and as provided in the options below.

For the two options, one with a positive and one with a negative formulation, staff provide the following for consideration and discussion:

If voting occurs outside of the common areas of a facility served by special voting deputies, an observer shall be permitted to enter a voter’s private room unless the voter requests that the observers not be permitted. If the observers enter the voter’s private room, the Special Voting Deputies shall maintain the observation area as described in section EL 4.03, and shall maintain the secret ballot as provided in par. [. . .]. If the voter requests that the observers not enter the voter’s private room, the observers shall be permitted to observe the public aspects of the voting process from a common area in accordance with sub. [. . .].

or

If voting occurs outside of the common areas of a facility served by special voting deputies, the Special Voting Deputies shall ask a voter if any observers may be permitted to enter the voter’s private room. If the voter does not state or clearly indicate that the observers may enter the voter’s private room, the observers shall only be permitted to observe the public aspects of the voting process from a common area in accordance with sub. [. . .]. If the voter states or clearly indicates that an observer may enter the voter’s private room, the Special Voting Deputies shall maintain the observation area as described in section EL 4.03 and shall maintain the secret ballot as provided in par. [. . .].

Next Steps:

The next stage of promulgation includes a recommended review by the Legislative Reference Bureau (LRB), posting the draft text on the WEC and Wis. Admin. Rules websites and accepting comments for 14 days as a means of gathering data for the economic impact statement, writing the economic impact statement, fiscal estimate, and rulemaking order. If the Commission approves a draft at the December 19 meeting, staff will post the proposed rule and send the draft text to LRB for comments. Staff will also prepare draft documents to the extent possible and bring the edits and comments from LRB and the WEC and Wis. Admin. Rules website back to the Commission, possibly as early as the Jan. 9 ballot access meeting. Between January 9 and the February 8

Commission meeting, staff intend to finalize the economic impact statement in coordination with any local government units that desire to participate, draft a rulemaking order, and take all steps necessary for the Commission to approve a notice of submission of the proposed rule to the Rules Clearinghouse on February 8.

Recommended Motion:

The Commission approves the language of the draft observer rule as modified during this meeting and directs staff to: redraft the text into rulemaking order format; submit the draft text to the Legislative Reference Bureau for editing; post the draft text to the agency and Wis. Admin. Rules websites for interested persons to comment concerning any economic impacts; and take other preliminary steps in the rulemaking process as needed. Staff shall then bring all comments and preliminary drafts to the Commission during the next available meeting.

Appendix A

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

EL 4.02 Definitions. In this chapter:

- (1) “Accessibility reviewer” means an individual authorized by the Commission who monitors compliance with s. 5.25(4)(a), Stats. ~~An a~~Accessibility reviewers ~~are-is~~ not an observers under this chapter.
- (2) “Commission” means the Wisconsin Elections Commission. ~~An f~~individuals authorized by the Commission to conduct any election related activities ~~at an observable location are not observers~~ is an election official under in this chapter.
- (3) “Chief inspector” means the chief inspector at a polling place, under s.7.30(6)(b), Stats.
- (4) “Clerk” means the municipal clerk, or the executive director of a municipal board of election commissioners, under s. 5.02(10), Stats.
- (5) “Communications media member” means an individuals who ~~identify themselves~~ communicates to the designated election official ~~as seeking that the individual seeks~~ to record or report information ~~at observable locations~~ outside ~~of~~ the voting area. Except as provided in s. EL 4.07(3), a communications media member is not an observer under this chapter. Communications media individuals are not observers under this chapter.
- (6) “Confidential information” means information that is not part of the public aspects of the voting process, including ~~but not limited to an~~ operator’s license or identification- card numbers issued by the Wisconsin Department of Transportation, a birth dates, a Ssocial Ssecurity numbers or any portion thereof, accommodation information on a voter

registration form, ~~information on photo IDs as defined by s. 5.02(6m) Stats., information on proof of residency documents as defined by s. 6.34(3) Stats.,~~ information concerning a confidential elector~~s~~, guardianship information, a voted ballot~~s~~, and a communication~~s~~ 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.

- (7) “Designated election official” means the chief inspector, if the observable location is a polling place, or the clerk, or any other election official designated by a chief inspector or clerk to carry out the election responsibilities under this chapter. At a facility served by special voting deputies, designated election official means the special voting deputies. At a recount, designated election official means the board of canvassers.
- (8) “Electioneering” has the meaning given in s. 12.03(4), Stats.
- (9) “Election official” means an individual who is charged with any duties relating to the conduct of an election.
- (10) “Inspector” or “election inspector” means ~~any~~ individual appointed pursuant to s. 7.30, Stats., to conduct an election.
- (11) “Member of the public” means ~~any~~ individual, excluding an election official~~s~~ ~~and any~~ candidate appearing on the ballot at that observable location~~s~~, or a registered write-in candidate for an office voted on at that observable location.
- (12) “Observable location” means a polling place, a municipal clerk’s office that is located in a public building, an alternate absentee ballot site, a meeting location of a board of absentee ballot canvassers, a facility served by special voting deputies, a central

count location, or a recount location during those hours specified in this chapter as permitting observation.

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

(14) “Observer” means ~~any~~ member of the public who has signed in as an observer at ~~the~~ an observable location and is present at ~~any~~ observable location to observe an election or the absentee ballot voting process.

(15) “Organization” means ~~any~~ organization represented by an observer at an observable location under this chapter and shall not be construed to be limited to political parties, candidates, or campaigns.

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

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

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

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

EL 4.03 Conduct of election officials.

(1) ~~If there are no alternatives d~~Due to physical limitations ~~and 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) 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., ~~observers~~ to enter the required information under EL 4.04(1) into the observer log and shall ensure that the photo ID presented reasonably resembles the observer and the name entered. ~~The designated election official shall then inform the observers~~

a) After completing the log, an observer shall be offered a summary of the rules governing election observers at the observable location, and be informed of the following:

i. To whom at the observable location ~~they the observer~~ may direct questions during the day, ~~make available to the observer a summary of the rules governing election observers at the observable location,~~

ii. How ~~explain how observers the observer~~ may move between observation areas throughout the day, and explain

iii. The location where a ballot may be remade, if applicable, ~~and then direct the observer.~~

a)b) After the requirements of par. (a) have been met, an observer shall then be directed to an area of the observable location established by the designated election official as an observation area. ~~An o~~Observer logs shall be returned to the

municipal clerk after the election activities at an observable location have concluded.

~~(2)~~(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.

~~(3)~~(4) The designated election official shall establish at least one observation area to enable observers to readily observe all public aspects of the voting process during the election without disrupting the voting process. An observation area shall be not less than 3 feet nor more than 8 feet from each table at which electors announce their names and addresses to be issued voter numbers or at which election officials announce the name of absentee voters; not less than 3 feet nor more than 8 feet from each table at which electors may register to vote; and not less than 3 feet nor more than 8 feet from each table at which election inspectors remake any ballots. The 3-foot distance described in this paragraph shall be applied unless it would interfere with voting activities due to the physical limitations of the observable location.

~~(4)~~(5) An election official shall repeat, once and then at the election official's discretion, a name or address upon request.

~~(5)~~(6) The designated election official shall position ~~the~~an observer area to minimize contact between observers and voters and election officials.

~~(6)~~(7) ~~All~~An observation areas shall be accessible to observers with disabilities and shall include sufficient space for mobility equipment, chairs, or other disability aids brought by ~~the~~an observer.

(7)(8) The designated election official shall permit an observers access to any available chairs within the observable location and with the same access to restrooms available to election officials at the observable location.

(8)(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.

(9)(10) ~~As time permits, In a manner established by the designated election official,~~ election officials shall allow an observers to observe absentee ballot certificate envelopes that have been set aside to be rejected ~~in a manner established by the designated election official.~~

(10)(11) ~~An e~~Election officials shall permit an observers to observe the poll lists, excluding the confidential portions of the lists maintained under ss. 6.36(4) and 6.79(6), Stats., at such times as election officials determine that doing so does not interfere with or distract electors under s. 5.35(5) Stats., and does not interfere with the conduct of the election under s. 6.45(1m), Stats. ~~Election officials shall not permit observers to create or transmit a photocopy, photograph, or video of the poll lists on election day.~~

(11)(12) ~~No e~~Election officials ~~shall~~ may not permit an observers to handle an original version of any official election document.

(12)(13) ~~No e~~Election officials ~~shall~~ may not permit an observers to observe any confidential information.

(13)(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, ~~who shall proceed under this section~~.
- b) If the offending observer who is ordered to depart under subpar. (a) declines or otherwise fails to comply with the designated election official's order to depart, the official may summon law enforcement to remove the offending observer. The designated election official shall provide a written order to the observer which includes the reason for the order and the signature of the designated election official.
- c) If the designated election official who has issued an order to an observer to depart has been appointed from a list provided by a political party under s. 7.30 (4) Stats. an election official representing the opposite political party than the designated election official, if available timely on a timely basis ~~available~~, shall be offered the opportunity to sign the written order, and to note any concurrence or disagreement with that order. Failure of that election official to sign the written order, or the unavailability of that official to review the order in a timely fashion, does not affect the enforceability of that order.

- d) If an observer is ordered to leave an observable location, the incident shall be recorded and the designated election official shall, within 60 days of the incident, provide to the Commission a copy of the order and any other documentation of the incident. The designated official may use a copy of an inspectors' statement or other incident log to comply with this subsection.

EL 4.04 Conduct of observers.

- (1) ~~Any~~ member of the public intending to exercise the right to observe an election under s. 7.41, Stats., shall notify the designated election official of that intent upon entering the observable location. ~~An observer 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 ~~o~~observer shall comply with the designated election official's commands or shall be subject to removal from the ~~polling place~~ 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 ~~shall may~~ direct ~~any~~ questions to the designated election official or other election officials as determined by the designated election official and communicated to observers when they sign the observer log pursuant to s. EL 4.03(2)(a)1. ~~All questions shall be answered by the designated election official in a timely manner.~~

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

~~(6) An~~ No observer ~~shall~~ may not 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.

~~(6)(7)~~ No observer ~~may including but not limited to any abuse of the ability to~~ create or transmit photographs, videos, or audio recordings of any observable location except as allowed expressly permitted by this chapter, ~~that, in the discretion of the designated election official, threatens the orderly conduct of the election or interferes with voting or registration.~~

~~(7)(8)~~ An ~~o~~ Observer shall keep conversation to a minimum and shall conduct whatever conversation is necessary at a low enough volume to minimize distraction to electors and election officials.

~~(8)(9)~~ No observer ~~may~~ An observer shall not engage in electioneering as defined in s. 12.03, Stats., or the posting or distribution of election-related material as defined in s. 12.035, Stats.

~~(9)(10)~~ No observer ~~may~~ An observer shall not display the name or likeness of, or text related to, a candidate, party, or referendum ~~group~~ position appearing on the ballot, or display text which describes, states, or implies that the observer is an election governmental official.

~~(10)(11)~~ No observer ~~may~~ An observer shall not engage in any conversation concerning a candidate, party, or question appearing on the ballot.

~~(11)~~(12) ~~No observer may~~ ~~An observer shall not~~ 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.

~~(12)~~(13) ~~No observer may~~ ~~An observer shall not~~ initiate a conversation with a voter. If a voter initiates a conversation with an observer inside an observable location, except as allowed by subsection (13), the observer may briefly respond to the voter if such response does not disturb other voters or the orderly administration of the election. The observer may also refer the voter to an election official for any election related questions, and briefly explain to the voter that the observer is observing the election and is not an election official. A brief wave or greeting to an individual known to the observer ~~shall~~ does not constitute a violation of this section.

~~(13)~~(14) An observer may communicate ~~as needed~~ with the designated election official and any other election officials at the discretion of the designated election official.

~~(14)~~(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 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 ~~An observer shall not~~ create or transmit photographs, videos, or audio recordings of the interior of the observable location until the public canvassing meeting has begun.

(2) MUNICIPAL CLERK OFFICE OR ALTERNATE SITE.

- a. An observer shall be permitted to observe the in-person issuing and voting of absentee ballots under s. 6.86(1)(b), Stats., as well as the return of voted absentee ballots during the hours such activities may occur at a municipal clerk's office whose office is located in a public building, or at an alternate absentee ballot site under s. 6.855, Stats.
- b. An observer shall be permitted to observe the in-person issuing and voting of absentee ballots under s. 6.86(1)(b), Stats., during the hours such activities may occur at a municipal clerk's office whose office is located in a public building, or at an alternate absentee ballot site under s. 6.855, Stats. The return of voted by-mail absentee ballots to a municipal clerk's office or alternate site is not covered by this chapter unless it occurs in the same location and during the same hours as the issuing and voting of absentee ballots.
- c. An observer shall be permitted to observe the preparations for the transfer of voted absentee ballots to a polling place, central count location, or board of absentee ballot canvassers.

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

(3) BOARD OF ABSENTEE BALLOT CANVASSERS.

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

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

~~e.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 clerk or board of election commissioners no later than the close of business on the last business day prior to the visit to the facility.

- b. An observer shall be permitted to accompany the special voting deputies during the hours when the deputies will be administering voting in accordance with s. 6.875, Stats.
- c. An observer shall comply with any requirements imposed on visitors by a facility served by special voting deputies.
- d. An observer shall be permitted to observe the process of absentee ballot distribution in the common areas of the home or facility. Observers shall not be permitted to observe a voter or the special voting deputies providing assistance to a voter, filling out a ballot or expressing which candidates or referenda the voter selects.
- e. If voting occurs outside of the common areas of a facility served by special voting deputies, an observer shall not be permitted to enter a voter's private room, however, the observers shall be permitted to observe such voting from a common area in accordance with sub. (4)(d).

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

(5) RECOUNT.

- a. An observer shall be permitted to observe during all hours when a recount is occurring.
- b. The petitioner, all opposing candidates, ~~and associated interested persons and their counsel~~, as described in 9.01(3), Stats., are not subject to the limitations of this chaptershall be allowed to observe and may not be limited in number under Sec. 4.03(1).

- c. The designated election official shall establish at least one area in which observers may observe the proceedings.
- d. An observer may create or transmit photographs, videos, or audio recordings of the observable location.

(6) CENTRAL COUNT.

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

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

- ~~e.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 ~~it-such action~~ is disruptive or interferes with the administration of the election.

4.07 Communications Media

~~(1) A~~ communications media ~~individuals-member~~ shall identify ~~themselves-him or herself~~ and any organization ~~they-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, and~~

~~provided the cameras do not or that~~ disrupts or interferes with voting or ~~disrupt~~ 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.

~~(1)(3) _____ Communications media may not enter the voting area unless they are voting, assisting a voter, or observing under this chapter. A communications media member may~~ act as an observer, but when so doing is subject to the provisions of this rule.

Appendix B

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

EL 4.02 Definitions. In this chapter:

- (1) “Accessibility reviewer” means an individual authorized by the Commission who monitors compliance with s. 5.25(4)(a), Stats. An accessibility reviewer is not an observer under this chapter.
- (2) “Commission” means the Wisconsin Elections Commission. An individual authorized by the Commission to conduct any election related activities is an election official in this chapter.
- (3) “Chief inspector” means the chief inspector at a polling place, under s.7.30(6)(b), Stats.
- (4) “Clerk” means the municipal clerk, or the executive director of a municipal board of election commissioners, under s. 5.02(10), Stats.
- (5) “Communications media 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.
- (6) “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 Transportation, a birth date, a Social Security number or any portion thereof, accommodation information on a voter registration form, information concerning a confidential elector, 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.

- (7) “Designated election official” means the chief inspector, if the observable location is a polling place, or the clerk, or any other election official designated by a chief inspector or clerk to carry out the election responsibilities under this chapter. At a facility served by special voting deputies, designated election official means the special voting deputies. At a recount, designated election official means the board of canvassers.
- (8) “Electioneering” has the meaning given in s. 12.03(4), Stats.
- (9) “Election official” means an individual who is charged with any duties relating to the conduct of an election.
- (10) “Inspector” or “election inspector” means an individual appointed pursuant to s. 7.30, Stats., to conduct an election.
- (11) “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.
- (12) “Observable location” means a polling place, a municipal clerk’s office that is located in a public building, an alternate absentee ballot site, a meeting location of a board of absentee ballot canvassers, a facility served by special voting deputies, a central count location, or a recount location during those hours specified in this chapter as permitting observation.

- (13) “Observe” means to see or hear and does not include physically handling election related materials or materials provided by the voter.
- (14) “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.
- (15) “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.
- (16) “Posting and distribution of election-related material” has the meaning given in s. 12.035, Stats.
- (17) “Public aspects of the voting process” means the election activities that take place at an observable location during those hours specified in this chapter as permitting observation, except for inspection of confidential materials as defined in sub. (6).
- (18) “Representing the same organization” means individuals who were deployed, assigned, trained by, or who identify as representing the same organization.
- (19) “Voting Area” is that area at an observable location where electors receive, prepare, or deposit their ballots, or where electors cast their votes on a voting machine.

EL 4.03 Conduct of election officials.

- (1) 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) 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 EL 4.04(1) into the observer log and shall ensure that the photo ID presented reasonably resembles the observer and the name entered.

a) After completing the log, an observer shall be offered a summary of the rules governing election observers at the observable location, and be informed of the following:

- i. To whom at the observable location the observer may direct questions during the day,
- ii. How the observer may move between observation areas throughout the day, and
- iii. The location where a ballot may be remade, if applicable.

b) After the requirements of par. (a) have been met, an observer shall then be directed to an area of the observable location established by the designated election official as an observation area. An 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. The 3-foot distance described in this paragraph shall be applied unless it would interfere with voting activities due to the physical limitations of the observable location.
- (5) An election official shall repeat, once and then at the election official's discretion, a name or address upon request.
- (6) The designated election official shall position 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.
- (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. 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 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.

- (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) 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 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., as well as the return of voted absentee ballots during the hours such activities may occur at a municipal clerk's office whose office is located in a public building, or at an alternate absentee ballot site under s. 6.855, Stats.
- b. An observer shall be permitted to observe the in-person issuing and voting of absentee ballots under s. 6.86(1)(b), Stats., during the hours such activities may

occur at a municipal clerk's office whose office is located in a public building, or at an alternate absentee ballot site under s. 6.855, Stats. The return of voted by-mail absentee ballots to a municipal clerk's office or alternate site is not covered by this chapter unless it occurs in the same location and during the same hours as the issuing and voting of absentee ballots.

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

(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 clerk or board of

election commissioners no later than the close of business on the last business day prior to the visit to the facility.

- b. An observer shall be permitted to accompany the special voting deputies during the hours when the deputies will be administering voting in accordance with s. 6.875, Stats.
- c. An observer shall comply with any requirements imposed on visitors by a facility served by special voting deputies.
- d. An observer shall be permitted to observe the process of absentee ballot distribution in the common areas of the home or facility. Observers shall not be permitted to observe a voter or the special voting deputies providing assistance to a voter, filling out a ballot or expressing which candidates or referenda the voter selects.
- e. If voting occurs outside of the common areas of a facility served by special voting deputies, an observer shall not be permitted to enter a voter's private room, however, the observers shall be permitted to observe such voting from a common area in accordance with sub. (4)(d).

(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.

- 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.



Wisconsin Elections Commission

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DATE: For the December 19, 2023, Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Angela O'Brien, Staff Attorney

SUBJECT: Wis. Stat. § 5.06 Complaints
Matt Roeser v. Celestine Jeffreys (EL 22-37)
Eugene Wojciechowski v. Rebecca Grill (EL 22-58)
Dawn M. Martin v. Rebecca Grill (EL 23-38)

Introduction

Pursuant to the Commission's delegation of authority, Commission staff have prepared two draft decision letters for three complaints under § 5.06. The first decision letter would resolve Matt Roeser v. Celestine Jeffreys (EL 22-37). The second decision letter would resolve both Eugene Wojciechowski v. Rebecca Grill (EL 22-58) and Dawn M. Martin v. Rebecca Grill (EL 23-38) because both complaints were brought against the same Respondent for the same alleged conduct and statutory violations. The Commission Chair authorized both complaints to be resolved in the same decision letter on June 12, 2023.

On February 27, 2020, the Commission approved a Delegation of Authority to the Commission Administrator that includes authority for the Administrator to issue compliance review orders under the provisions of Wis. Stat. § 5.06 and Wis. Admin. Code Chapter EL 20. Under the Delegation of Authority, if two or more Commissioners ask the Administrator to request a special meeting regarding a § 5.06 draft decision, the Administrator shall discuss with the Chair to determine whether to hold a special meeting prior to the release of the decision. Provision (1)(a)(iv) of the Delegation of the Authority constitutes a retention of authority by the Commission when two or more Commissioners choose to exercise it. A copy of the current Delegation of Authority is included for reference as **Attachment A**.

On November 18, 2023, two Commissioners requested that these § 5.06 complaints be discussed and decided by the whole Commission during a meeting. The Chair accordingly determined that the complaints would be added to the agenda for the scheduled December 19, 2023, Commission meeting. Although the Commission is vested with discretionary authority to conduct a hearing in the manner described by Ch. 227, it has not chosen to exercise that authority to resolve these three complaints at this time. Wis. Stat. § 5.06(1); EL § 20.06(1).

Authority of Administrator

The Commission has delegated authority to the Administrator, upon consultation with the Commission Chair, to issue compliance review orders under Wis. Stat. § 5.06. In consultation with the Commission Chair, the

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

Administrator has accordingly prepared the enclosed § 5.06 complaint decision letters for the Commission’s consideration and discussion.

If the Commission disagrees with the analysis, in whole or in part, of the enclosed decision letters, or it wishes to provide edits or feedback, it has the option to directly issue the decision letters itself pursuant to its statutory authority under § 5.06(6), or to direct staff to make changes pursuant to the Delegation of Authority. To do so, the Commission would need to vote to override the Delegation of Authority with respect to these three complaints. A vote to override the Delegation of Authority would be an action requiring the affirmative vote of at least two-thirds of the members. Wis. Stat. § 5.05(1e).

Pursuant to the Delegation of Authority, which was approved by and is reviewed annually by the Commission, the Commission has directed the Administrator to issue compliance review orders under 5.06. Based on past practice, the Administrator has conferred with the Commission Chair prior to issuing the compliance review orders under the Delegation of Authority. The Administrator must follow the Delegation of Authority absent an override of that delegation by the Commission. If the Commission does not vote to override the Delegation of Authority with respect to these three complaints, the Commission Chair and the Administrator will confer and issue the decision letters that were prepared pursuant to the Delegation of Authority.

Discussion

Pursuant to the Commission’s retained authority under the Delegation of Authority, Commission staff received submitted comments and input from two Commissioners regarding the merits of these complaints. A summary of those considerations is provided below for the Commissioners to discuss.

Matt Roeser v. Celestine Jeffreys (EL 22-37)

- Whether a municipal clerk has an explicit or implicit duty to question a voter who is attempting to return more than one voted absentee ballot in person to determine whether they are assisting an individual with a disability, or whether a voter must affirmatively state that they are assisting another individual.
- If an individual returning a ballot for a voter indicates or says that the voter is “sick,” whether the municipal clerk can ask any follow-up questions to determine whether the voter’s sickness causes the voter to be disabled and therefore unable to return their ballot.
- Whether the decision letter in this complaint should incorporate, reference, or modify previous Commission guidance distributed in a clerk memo from September 7, 2022, specifically the suggested questions on Pgs. 1-2. A copy of this clerk memo is attached for reference as **Attachment B**.

Eugene Wojciechowski v. Rebecca Grill (EL 22-58) & Dawn M. Martin v. Rebecca Grill (EL 23-38)

- Whether a municipal clerk has an explicit or implicit duty under statute or caselaw to require or ask a voter to produce proof of photo identification when returning their voted absentee ballot in person to the office of the municipal clerk.
- Whether state law prohibits a municipal clerk from asking voters to show proof of photo ID upon the in-person return of their voted absentee ballot.

- Whether a municipal clerk is permitted to mark an absentee ballot envelope in any way to indicate that a voter has either refused or declined to provide proof of photo identification upon the in-person return of their voted absentee ballot.
- Whether the decision letter in this complaint should incorporate, reference, or modify previous Commission guidance distributed in a clerk memo from September 7, 2022, specifically the suggested questions on Pgs. 1-2. A copy of this clerk memo is attached for reference as **Attachment B**.

Possible Motion 1: The Commission chooses to override the Delegation of Authority for the Administrator to issue compliance orders under the provisions of Wis. Stat. § 5.06 for the following complaints: Matt Roeser v. Celestine Jeffreys (EL 22-37); Eugene Wojciechowski v. Rebecca Grill (EL 22-58); and Dawn M. Martin v. Rebecca Grill (EL 23-38). This motion is specific to these three complaints only and is not intended to modify or otherwise alter the general Delegation of Authority that the Commission authorized on February 27, 2020.

Possible Motion 2: The Commission directs staff to edit and revise the decision letters consistent with its discussion. Once the agreed-upon changes have been made, the Commission chooses to exercise its authority pursuant to Wis. Stat. § 5.06(6) to summarily decide these complaints.



Wisconsin Elections Commission

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Pursuant to the Commission Administrator's role as agency head and the State's chief election official, the Wisconsin Elections Commission on February 27, 2020 delegated the authority described below to its Administrator:

1. The following authority is delegated to the Administrator subject to the requirement that before it is exercised, the Administrator consult with the Commission Chair to determine whether a special meeting is conducted before action is taken:
 - a. To issue compliance review orders under the provisions of Wis. Stat. § 5.06. Prior to compliance review orders being issued, the following actions shall be taken:
 - i. Commission staff shall provide to Commissioners the parties' filings as they are received and post the filings on the Commission's website.
 - ii. If time permits, as determined by the Administrator in consultation with the Chair, staff shall provide draft decisions to all Commissioners prior to their issuance. The Administrator and Chair shall determine whether it is feasible to permit Commissioners to submit comments regarding the draft decision given statutory and administrative deadlines, and the amount of time allowed to submit comments.
 - iii. If time permits, Commissioners who wish to comment on the draft decision may contact the Administrator but shall not discuss the case with other Commissioners, except as allowed by the open meeting law. The Administrator shall determine whether any comments or input provided by Commissioners will be incorporated into the final decision.
 - iv. If two or more Commissioners ask the Administrator to request a special meeting regarding a Section 5.06 draft decision, the Administrator will discuss with the Commission Chair such requests and the Chair will determine whether to hold a special meeting prior to release of the decision.
 - b. To certify and sign election related documents including candidate certifications, certificates of election, and certifications of election results on behalf of the Commission;
 - c. To accept, review, and exercise discretion to approve applications for voting system modifications characterized as engineering change orders (ECOs) for systems previously approved for use in Wisconsin;
 - d. To implement the Commission's determinations regarding sufficiency of nomination papers or qualifications of candidates;
 - e. To communicate with litigation counsel representing the Commission in order to advise the Commission regarding necessary decisions related to Commission litigation. This delegation is intended to require Commission input regarding significant litigation

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Administrator
Meagan Wolfe

decisions such as the filing of an appeal, but is not intended to require consultation with the Chair or the Commission prior to communicating with litigation counsel regarding routine matters such as feedback pertaining to legal briefs and other legal filings, discovery procedures and Commission staff's participation in court proceedings;

- f. To execute and sign contracts on behalf of the Commission, except related to special investigators as provided in Wis. Stat. § 5.05(2m), subject to the further provisions of this paragraph. The Administrator is required to request approval from the Commission for contracts involving a sum exceeding \$100,000, or for purchases from a statewide contract over \$100,000. The Administrator is required to request approval from the Commission prior to posting a Request for Proposal or Request for Bid. In addition, the Administrator may enter into a sole source contract only after obtaining approval from Commission Chair and providing five days' prior notice to the Commission regardless of the dollar amount.

2. The following authority is delegated to the Administrator without the requirement for prior consultation with the Commission Chair before action is taken:

- a. To exempt municipalities from polling place accessibility requirements pursuant to the provisions of Wis. Stat. § 5.25(4)(a);
- b. To exempt municipalities from the requirements for the use of voting machines or electronic voting systems pursuant to the provisions of Wis. Stat. § 5.40(5m);
- c. To execute and sign contracts on behalf of the Commission, except related to special investigators as provided in Wis. Stat. § 5.05(2m), for contracts involving a sum not exceeding \$100,000, or for purchases from a statewide contract involving sums not exceeding \$100,000.



Wisconsin Elections Commission

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DATE: September 7, 2022

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

FROM: The Wisconsin Elections Commission

SUBJECT: Guidance on Absentee Ballot Return Options Under the Federal Voting Rights Act

The United States District Court for the Western District of Wisconsin entered an Opinion and Order, as well as a Permanent Injunction and Declaration, in the matter of *Timothy Carey et al. v. Wisconsin Elections Commission et al.* (22-cv-402jdp) on August 30, 2022. These materials have been attached for your consideration. In his decision, Judge James Peterson clarified how the Voting Rights Act applies to Wisconsin voters who require assistance with mailing or delivering their absentee ballot (“ballot return assistance”) because of a disability.

Pursuant to the Voting Rights Act, **any Wisconsin voter who requires assistance with mailing or delivering their absentee ballot to the municipal clerk because of a disability must be permitted to receive such assistance by a person of the voter’s choice, other than the voter’s employer or agent of that employer or officer or agent of the voter’s union.**

In administering future elections, all municipal clerks and their staff should comply with the above statutory requirement. The remainder of this memorandum addresses some questions that have arisen in light of the recent rulings in *Carey* and other court cases. The Commission suggests that you discuss this guidance and any other questions you may have with local legal counsel.

Frequently Asked Questions:

Do I need to confirm a person’s disability if they are being provided voting assistance, and if so, how?

No. Municipal clerks do not need to confirm that a voter utilizing ballot return assistance is a voter who requires ballot return assistance due to a disability. A Wisconsin voter may self-identify as requiring ballot return assistance due to a disability. This approach is consistent with previous court decisions holding, in analogous contexts, that voters may personally determine whether they fall within a particular statutory category. *See, e.g., Jefferson v. Dane Cnty.*, 2020 WI 90, 394 Wis. 2d 602 (allowing voters to self-identify indefinitely confined status).

When a clerk is presented with an absentee ballot delivered in-person to the clerk’s office, the Commission believes that the clerk may ask the following questions:

- Are you the voter? *If not, then:*

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Administrator
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- Are you delivering the voter’s ballot because the voter has determined that they require assistance returning their ballot due to their disability? *If yes, then:*
- Are you someone other than the voter’s employer, an agent of that employer, or an officer or agent of the voter’s union? *If yes, then the ballot can be accepted.*

Additionally, as in all cases, any person who commits voter fraud or violates any statutory voting requirement may be subject to legal remedies in a criminal or civil proceeding.

Do I need to confirm the disabled voter or agent’s identity, or otherwise request additional information?

No. If the agent answers the above bullet-point questions correctly, the ballot should be accepted. Nothing in the statutes provides for otherwise confirming the agent’s identity or requesting additional information. As for the disabled voter, they will have provided any statutorily necessary identification and residency information prior to the absentee ballot request. The statutes do not require a second presentation of that information.

Did the Carey case overrule Teigen v. Wisconsin Elections Commission (976 N.W.2d 519)?

No. The *Carey* decision did not overrule or invalidate any portion of the Wisconsin Supreme Court’s decision in *Teigen*. The *Teigen* court did not decide whether voters with disabilities may be entitled to absentee ballot return assistance. The *Teigen* court also did not decide whether voters in general may have someone else return a ballot through the U.S. Mail.

Who can provide a disabled voter with absentee ballot return assistance?

Under the Voting Rights Act, a voter requiring ballot return assistance due to a disability may select any person to serve as their agent providing ballot return assistance, provided that the person is not the voter’s employer, an agent of their employer, or an officer or agent of the voter’s union.

Can a single agent provide assistance to more than one disabled absentee voter?

Yes. As stated above, a voter requiring ballot return assistance due to a disability may select any person to serve as their agent providing ballot return assistance, provided that the person is not the voter’s employer, an agent of their employer, or an officer or agent of the voter’s union. It is possible that more than one voter might select the same agent.

What constitutes a permissible absentee ballot “mailing,” and when has the agent’s “assistance” stopped?

The Commission recommends treating the following as circumstances constituting “mailing” with respect to returning an absentee ballot on behalf of a voter requiring ballot return assistance due to a disability:

- A lawful agent places the absentee ballot in the voter’s residential mailbox.
- A lawful agent places the absentee ballot in a United States Postal Service or similar parcel carrier’s mailbox or delivers it to a designated drop facility for such parcel carriers.
- A lawful agent turns over custody of the absentee ballot directly to a postal or parcel carrier’s employee/agent.
- A lawful agent places the absentee ballot into a reasonable, legitimate, and legally compliant stream of mail delivery services (*e.g.* care facilities, jails and correctional institutions, military installations, and other similar institutions and organizations often have a designated clerk or courier service responsible for collecting or otherwise delivering mail to postal officials or mail carriers).

The agent’s assistance is complete when that party lawfully returns the absentee ballot to the appropriate clerk’s office or deposits the absentee ballot into the stream of mail services discussed above (including any other lawful means of providing the ballot to a designated mail carrier, mailbox, or mail facility).

If election officials have any questions about this guidance, they may discuss them local counsel or contact the Commission Help Desk at elections@wi.gov or by phone at (608) 261-2028. Thank you for your prompt attention to this matter.



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December, 2023

Matt Roeser
419 E. LeCapitaine Circle
Green Bay, WI 54302

Celestine Jeffreys
100 N. Jefferson St.
Green Bay, WI 54301

Sent via email: Gynild@mklaw.com, kaardal@mklaw.com, Lindsay.Mather@greenbaywi.gov,
Joanne.Bungert@greenbaywi.gov, Celestine.Jeffreys@greenbaywi.gov

Re: Matt Roeser v. Celestine Jeffreys (EL 22–37)

Dear Mr. Roeser and Clerk Jeffreys,

This decision letter is in response to the verified Complaint submitted by Matt Roeser (Complainant) to the Wisconsin Elections Commission (Commission). The Complaint alleges that the City of Green Bay Municipal Clerk, Celestine Jeffreys (Respondent), failed to properly follow Wis. Stat. § 6.87(4)(b)1. when accepting by-mail absentee ballots returned in-person to her office.

Complaints “...shall set forth such facts as are within the knowledge of the complainant to show probable cause to believe that a violation of law or abuse of discretion has occurred or will occur.” Wis. Stat. § 5.06(1). Probable cause is defined in Wis. Admin. Code § EL 20.02(4) to mean “the facts and reasonable inferences that together are sufficient to justify a reasonable, prudent person, acting with caution, to believe that the matter asserted is probably true.”

The Commission has reviewed the Complaint, Response, Reply, and all supporting documentation. The Commission provides the following analysis and decision. In short, the Commission has determined that the Complainant has shown probable cause that the Respondent violated Wis. Stat. § 6.87(4)(b)1. The Commission’s order, however, seeks only to prevent the Respondent from permitting ballot return assistance to voters who are not disabled.

Summary of Complaint

The Complaint argues that the “only legally authorized methods of delivery of absentee ballots are personally delivering your absentee ballot to the clerk or personally mailing it—unless there is a statutory exception.” The complaint cites Wis. Stat. § 6.87(4)(b)1., which states in relevant part that, “[t]he envelope shall be mailed by the elector, or delivered in person, to the municipal clerk issuing the ballot or ballots.” The complaint further cites the Order Granting Summary Judgement for Plaintiffs in *Teigen v. Wisconsin Elections Commission*, No. 21-CV-958 (Wis. Cir. Ct. for Waukesha Cnty. June 28, 2021), which held in relevant part that “the only lawful methods for casting an absentee ballot pursuant to Wis. Stat. § 6.87(4)(b)1. are for the elector to place the

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envelope containing the ballot in the mail or for the elector to deliver the ballot in person to the municipal clerk.”

The Complainant then alleges that he, along with two other individuals who provided sworn affidavits for the Complaint, witnessed the Respondent “many times, based on a claimed ‘discretion’ accept[ing] multiple absentee ballots for the April 5, 2022, election from an individual voter without a statutory exception applying—in violation of Wisconsin Statutes § 6.87(4)(b)1.” The Complaint alleges that, when questioned about receiving multiple absentee ballots from a single individual, the Respondent stated “[i]t’s my discretion on whether I take the ballots” and “I have determined that I can take both ballots.”

Summary of Response

The Response alleges that:

[T]he City fulfilled its equal protection obligation to accept ballots on behalf of voters who were unable to personally deliver their own as a result of a disability or impairment. Clerk Jeffreys is not permitted to violate federal law or the constitutional right to vote of qualified electors who are incapable of personally delivering their ballots. Likewise, she may not violate the privacy rights of those electors by requiring details as to the reasons they cannot bring in their own ballots.

Regarding federal law requirements, the Response alleges that:

The federal Voting Rights Act (“VRA”) and Americans with Disabilities Act (“ADA”) require Clerk Jeffreys to accept absentee ballots returned on behalf of voters with disabilities. Specifically, the VRA states, “[a]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter’s choice, other than the voter’s employer or an agent of that employer or officer or agent of the voter’s union.” 52 U.S.C. § 10508.

The Response asked the Commission to hold the Complaint in abeyance until the Wisconsin Supreme Court issued a decision in the appeal of *Teigen v. Wisconsin Elections Commission*. The Response alleges that “[e]ven though the City was not a party to the *Teigen* case, in an abundance of caution, City staff made the decision to comply with the judge’s ruling” and that the Respondent “developed a policy pursuant to which her staff would inform voters that the Clerk’s office could only accept the ballot of the individual elector personally delivering their ballot.” The Response alleges that:

In situations in which an elector brought more than one ballot to the counter, the following type of exchange would occur:

Staff member: “Which ballot is yours?”

Voter: *Indicates which ballot is their own; asks to be able to submit someone else’s ballot for them.*

Staff member: “I’m sorry, I can only take your ballot.”

The interaction ceased there, and the Clerk’s office only accepted the elector’s own ballot. Staff did not ask any additional questions or offer any prompts or

suggestions. However, if the individual volunteered, on their own and without provocation, that they were submitting a ballot on behalf of a voter who was sick or otherwise disabled, staff would accept that person's ballot as well.

The Response alleges that when voters indicated they were delivering someone else's ballot for convenience "without exception, the Clerk's office staff would not accept any ballot from that person other than their own." The Response further alleges that:

Staff would not ask any follow-up questions in an effort to determine the extent of the non-present voter's inability to bring in their own ballot in order to protect the privacy rights of voters with disabilities. Similarly, she also determined that ballots brought in on behalf of disabled voters would not be marked, set aside, or otherwise treated differently from all other absentee ballots received in person in the Clerk's office so as to avoid singling out differently abled voters and potentially raising equal protection issues.

The Response states that during the April 5, 2022, election the Respondent did accept multiple ballots from a single individual as determined by the procedures established by the Respondent.

Summary of Reply

The Reply first argues that the grounds of the Complaint are valid under a plain reading of Wis. Stat. § 6.87(4)(b)1. combined with the Respondent's admission of accepting more than one ballot from a single voter on at least some occasions. The Reply then addresses the policy described in the Response and argues that the Respondent did not describe any policy during her interactions with the Complainant, and only stated that accepting the ballots was in her discretion. The Reply states that the Respondent did not provide any written materials describing the policy or any training conducted to implement the policy and alleges that this Complaint is the first time the policy has become publicly known.

The Reply also disputes that the Complaint called into question the right of a disabled voter to return an absentee ballot. The Reply argues that the Respondent's policy does not include a mechanism to "test the validity" of an agent's claim to be returning a ballot on behalf of an elector with a disability.

Commission Authority and Role in Resolving Complaints Filed Under Wis. Stat. § 5.06

Under Wis. Stat. §§ 5.05(1)(e) and 5.06(6), the Commission is provided with the inherent, general, and specific authority to consider the submissions of the parties to a complaint and to issue findings. In instances where no material facts appear to be in dispute, the Commission may summarily issue a decision and provide that decision to the affected parties. This letter serves as the Commission's final decision regarding the issues raised by Matt Roeser's complaint.

The Commission's role in resolving verified complaints filed under Wis. Stat. § 5.06, which challenge the decisions or actions of local election officials, is to determine whether a local official acted contrary to applicable election laws or abused their discretion in administering applicable election laws.

Commission Findings

Alleged Violations of Wis. Stat. § 6.87(4)(b)1.

Wis. Stat. § 6.87(4)(b)1. provides rules for voting absentee and states in relevant part that, “[t]he envelope shall be mailed by the elector, or delivered in person, to the municipal clerk issuing the ballot or ballots.”

After this Complaint had been filed, the Wisconsin Supreme Court considered *Teigen v. WEC* (976 N.W.2d 519), and the Western District of Wisconsin heard the matter of *Timothy Carey et al. v. Wisconsin Elections Commission et al.* (22-cv-402jdp). In *Teigen v. WEC*, the Wisconsin Supreme Court held that Wis. Stat. § 6.87(4)(b)1. necessitates that, without a statutory exemption, only the voter is permitted to return his or her own ballot but declined to determine if the ADA or VRA provide an exemption to this rule. *Teigen*, 2022 WI 64 at PP 85–86. In *Carey v. WEC*, the United States District Court in the Western District of Wisconsin held that the VRA preempts Wis. Stat. § 6.87(4)(b)1. to the extent it prevents third parties from returning ballots on behalf of people with disabilities. *Carey v. Wis. Elections Comm'n*, 624 F. Supp. 3d 1020, 1025 (W.D. WI 2022). In summary, a single voter may not return multiple ballots without a statutory exemption unless they are assisting a person with a disability or are a registered agent of a hospitalized voter returning their ballot.

As in all cases, any person who commits voter fraud or violates any statutory voting requirement may be subject to legal remedies in a criminal or civil proceeding. Wis. Stat. § 5.05(2m)(c)2.a.; § 12.13. Specifically, it is a Class I felony for any person to intentionally “make[] false statements to the municipal clerk, board of election commissioners or any other election official whether or not under oath.” Wis. Stats. §§ 12.13(1)(b), 12.60(1)(a). Accordingly, a voter who intentionally attempts to return a voted ballot they are not permitted to return may face legal consequences.

Here, the response outlines a policy of accepting ballots from those that, “were submitting a ballot on behalf of a voter who was sick or otherwise disabled” and admits specifically to accepting an absentee ballot from a third party when the third party, “volunteered the information that her husband was physically unable to personally deliver his ballot to the Clerk’s office.” The Commission does not find an abuse of discretion concerning this specific example as a voter or agent may use various terms to describe a disability and the context of this example and the phrase “physically unable” strongly supports the election official’s conclusion that the voter required assistance returning their ballot due to their disability.

However, the Commission does find an abuse of discretion to the extent that the policy described by the Respondent allows ballot return assistance if a voter is merely reported to be “sick.” Sickness alone may or may not constitute a disability, and thus it cannot be a qualification to receive ballot return assistance. Though the Commission does not find an abuse of discretion or violation of law in the Respondent’s policy of not directly asking about any disability, the Respondent should ensure that voters who qualify for ballot return assistance under the Voting Rights Act are able to receive such assistance.

Commission Decision

Based upon the above review and analysis, the Commission finds probable cause to believe that a violation of law or abuse of discretion occurred under Wis. Stat. § 6.87(4)(b)1. due to the

Respondent's policy that could allow accepting a voter's ballot that was returned to a clerk by a third party when the voter was "sick" but not necessarily disabled. The Commission hereby orders Celestine Jeffreys to amend the policy described in the Response or any current or future policy in a manner consistent with this decision.

The Commission understands that this decision may not provide an answer to what specific actions, if any, municipal clerks should take to be fully compliant with the *Teigen* decision and the reasoning in the *Carey* decision. This decision solely affirms that a single voter may not return multiple ballots without a statutory exemption unless they are assisting a person with a disability or are a registered agent of a hospitalized voter returning their ballot. Accordingly, to the extent that the Respondent's policy accepted ballots from voters who are "sick," but not disabled, it is contrary to law.

Right to Appeal – Circuit Court

This letter constitutes the Commission's resolution of this complaint. Wis. Stat. § 5.06(2). Pursuant to Wis. Stat. § 5.06(8), any aggrieved party may appeal this decision to circuit court no later than 30 days after the issuance of this decision.

If any of the parties have questions about this letter or the Commission's decision, please feel free to contact me.

Sincerely,

Meagan Wolfe
Wisconsin Elections Commission Administrator

cc: Commission Members



Wisconsin Elections Commission

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DATE

Eugene Wojciechowski
11923 West Lincoln Avenue
West Allis, WI 53227

Dawn M. Martin
1975 S. 70th Street
West Allis, WI 53219

Rebecca Grill, City Clerk
7525 West Greenfield Avenue
West Allis, WI 53214

Sent via email to: clerk@westalliswi.gov; kdecker@westalliswi.gov;
dmartin928@sbcglobal.net; dlencz@lawforward.org

Re: In the Matters of: **Eugene Wojciechowski v. Rebecca Grill** (Case No.: EL 22-58)
Dawn M. Martin v. Rebecca Grill (Case No.: EL 23-38)

Dear Mr. Wojciechowski, Ms. Martin, and Clerk Grill:

This letter is in response to the verified complaints submitted by Eugene Wojciechowski and Dawn M. Martin to the Wisconsin Elections Commission (“Commission”), which were filed in reply to actions taken by Clerk Grill of the City of West Allis (“Respondent”) concerning alleged violations of Wis. Stats. §§ 6.02, 6.87, and 6.88. Both complaints center upon the legal question of whether a voter is required, or can be asked, to produce proof of photo identification upon the in person return of a completed absentee ballot. Both complainants raise a secondary question of whether the Respondent is permitted to place an additional mark upon the envelope of a completed absentee ballot to indicate that no photo identification was provided during the return of the ballot in case the ballots need to be separated later.

Together, the complaints raise allegations about the Respondent’s in-person absentee ballot return policies during the elections held on August 9, 2022, February 21, 2023, and April 4, 2023. Though both Complainants bring similar allegations against the same Respondent, they are brought amidst ongoing, relevant legal guidance from three different courts of law, as well as changes in the Respondent’s own policy regarding photo identification and the return of completed absentee ballots. Given the similarities between the facts and applicable law, the Commission has reviewed both complaints together and accordingly issues this closing letter to resolve both complaints.

The Commission has reviewed both complaints, the Respondent’s responses, and both Complainants’ replies. The Commission provides the following analysis and decision. In short, the Commission finds that both Complainant Wojciechowski and Complainant Martin did show probable cause to believe that a violation of law or abuse of discretion occurred with relation to Respondent’s procedural actions.

Commissioners

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

Administrator
Meagan Wolfe

Commission Authority and Role in Resolving Complaints Filed Under Wis. Stat. § 5.06

Under Wis. Stat. §§ 5.05(1)(e) and 5.06(6), the Commission is provided with the inherent, general, and specific authority to consider the submissions of the parties to a complaint and to issue findings. In instances where no material facts appear to be in dispute, the Commission may summarily issue a decision and provide that decision to the affected parties. This letter serves as the Commission's final decision regarding the issues raised in the complaints of Eugene Wojciechowski and Dawn M. Martin.

The Commission's role in resolving verified complaints filed under Wis. Stat. § 5.06, which challenge the decisions or actions of local election officials, is to determine whether a local official acted contrary to applicable election laws or abused their discretion in administering applicable election laws.

Complaints "...shall set forth such facts as are within the knowledge of the Complainant to show probable cause to believe that a violation of law or abuse of discretion has occurred or will occur." Wis. Stat. § 5.06(1). Probable cause is defined in Wis. Admin. Code § EL 20.02(4) to mean "the facts and reasonable inferences that together are sufficient to justify a reasonable, prudent person, acting with caution, to believe that the matter asserted is probably true."

Complaint Allegations; Response; Reply – Wojciechowski v. Grill

On August 9, 2022, Complainant Wojciechowski filed a sworn complaint with the Commission pursuant to Wis. Stat. § 5.06, alleging that Respondent violated Wis. Stat. § 6.87(4)(b)3. by requiring the production of proof of identification when a voter returns a completed absentee ballot in person to the municipal clerk's office.

Complainant Wojciechowski alleges that he requested and received by mail an absentee ballot to vote in the August 9, 2022, election, and that he provided a copy of his photo identification. On August 1, 2022, he alleges that he attempted to return his absentee ballot to the office of the municipal clerk at City Hall in West Allis. He alleges that a clerk's office staff member informed him that the Respondent required a voter to show photo identification in order to return their completed absentee ballot. Complainant Wojciechowski did not specify whether he showed his photo identification anyway, or whether the staff member refused to accept his ballot.

On August 18, 2022, the Respondent submitted her response. She began by alleging that her office had changed its policy since Complainant Wojciechowski filed his complaint. She alleges that the office policy is now to ask voters if they are willing to show identification, rather than require it. She alleges that if the voter declines to show identification, the clerk's office will still accept the ballot, but will mark that ballot as "No ID Verified," or similar language, to ensure that she can separate absentee ballots later, if necessary.

Despite these allegations describing the new policy, the Respondent does not deny that she required Complainant Wojciechowski to show his photo identification on August 1, 2022, in order to accept the in-person return of his completed absentee ballot. In addition to these allegations, the Respondent also provided various interpretations of relevant statutory provisions and welcomed the complaint as an opportunity to resolve these legal issues.

Complainant Wojciechowski filed a sworn reply to the Respondent's response. He sets forth several additional legal arguments, most of which attempt to refute Respondent's interpretation of the law.

Both Complainant Wojciechowski's and the Respondent's legal arguments will be fully addressed in the Commission's discussion and legal analysis.

Complaint Allegations – Martin v. Grill

On April 14, 2023, Complainant Martin filed a sworn complaint with the Commission pursuant to Wis. Stat. § 5.06, alleging that Respondent violated Wis. Stat. § 6.87(4)(b)3. by requiring the production of proof of identification at the point of in-person absentee ballot return.

Complainant Martin alleges that in the spring of 2020, she became a permanent absentee voter by virtue of her age, physical illness, or infirmity. She alleges that after submitting her application but before the April 7, 2020, election, she appeared in person to the office of the Respondent to provide her photo identification.

Complainant Martin alleges that she received by mail an absentee ballot for the February 21, 2023, primary election. Prior to that election, she alleges that she attempted to return her absentee ballot to the Respondent's office. She alleges that one of Respondent's staff workers informed her that the Respondent and the city attorney required a voter to show photo identification to return a completed absentee ballot. Complainant Martin alleges that the staff member told her that she would not accept her ballot unless Complainant Martin showed her photo identification. Complainant Martin alleges that she informed the staff member that she believed this requirement to be unlawful, but that she showed her photo identification and her ballot was accepted.

Complainant Martin alleges that she received by mail an absentee ballot for the April 4, 2023, primary election. She alleges that on March 20, 2023, she attempted to return her completed absentee ballot to the Respondent's office in City Hall. She alleges an employee at the service counter in Respondent's office asked if Complainant Martin would provide photo identification. She alleges that she told the employee she was not required to provide photo identification to turn in her ballot. She alleges that the employee accepted her ballot.

Complainant Martin also alleges that she asked if the employee would do anything to the ballot if she did not provide photo identification. She alleges she was told that the employee would put a checkmark on the envelope. She alleges that when she objected, the employee told her this was the staff's normal procedure. She alleges that she showed her photo identification to avoid having her ballot unlawfully marked.

On May 2, 2023, the Respondent submitted her response. She does not refute Complainant Martin's allegations, but does provide her legal analysis of why she believes her actions were lawful. The Respondent also provided a flowchart which allegedly depicts her office's policy for accepting absentee ballots from disabled voters. Finally, the Respondent asked the Commission to determine if there is a duty, pursuant to *Teigen*, to verify the identity of voters as they deliver their completed absentee ballots, and whether election results could be jeopardized if a clerk's office fails to confirm that voters have delivered their own absentee ballots.

Complainant Martin filed a sworn reply to Respondent's response. She does not appear to provide additional allegations or evidence, but does set forth a number of additional legal arguments, most of which attempt to refute Respondent's interpretation of the law.

Both Complainant Martin’s and the Respondent’s legal arguments will be fully addressed in the Commission’s discussion and legal analysis.

Discussion

Claims of Violations of § 6.87(4)(b)3.

As an initial matter, the Respondent concedes that there is no explicit statutory language that requires electors to provide proof of identification upon returning an absentee ballot in person to a voter’s municipal clerk. Instead, she argues that the way the relevant statutes have been interpreted by binding precedent imposes an implicit duty with which she must comply.

While voting is a right for all qualified electors in Wisconsin, it is subject to regulation, particularly with respect to absentee voting. Wis. Stat. § 6.84(1). Absentee voting is a “privilege exercised wholly outside the traditional safeguards of the polling place,” and “must be carefully regulated to prevent the potential for fraud or abuse” Wis. Stat. § 6.84(1). One of the ways in which absentee voting is regulated is by requiring absentee voters to submit or show proof of photo identification so that the municipal clerk can confirm their identity as an elector.

Subject to several enumerated exceptions, when an elector requests an absentee ballot, § 6.86(1)(ac) requires the elector to “transmit a copy of his or her proof of identification in the manner provided in § 6.87(1).” Although this particular sentence does not specifically mention when an elector must present his or her proof of identification, the parties do not appear to dispute that § 6.86(1)(ac) requires certain electors to provide proof of photo identification when requesting an absentee ballot from the municipal clerk.

However, there are enumerated, statutory exceptions to the general requirement of § 6.86(1)(ac) that voters must provide proof of photo identification when requesting absentee ballots. One exception is for absentee voters who have previously provided their photo identification as part of an absentee ballot request, and who have not changed their name or address since they last provided their identification. Wis. Stat. § 6.87(4)(b)3. Another exception is for absentee voters who are indefinitely confined—in lieu of identification, they may provide a statement signed by their witness verifying their name and address are correct. Wis. Stat. § 6.87(4)(b)2.

The Complainants argue that once an absentee elector has provided their photo identification and received an absentee ballot previously, election officials may not require him or her to provide that photo identification again, at any point, unless the elector has changed his or her name or address. Wis. Stat. § 6.87(4)(b)3. The Respondent argues that § 6.87(4)(b)3. is only relevant when electors request absentee ballots, and accordingly, it does not prohibit her from requesting proof of photo identification when an elector is *returning* a completed absentee ballot.

The relevant statutory provisions that govern absentee voting are organized to provide step-by-step instructions for the entire process, from requesting the ballot to returning it. Section 6.86 is titled “Methods for Obtaining an Absentee Ballot.” Section 6.87 is titled “Absentee Voting Procedure.” These two sections are organized along a temporal divide of when the elector submits his or her request for an absentee ballot. Put another way, § 6.86 governs the procedures for how an elector may request an absentee ballot, and § 6.87 outlines the steps the municipal clerk should take after receiving a request for an absentee ballot, as well as how the voter should complete and return the absentee ballot to the municipal clerk.

The very first step of § 6.87 provides the procedures by which a municipal clerk issues an absentee ballot after it has been properly requested by the voter pursuant to § 6.86. Section 6.87(1) specifies that unless an enumerated exception applies, the elector should have enclosed a copy of proof of photo identification with their absentee ballot request. The municipal clerk is then instructed to verify that the name on the proof of photo identification conforms to the application before issuing the ballot. Wis. Stat. § 6.87(1). If the voter was properly exempt from providing their proof of photo identification with their ballot request, § 6.87(4)(b)3. confirms that the elector “is not required to provide proof of identification.”

The Commission interprets § 6.87(4)(b)3. to mean that if a voter has already provided their proof of photo identification with their absentee ballot request, or if they are exempt from doing so, they are not required to provide proof of identification when they return their completed absentee ballot in person to the municipal clerk.

When the Legislature intended to impose a proof of photo identification requirement on electors, it did so with specificity. Electors must provide proof of identification when registering to vote. Wis. Stat. §§ 6.15(2)(bm), (3). Electors must also provide proof of identification when voting in person at the polls on election day. Wis. Stat. § 6.79(2)(a). Electors must provide proof of identification when voting via in-person absentee voting, and certain electors must provide proof of identification when requesting an absentee ballot by mail. Wis. Stat. § 6.86(1)(ac). Accordingly, had the Legislature intended to require proof of photo identification when a voter returns a completed absentee ballot in person to the municipal clerk, the legislature would have included that requirement clearly within § 6.87.

Despite the lack of explicit statutory authority, the Respondent argues that binding Wisconsin Supreme Court precedent imposes an affirmative duty upon her to verify the identity of voters who are returning completed absentee ballots in person. In July 2022, before any of the elections central to these complaints, the Court held that an absentee ballot “must be returned by mail or the voter must personally deliver it to the municipal clerk at the clerk’s office or a designated alternate site.” *Teigen v. Wis. Elections Comm’n*, 2022 WI 64, P4, 403 Wis. 2d 607, 976 N.W.2d 519.¹ Specifically, the Court held that Wisconsin law does not permit anyone other than the voter to return their completed absentee ballot. *Id.* at P73.

Importantly, *Teigen* does *not* hold that a voter must present photo identification to return a completed absentee ballot. The photo identification requirement is the Respondent’s interpretation of her obligations under *Teigen* as an election official, and it is that legal interpretation that sits at the center of both complaints. The Respondent determined that asking a voter to present their photo identification was the “least intrusive” method of confirming that the voter him or herself was the individual returning the completed absentee ballot.

The Commission finds that the Respondent’s interpretation of *Teigen* is contrary to law. *Teigen* concluded that “an absentee ballot delivered in person under Wis. Stat. § 6.87(4)(b)1. must be delivered personally by the voter.” *Teigen v. Wis. Elections Comm’n*, 2022 WI 64, P83. It does not say that the voter must produce a copy of their photo identification. Accordingly, *Teigen* does not place a direct obligation upon the Respondent to confirm via photo identification that the elector returning the completed absentee ballot is not an impermissible agent or third party.

¹ *Teigen* interpreted Wis. Stat. 6.87(4)(b)1., which states, in relevant part, “[t]he envelope shall be mailed by the elector, or delivered in person, to the municipal clerk issuing the ballot or ballots.”

Furthermore, the Respondent's interpretation of *Teigen* is contrary to law to the extent that it prevents voters with disabilities from lawfully relying upon third parties to return their ballots. A month after *Teigen*, the District Court for the Western District of Wisconsin held that the federal Voting Rights Act preempted Wisconsin state law with respect to the ability of voters with disabilities to rely upon third parties to request, complete, and return their voted absentee ballots. *Carey v. Wis. Elections Comm'n*, 2022 U.S. Dist. LEXIS 156973, P4 (W.D. Wisconsin 2022). Under *Carey*, the Commission is enjoined from enforcing the portion of § 6.87(4)(b)1. that prohibits the plaintiffs from receiving assistance in returning their absentee ballots. *Id.* at P29–P30. The Respondent's policy of requiring a voter to produce identification when returning an absentee ballot is contrary to the federal protections guaranteed by *Carey*.

Furthermore, the Respondent's policy could also unlawfully prevent hospitalized voters from relying on the assistance of an agent to return their completed absentee ballot. Wis. Stat. § 6.86(1)(a)4. Any registered elector who is hospitalized may apply for and obtain an official ballot by agent. Wis. Stat. § 6.86(3)(a)1. That agent is also permitted to return the hospitalized voter's ballot to the municipal clerk or to the voter's polling place on election day. Wis. Stat. § 6.86(3)(c).

As in all cases, any person who commits voter fraud or violates any statutory voting requirement may be subject to legal remedies in a criminal or civil proceeding. Wis. Stat. § 5.05(2m)(c)2.a.; § 12.13. Accordingly, a voter who intentionally attempts to return a voted ballot they are not permitted to return may face legal consequences.

Claims of Violations of § 6.02(1)

The Complainants have also argued that the Respondent's procedures impose additional voter qualification requirements on electors in violation of § 6.02(1). The Complaints appear to argue that the Respondent does not consider them to be qualified electors if they do not provide proof of photo identification when returning their completed absentee ballots in person. The Respondent argues that a voter who does not show proof of photo identification when returning their absentee ballot is still an eligible voter. Accordingly, the parties appear to agree that the Complainants are still eligible electors under § 6.02(1), even if they choose not to present proof of photo identification in order to return their completed absentee ballot.

However, the Commission believes that the Complainants have also articulated claims that the Respondent imposed additional voter regulations not authorized by law beyond their specific § 6.02(1) voter qualification claim. Accordingly, the Commission will also address whether the Respondent exceeded her statutorily delegated authority as a municipal clerk in imposing this photo identification requirement on absentee voters.

Wisconsin law allocates election administration authority between the Commission and the state's 1,850 municipal clerks and 72 county clerks, who are each "a partner in the process of carrying out open, fair and transparent elections." *State ex rel. Zignego v. Wis. Elections Comm'n*, 2021 WI 32, P13, 396 Wis. 2d 391, 957 N.W.2d 208 (quoting Commission guidance). The Commission issues clerk communications, training materials, and other resources for local clerks. In return, local clerks "are tasked with implementing any changes in policy or law in their community, including administering absentee ballot voting." *Democratic Nat'l Comm. v. Bostelmann*, 451 F. Supp. 3d 952, 959 (W.D. Wis. 2020).

County and municipal clerks have specific statutory authority pursuant to §§ 7.10(1) and 7.15(1) to supervise elections and registration in their jurisdictions. They are tasked with equipping their polling places, purchasing election equipment, preparing ballots, training election officials, reporting suspected election fraud, reviewing nomination papers, and facilitating election administration on election day, among other duties. Wis. Stat. §§ 7.10(1) and 7.15(1). If a clerk's decision (or failure to act) with respect to conduct of elections is contrary to law, or the clerk has abused his or her discretion, any elector of that clerk's jurisdiction may bring a complaint against the clerk to the Commission, which is what the Complainants have done. Wis. Stat. § 5.06.

The Wisconsin Supreme Court has consistently held that only the Legislature may regulate the right to vote in Wisconsin. *State ex rel. Cothren v. Lean*, 9 Wis. 279, 283–84 (1859); *see also League of Women Voters of Wis. Educ. Network v. Walker*, 2014 WI 97, ¶¶19–21, 357 Wis.2d 360, 851 N.W.2d 302. The Legislature, in turn, has delegated the administration of Chapters 5 through 10 and 12 of the state statutes to the Commission. Wis. Stat. § 5.05(1).

Accordingly, the statutory authority to interpret Wisconsin election law rests with the Commission, not individual clerks. County and municipal clerks “are not to interpret Wisconsin’s election laws and make declarations based on those interpretations.” *Jefferson v. Dane Cty.*, 2020 WI 90, P24, 394 Wis. 2d 602, 951 N.W.2d 556. Duties of county and municipal clerks are enumerated in §§ 7.10 and 7.15, and “nowhere in these duties did the legislature include disseminating information based on the clerk’s interpretation of absentee voting laws.” *Id.* Instead, the Commission is responsible for guidance in the statewide administration and enforcement of Wisconsin’s election laws, not county and municipal clerks. *Id.*

Accordingly, the Commission concludes that the Respondent exceeded the statutory authority delegated to her pursuant to § 7.15 by imposing additional regulations on voting not provided by law. Section 7.15(1) confirms that municipal clerks have “charge and supervision of elections and registration” in their jurisdiction, and that they are to perform their enumerated duties “and any others which may be necessary to properly conduct elections or registration.” However, imposing additional regulations on voting not provided by law does not constitute properly conducting elections, and therefore cannot be a lawful exercise of § 7.15(1) responsibility.

Claims of Violations of § 6.88

Finally, Complainant Martin argues that the Respondent’s policy of placing a mark upon the returned, voted absentee ballot to indicate that the elector declined to show her proof of photo identification when returning the ballot violates the procedures outlined in § 6.88. That section describes the procedures the municipal clerk is to take upon the receipt of a completed absentee ballot. Complainant Martin argues that this policy imposes additional voting procedures that are not permitted by statute.

The Respondent concedes that § 6.88 does not specifically authorize her to mark absentee ballots in this manner, but also argues that her authority to properly conduct elections authorizes her to carry out this policy because the law is unclear with respect to her obligations to verify that the voter herself is returning her own completed absentee ballot. Respondent claims that her policy of marking “No ID Verified,” or similar, on the absentee certificate envelope is to ensure that she can later separate out those absentee ballots collected without proof of photo identification, if necessary.

A municipal clerk is not limited in marking only what is required by § 6.88. In fact, other statutes compel municipal clerks to make specific notations on absentee certificate envelopes in certain circumstances. For example, if a municipal clerk receives an absentee ballot from an elector who presents a citation or notice in lieu of a driver's license under § 6.87(4)(b)4., statute specifically directs her to "enter a notation on the certificate envelope 'Ballot under s. 6.965 stats.'" Wis. Stat. § 6.965. This then directs the election inspectors to make a similar notation on the back of voter's ballot on election day. Wis. Stat. § 6.965. Several other statutes provide for specific notations that election inspectors shall make to the backs of certain ballots at the polls on election day when processing ballots. Wis. Stat. §§ 6.95, 6.96, 6.965, 6.97.

Nothing in the state statutes requires municipal clerks to affix any mark or notation upon an absentee certificate envelope if a voter declines to provide proof of photo identification when returning an absentee ballot. In light of the Commission's decision regarding the practice of asking for photo identification upon the return of an in-person absentee ballot return to the municipal clerk, the Commission finds that this particular notation is not supported by a statutory process or requirement, and is therefore an abuse of discretion regarding the administration of an election.

Commission's Findings

Complainants seek various forms of relief from the Commission, including the issuance of an order requiring West Allis officials to stop requiring additional production of POI, issuance of an order requiring West Allis to update any policies or procedures to the contrary, and any action that has the effect of restraining Respondent from acting contrary to the law.

Pursuant to the analysis above, the Commission hereby issues this order restraining the Respondent from taking any action inconsistent with the analysis of the law in this decision. Wis. Stat. § 5.06(6). The Respondent is not permitted to require or ask voters to produce proof of voter identification upon the in-person return of completed absentee ballots. The Respondent is also not permitted to place any mark or notation on the absentee certificate ballot indicating that the voter did not produce proof of photo identification upon the in-person return of completed absentee ballots. Finally, to the extent necessary, the Respondent is instructed to rescind any memoranda, guidance, or policies that contradict these findings, and may not develop any future guidance or policy that contradicts these findings.

The Commission understands that this decision may not provide an answer to what specific actions, if any, municipal clerks should take to be fully compliant with the *Teigen* decision. This decision solely decides that requiring an individual to present proof of photo identification upon the in-person return of a voted absentee ballot is contrary to law. The Commission may at some future time decide to issue further guidance on municipal clerk duties under *Teigen*, but that is beyond the scope of this § 5.06 complaint.

Right to Appeal – Circuit Court

This letter constitutes the Commission's resolution of these complaints. Wis. Stat. § 5.06(2). Pursuant to Wis. Stat. § 5.06(8), any aggrieved party may appeal this decision to circuit court no later than 30 days after the issuance of this decision.

If any of the parties should have questions about this letter or the Commission's decision, please feel free to contact me.

DATE

Page 9

Sincerely,

WISCONSIN ELECTIONS COMMISSION

Meagan Wolfe
Administrator

cc: Commission Members



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 December 19, 2023, Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Angela O’Brien, Staff Attorney

SUBJECT: **Agency Approval of SS 089-23, SS 090-23, SS 091-23, SS 092-23, SS 093-23, and SS 094-23 – Ballot Access and Election Petition Challenge Procedure & Mandatory Use of Uniform Instructions for Absentee Voting**

Introduction

The Wisconsin Elections Commission (“the Commission”) is the body with policy-making powers over the subject matter of proposed administrative rules. Wis. Stats. §§ 227.135(2), 227.24(1)(e)1d. Accordingly, it has the authority to approve statements of scope after it has received and reviewed any public comments and feedback received during the public hearing and comment period.

This memo, and accompanying attachments, is intended to provide the Commission with the public comments and feedback for the Commission to review ahead of its December 19, 2023 meeting. At the December 19, 2023 meeting, staff will recommend that the Commission approve the following scope statements:

| | |
|-----------|--|
| SS 089-23 | Emergency Rule – Declaration of Candidacy Challenges |
| SS 090-23 | Permanent Rule – Declaration of Candidacy Challenges |
| SS 091-23 | Permanent Rule – Nomination Paper Challenges |
| SS 092-23 | Emergency Rule – Nomination Paper Challenges |
| SS 093-23 | Permanent Rule – Mandatory Use of Uniform Instructions for Absentee Voting |
| SS 094-23 | Emergency Rule – Mandatory Use of Uniform Instructions for Absentee Voting |

Rulemaking Background

On August 30, 2023, the Commission authorized staff to begin the emergency and permanent administrative rule making process for rules to require municipalities to use the Uniform Instructions for absentee voting and to implement a discrete administrative process for ballot access challenges.

On September 7, 2023, staff presented statements of scope for emergency and permanent rulemaking for three proposed administrative rules: 1) create a new administrative rule to require municipalities to use the Uniform Instructions that are approved by the Commission for absentee voting; 2) amend existing administrative rules to clarify the procedural components of nomination paper challenges; and 3) create a new administrative rule provision detailing the procedures for Declaration of Candidacy challenges. At that meeting, the Commission

Wisconsin Elections Commissioners

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

directed staff to submit all three sets of scope statements, for emergency and permanent rulemaking, to the Department of Administration pursuant to § 227.24(1)(e)1d. and § 227.135(2).

On September 15, 2023, staff transmitted the statements of scope to the Department of Administration. On September 19, 2023, the Department of Administration legal team completed review of the scope statements and confirmed the Commission's statutory authority to enact the proposed rules, and forwarded the scope statements to the Governor's Office for review. On September 28, 2023, Governor Evers approved all three sets of the scope statements described above.

On October 25, 2023, the Commission voted to hold a virtual public hearing and comment period on the scope statements on November 3 from 1 p.m. to 4 p.m., and directed staff to transmit the statements of scope to the Legislative Reference Bureau (LRB), the Secretary of the Department of Administration, and to the chief clerks of each house of the Legislature so they could be distributed to the co-chairs of the Joint Committee for Review of Administrative Rules (JCRAR). On October 25, 2023, Commission staff transmitted the statements of scope to the parties above, as directed by the Commission. On October 30, 2023, the LRB published all six scope statements, along with the public hearing notices, in the Administrative Register. See **Attachment A**.

On November 2, 2023, the Commission voted to move the public hearing on Scope Statements SS 089-23 – SS 094-23 to November 9, 2023. Also on November 2, 2023, Commission staff notified the LRB of the decision to move the public hearing date to November 9. The LRB agreed to add the updated notice to all three rules in the Administrative Register. The updated hearing notice was published in the Administrative Register on November 6, 2023. See **Attachment B**.

On November 8, 2023, the Commission received an electronic letter from Senator Steve Nass, Co-Chair of JCRAR, directing the Commission to hold a public hearing on the scope statements. The letter acknowledged that the Commission had affirmatively scheduled a hearing, but directed that the hearing and comment period occur anyways in the event of a change of plans. See **Attachment C**. On November 13, 2023, the Commission received a hard copy of this letter in the mail.

On November 9, 2023, Commission staff hosted a virtual public hearing on Scope Statements SS 089-23 – SS 094-23. The minutes of that meeting are included as **Attachment D**. The meeting began at 1:00pm, and Staff Attorney Brandon Hunzicker provided instructions for how members of the public could submit written comments to the LRB, or to the Commission, or both until 4:00pm that day. No one appeared to comment on the scope statements, and Staff Attorney Hunzicker concluded the live portion of the hearing. He stated that the screen containing the contact information would be left up for the duration of the meeting until 3:00pm.

Summary of Public Comments at the Hearing:

As reflected by the meeting minutes, no members of the public attended the November 9 meeting to offer comments on the proposed statements of scope.

Summary of Public Comments Received by the Legislative Reference Bureau:

On November 14, 2023, the LRB confirmed that it did not receive any comments from the public regarding these statements of scope. See **Attachment E**.

Summary of Written Comments Received by the Commission:

The Commission received a variety of comments from the public regarding the scope statements for the challenge procedures for nomination papers and declarations of candidacy. Many of the comments objected to subjective criteria, such as character, being included as a basis for these types of challenges. See **Attachment F**.

The Commission also received two written comments specific to the scope statements for the mandatory use of uniform instructions for absentee voting. 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. See **Attachment G**.

Discussion and Recommendations:

Commission staff have received and reviewed all public comments relating to each of the six proposed statements of scopes. All of the comments received for the nomination paper and declaration of candidacy statements of scope address subjective grounds for those types of challenges that are outside the scope statements, such as character. Subjective criteria such as “character” is not within the proposed rulemaking scope of any of the scope statements. Additionally, the two written comments received for the scope statements on mandatory use of uniform instructions for absentee voting were both in support of the statements of scope as written.

Accordingly, Commission staff recommend that the Commission approve all six statements of scope pursuant to Wis Stats. §§ 227.135(2), 227.24(1)(e)1d.

Recommended Motion 1: The Wisconsin Elections Commission has received and reviewed all relevant public commentary for scope statements SS 089-23 and SS 090-23, relating to the proposed rulemaking for the procedural challenge process for Declarations of Candidacy. As the body with policy-making powers over the subject matter of the proposed rule, the Commission accordingly approves these statements of scope as written. The Commission further directs staff to begin drafting proposed rule language for these scope statements to be reviewed and approved by the Commission at an upcoming meeting.

Recommended Motion 2: The Wisconsin Elections Commission has received and reviewed all relevant public commentary for scope statements SS 091-23 and SS 092-23, relating to the proposed rulemaking for the procedural challenge process for Nomination Papers. As the body with policy-making powers over the subject matter of the proposed rule, the Commission accordingly approves these statements of scope as written. The Commission further directs staff to begin drafting proposed rule language for these scope statements to be reviewed and approved by the Commission at an upcoming meeting.

Recommended Motion 3: The Wisconsin Elections Commission has received and reviewed all relevant public commentary for scope statements SS 093-23 and SS 094-23, relating to the mandatory use of uniform instructions for absentee voting. As the body with policy-making powers over the subject matter of the proposed rule, the Commission accordingly approves these statements of scope as written. The Commission further directs staff to begin drafting proposed rule language for these scope statements to be reviewed and approved by the Commission at an upcoming meeting.

ATTACHMENT A

Full text of the specified Administrative Register, except Inserted Chapters published in the Register.

Wisconsin Administrative Register No. 814B

Published every Monday by the Legislative Reference Bureau under s. 35.93, Wis. Stats.

Publication Date: October 30, 2023

Subscribe to receive email notification of changes to Administrative Code chapters or of selected notices published in the Administrative Register.

Table of Contents

- Emergency Rules in Effect
- Statements of Scope
- Notices of Public Hearing and Comment Period for Statements of Scope
- Notices of Submittal of Proposed Rules to Legislative Council Clearinghouse
- Rule-Making Notices (Hearing Notices)
- Notices of Submittal of Rules to Legislature in Final Draft Form
- Final Permanent Rules Filed with LRB for Administrative Code Publication
- Executive Orders
- Public Notices
- Final Rules Published in Administrative Code and Final Regulatory Flexibility Analyses
- Table of Administrative Code Provisions Revised in this Register
- Instructions For Inserting and Removing Administrative Code Chapters
- Administrative Code Chapters Inserted By This Register
- Administrative Code Chapters Removed By This Register

Emergency Rules in Effect

(Includes Rules Filed With Legislative Reference Bureau not yet in effect indicated below as "Pending")

EmR2314

Expires: **February 25, 2024**

Department of Children and Families (DCF)

Chs. DCF 201-252; Early Care and Education

ch. DCF 201

Child care subsidy copayments and registration fees

EmR2313

Expires: **February 11, 2024**

Genetic Counselors Affiliated Credentialing Board (Gen Couns)

Gen Couns 1

Gen Couns 2

Gen Couns 3

Gen Couns 4

Gen Couns 5

Genetic counselors

EmR2312

Expires: **January 17, 2024**

Department of Health Services (DHS)

Chs. DHS 110-199; Health

ch. DHS 137

Anatomical gifts

EmR2311

Expires: **January 11, 2024**

Department of Natural Resources (NR)

Chs. NR 1-99; Fish, Game and Enforcement, Forestry and Recreation

ch. NR 10

Establishing the 2023-2024 migratory bird season framework and regulations

EmR2310

Expires: **December 7, 2023**

Department of Transportation (Trans)

ch. Trans 309

Ambulance inspection standards

EmR2309

Expires: **December 1, 2023, or until the date on which permanent rules take effect, whichever is sooner**

Department of Safety and Professional Services (SPS)

Chs. SPS 1-299; Professional Services

Chs. SPS 1-29; Procedures, Miscellaneous

ch. SPS 11

Military medical personnel

EmR2308

Expires: **December 1, 2023 or until the date on which permanent rules take effect, whichever is sooner**

Medical Examining Board (Med)

ch. Med 26

Military medical personnel

EmR2306

Expires: **November 26, 2023**

First Extension

Department of Health Services (DHS)

Chs. DHS 1-19; Management and Technology and Strategic Finance

Chs. DHS 101-109; Medical Assistance

ch. DHS 10

ch. DHS 101

ch. DHS 105

ch. DHS 106

ch. DHS 107

Electronic visit verification requirements for certain Medical Assistance services

EmR2304

Expires: **March 1, 2024, or until permanent rules are promulgated, whichever is sooner**

Dentistry Examining Board (DE)

ch. DE 1

ch. DE 5

ch. DE 13

ch. DE 16

Certification of expanded function dental auxiliaries

EmR2303

Expires: **May 1, 2024, or until the date on which permanent rules take effect, whichever is sooner**

Pharmacy Examining Board (Phar)

ch. Phar 1

ch. Phar 5

ch. Phar 7

ch. Phar 10

ch. Phar 19

Registration of pharmacy technicians

EmR2302

Expires: **January 1, 2026, or the date on which permanent rules take effect, whichever is earlier**

Department of Natural Resources (NR)
Chs. NR 500-599; Environmental Protection – Solid Waste Management
ch. NR 500
Disposal of material dredged from the Great Lakes

EmR2213

Expires: **May 1, 2024, or until the date on which permanent rules take effect, whichever is sooner**

Pharmacy Examining Board (Phar)

- ch. Phar 1
- ch. Phar 5
- ch. Phar 6
- ch. Phar 7
- ch. Phar 8

Remote dispensing

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 081-23

Department of Financial Institutions (DFI)

Chs. DFI-CU 51-75; Department of Financial Institutions-Credit Unions

- ch. DFI-CU 51
- ch. DFI-CU 54
- ch. DFI-CU 56
- ch. DFI-CU 59
- ch. DFI-CU 60
- ch. DFI-CU 61
- ch. DFI-CU 62
- ch. DFI-CU 63
- ch. DFI-CU 68
- ch. DFI-CU 69
- ch. DFI-CU 71
- ch. DFI-CU 72
- ch. DFI-CU 74
- ch. DFI-CU 75

Correcting out-of-date cross-references, repealing obsolete provisions, modifying the structure of existing rules to conform to current drafting practices, and revising the definition of “member business loan” to conform to federal law

SS 082-23

Department of Public Instruction (PI)

ch. PI 34

Elimination of a dance license under PI 34.047 (3) (d) as obsolete

SS 083-23

Department of Public Instruction (PI)

ch. PI 34

Provisions of the tier I professional teaching permit

SS 084-23

Department of Public Instruction (PI)

ch. PI 34

Issuing a Tier I License with stipulations based on district need

SS 085-23

Department of Public Instruction (PI)

ch. PI 34

Clarifying the trade specialist license under s. PI 34.037

SS 086-23

Department of Public Instruction (PI)

ch. PI 34

Changes to rules governing assessment teams for Tier IV master educator licenses

SS 087-23

Department of Public Instruction (PI)

ch. PI 34

Innovative and Experimental Teacher Preparation Programs

SS 088-23

Department of Natural Resources (NR)

Chs. NR 800- ; Environmental Protection – Water Supply

ch. NR 809

Revisions to subch. II of ch. NR 809 related to control of lead and copper in public drinking water, to be consistent with revisions to the federal Lead and Copper Rule and the federal Lead and Copper Rule Improvements.

SS 089-23

Elections Commission (EL)

ch. EL 2

Ballot access and election petition challenge procedure

SS 090-23

Elections Commission (EL)

ch. EL 2

Ballot access and election petition challenge procedure

SS 091-23

Elections Commission (EL)

ch. EL 2

Ballot access and election petition challenge procedure

SS 092-23

Elections Commission (EL)

ch. EL 2

Ballot access and election petition challenge procedure

SS 093-23

Elections Commission (EL)

ch. EL 6

Mandatory use of uniform instructions for absentee voting

SS 094-23

Elections Commission (EL)

ch. EL 6

Mandatory use of uniform instructions for absentee voting

SS 095-23

Department of Natural Resources (NR)

Chs. NR 1-99; Fish, Game and Enforcement, Forestry and Recreation

ch. NR 10

The deer management assistance program

Notices of Public Hearing and Comment Period for Statements of Scope

SS 076-23 Notice of Preliminary Hearing

Department of Safety and Professional Services (SPS)

Chs. SPS 301-399 ; Safety, Buildings, and Environment

Chs. SPS 301-319; General, Part I

Chs. SPS 320-325; Uniform Dwelling Code

ch. SPS 305

ch. SPS 320

Dwelling contractor education requirements

SS 077-23 Notice of Preliminary Hearing

Department of Safety and Professional Services (SPS)

Chs. SPS 301-399 ; Safety, Buildings, and Environment

Chs. SPS 326-360; General, Part II

ch. SPS 333

Passenger ropeways

SS 089-23 Notice of Preliminary Hearing

Elections Commission (EL)

ch. EL 2

Ballot access and election petition challenge procedure

SS 090-23 Notice of Preliminary Hearing

Elections Commission (EL)

ch. EL 2

Ballot access and election petition challenge procedure

SS 091-23 Notice of Preliminary Hearing

Elections Commission (EL)

ch. EL 2

Ballot access and election petition challenge procedure

SS 092-23 Notice of Preliminary Hearing

Elections Commission (EL)

ch. EL 2

Ballot access and election petition challenge procedure

SS 093-23 Notice of Preliminary Hearing

Elections Commission (EL)

ch. EL 6

Mandatory use of uniform instructions for absentee voting

SS 094-23 Notice of Preliminary Hearing

Elections Commission (EL)

ch. EL 6

Mandatory use of uniform instructions for absentee voting

Notices of Submittal of Proposed Rules to Legislative Council Clearinghouse

CR 23-058

Department of Natural Resources (NR)

Chs. NR 1-99; Fish, Game and Enforcement, Forestry and Recreation

ch. NR 20

ch. NR 26

Minor changes to fishing regulations on inland, outlying and boundary waters (the 2023 Fisheries Management housekeeping rule)

Rule-Making Notices (Hearing Notices)

CR 23-058

Department of Natural Resources (NR)

Chs. NR 1-99; Fish, Game and Enforcement, Forestry and Recreation

ch. NR 20

ch. NR 26

Minor changes to fishing regulations on inland, outlying and boundary waters (the 2023 Fisheries Management housekeeping rule)

Notices of Submittal of Rules to Legislature in Final Draft Form

CR 21-096

Department of Agriculture, Trade and Consumer Protection (ATCP)

Chs. ATCP 90-139; Trade and Consumer Protection

ch. ATCP 94

Petroleum product inspections and affecting small businesses

CR 23-018

Controlled Substances Board (CSB)

ch. CSB 2

Scheduling thirty-eight (38) anabolic steroids

CR 23-019

Controlled Substances Board (CSB)

ch. CSB 2

Scheduling Daridorexant

CR 23-020

Controlled Substances Board (CSB)

ch. CSB 2

Scheduling seven (7) synthetic benzimidazole-opioid substances

CR 23-021

Controlled Substances Board (CSB)

ch. CSB 2

Scheduling Ganaxolone

CR 23-037

Medical Examining Board (Med)

ch. Med 26

Military medical personnel

CR 23-038

Department of Safety and Professional Services (SPS)

Chs. SPS 1-299; Professional Services

Chs. SPS 1-29; Procedures, Miscellaneous

ch. SPS 11

Military medical personnel

Final Permanent Rules Filed with LRB for Administrative Code Publication

CR 23-022

Board of Nursing (N)

ch. N 2

Modification of Board review process to take the NCLEX

Executive Orders

EO 215

A proclamation that the flag of the United States and the flag of the State of Wisconsin be flown at half-staff as a mark of respect for former State Representative John Klenke

Public Notices

Public Notice: Withdrawal of Statement of Scope SS 014-23

Optometry Examining Board (Opt)

Telehealth

Final Rules Published in Administrative Code and Final Regulatory Flexibility Analyses

CR 22-030

Effective: **November 1, 2023**

Athletic Trainers Affiliated Credentialing Board (AT)

ch. AT 2

Reciprocal credentials for service members, former service members, and their spouses

CR 22-045

Effective: **November 1, 2023**

Department of Natural Resources (NR)

Chs. NR 100-199; Environmental Protection – General

ch. NR 162

Clean Water Fund Program

CR 22-068

Effective: **November 1, 2023**

Department of Natural Resources (NR)

Chs. NR 100-199; Environmental Protection – General

ch. NR 166

Safe Drinking Water Loan Program and affecting small business

CR 22-083

Effective: **November 1, 2023**

Department of Workforce Development (DWD)

ch. DWD 65

The order of selection for vocational rehabilitation services

CR 22-085

Effective: **November 1, 2023**

Cosmetology Examining Board (Cos)

ch. Cos 2

ch. Cos 5

Scope of practice, mobile establishments, and distance learning

CR 22-086

Effective: **November 1, 2023**

Dentistry Examining Board (DE)

ch. DE 11

Precertification sedation education requirements

CR 23-001

Effective: **November 1, 2023**

Athletic Trainers Affiliated Credentialing Board (AT)

ch. AT 1

ch. AT 4

References to consulting physician

CR 23-004

Effective: **November 1, 2023**

Department of Natural Resources (NR)

Chs. NR 800- ; Environmental Protection – Water Supply

ch. NR 812

New cement formulations for the construction of water wells

CR 23-008

Effective: **November 1, 2023**

Department of Natural Resources (NR)

Chs. NR 1-99; Fish, Game and Enforcement, Forestry and Recreation

ch. NR 25

Reorganization rule

Instructions For Inserting and Removing Administrative Code Chapters

Instructions For Inserting and Removing Administrative Code Chapters

Administrative Code Chapters Inserted By This Register

See the Table of Administrative Code Provisions Revised in this Register for a list of the added, modified, or removed, administrative code provisions contained in the chapters inserted or removed by this register. See the Final Rules Published in Administrative Code and Final Regulatory Analyses in this register to see the text of rules affecting changes to the chapters inserted or removed by this register.

TOC

Department of Natural Resources (NR), Chs. NR 1-99; Fish, Game and Enforcement, Forestry and Recreation TOC

Inserted

AT 1

General Requirements And Procedures

Inserted

AT 2

Athletic Trainer License

Inserted

AT 4

Evaluation And Treatment Protocol

Inserted

Cos 2

Practice And Professional Conduct

Inserted

Cos 5

Courses Of Instruction

Inserted

DE 11

Anesthesia

Inserted

DHS 10

Family Care

Inserted

DWD 65

Order Of Selection For Vocational Rehabilitation Services

Inserted

NR 25

Commercial Fishing In Outlying Waters And Wholesale Fish Dealers

Inserted

NR 162

Clean Water Fund Program

Inserted

NR 166

Safe Drinking Water Loan Program

Inserted

NR 812

Well Construction And Pump Installation

Inserted

Psy 2

Requirements For Examination And Licensure Of Psychologists

Inserted

SPS 382 Appendix

Appendix

Administrative Code Chapters Removed By This Register

See the Table of Administrative Code Provisions Revised in this Register for a list of the added, modified, or removed, administrative code provisions contained in the chapters inserted or removed by this register. See the Final Rules Published in Administrative Code and Final Regulatory Analyses in this register to see the text of rules affecting changes to the chapters inserted or removed by this register.

Removed

AT 1

General Requirements And Procedures

Removed

AT 2

Athletic Trainer License

Removed

AT 4

Evaluation And Treatment Protocol

Removed

Cos 2

Practice And Professional Conduct

Removed

Cos 5

Courses Of Instruction

Removed

DE 11

Anesthesia

Removed

DHS 10

Family Care

Removed

DWD 65

Order Of Selection For Vocational Rehabilitation Services

Removed

NR 25

Commercial Fishing — Outlying Waters

Removed

NR 162

Clean Water Fund Program

Removed

NR 166

Safe Drinking Water Loan Program

Removed

NR 812

Well Construction And Pump Installation

Removed

Psy 2

Requirements For Examination And Licensure Of Psychologists

Removed

SPS 382 Appendix

Appendix

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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.

ATTACHMENT B

Full text of the specified Administrative Register, except Inserted Chapters published in the Register.

Wisconsin Administrative Register No. 815A1

Published every Monday by the Legislative Reference Bureau under s. 35.93, Wis. Stats.

Publication Date: November 6, 2023

Subscribe to receive email notification of changes to Administrative Code chapters or of selected notices published in the Administrative Register.

Table of Contents

- Emergency Rules in Effect
- Statements of Scope
- Notices of Public Hearing and Comment Period for Statements of Scope
- Notices of Submittal of Proposed Rules to Legislative Council Clearinghouse
- Rule-Making Notices (Hearing Notices)

Emergency Rules in Effect

(Includes Rules Filed With Legislative Reference Bureau not yet in effect indicated below as "Pending")

EmR2314

Expires: **February 25, 2024**

Department of Children and Families (DCF)

Chs. DCF 201-252; Early Care and Education

ch. DCF 201

Child care subsidy copayments and registration fees

EmR2313

Expires: **February 11, 2024**

Genetic Counselors Affiliated Credentialing Board (Gen Couns)

Gen Couns 1

Gen Couns 2

Gen Couns 3

Gen Couns 4

Gen Couns 5

Genetic counselors

EmR2312

Expires: **January 17, 2024**

Department of Health Services (DHS)

Chs. DHS 110-199; Health

ch. DHS 137

Anatomical gifts

EmR2311

Expires: **January 11, 2024**

Department of Natural Resources (NR)

Chs. NR 1-99; Fish, Game and Enforcement, Forestry and Recreation

ch. NR 10

Establishing the 2023-2024 migratory bird season framework and regulations

EmR2310

Expires: **December 7, 2023**

Department of Transportation (Trans)

ch. Trans 309

Ambulance inspection standards

EmR2309

Expires: **December 1, 2023, or until the date on which permanent rules take effect, whichever is sooner**

Department of Safety and Professional Services (SPS)

Chs. SPS 1-299; Professional Services

Chs. SPS 1-29; Procedures, Miscellaneous

ch. SPS 11

Military medical personnel

EmR2308

Expires: **December 1, 2023 or until the date on which permanent rules take effect, whichever is sooner**

Medical Examining Board (Med)

ch. Med 26

Military medical personnel

EmR2306

Expires: **November 26, 2023**

First Extension

Department of Health Services (DHS)

Chs. DHS 1-19; Management and Technology and Strategic Finance

Chs. DHS 101-109; Medical Assistance

ch. DHS 10

ch. DHS 101

ch. DHS 105

ch. DHS 106

ch. DHS 107

Electronic visit verification requirements for certain Medical Assistance services

EmR2304

Expires: **March 1, 2024, or until permanent rules are promulgated, whichever is sooner**

Dentistry Examining Board (DE)

ch. DE 1

ch. DE 5

ch. DE 13

ch. DE 16

Certification of expanded function dental auxiliaries

EmR2303

Expires: **May 1, 2024, or until the date on which permanent rules take effect, whichever is sooner**

Pharmacy Examining Board (Phar)

ch. Phar 1

ch. Phar 5

ch. Phar 7

ch. Phar 10

ch. Phar 19

Registration of pharmacy technicians

EmR2302

Expires: **January 1, 2026, or the date on which permanent rules take effect, whichever is earlier**

Department of Natural Resources (NR)

Chs. NR 500-599; Environmental Protection – Solid Waste Management

ch. NR 500

Disposal of material dredged from the Great Lakes

EmR2213

Expires: **May 1, 2024, or until the date on which permanent rules take effect, whichever is sooner**

Pharmacy Examining Board (Phar)

ch. Phar 1

ch. Phar 5

ch. Phar 6

ch. Phar 7

ch. Phar 8

Remote dispensing

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 096-23

Department of Justice (Jus)

ch. Jus 10

Handgun transfers

SS 097-23 Revised Statement of Scope

Department of Children and Families (DCF)

Chs. DCF 021-99; Safety and Permanence

ch. DCF 56

Foster care licensing

SS 098-23

Department of Corrections (DOC)

ch. DOC 302

Inmate Classification, Sentence and Release Provisions

Notices of Public Hearing and Comment Period for Statements of Scope

SS 082-23 Notice of Preliminary Hearing

Department of Public Instruction (PI)

ch. PI 34

Elimination of a dance license under PI 34.047 (3) (d) as obsolete

SS 083-23 Notice of Preliminary Hearing

Department of Public Instruction (PI)

ch. PI 34

Provisions of the tier I professional teaching permit

SS 084-23 Notice of Preliminary Hearing

Department of Public Instruction (PI)

ch. PI 34

Issuing a Tier I License with stipulations based on district need

SS 085-23 Notice of Preliminary Hearing

Department of Public Instruction (PI)

ch. PI 34

Clarifying the trade specialist license under s. PI 34.037

SS 086-23 Notice of Preliminary Hearing

Department of Public Instruction (PI)

ch. PI 34

Changes to rules governing assessment teams for Tier IV master educator licenses

SS 087-23 Notice of Preliminary Hearing

Department of Public Instruction (PI)

ch. PI 34

Innovative and Experimental Teacher Preparation Programs

SS 089-23 Updated Notice of Preliminary Hearing

Elections Commission (EL)

ch. EL 2

Ballot access and election petition challenge procedure

SS 090-23 Updated Notice of Preliminary Hearing

Elections Commission (EL)

ch. EL 2

Ballot access and election petition challenge procedure

SS 091-23 Updated Notice of Preliminary Hearing

Elections Commission (EL)

ch. EL 2

Ballot access and election petition challenge procedure

SS 092-23 Updated Notice of Preliminary Hearing

Elections Commission (EL)

ch. EL 2

Ballot access and election petition challenge procedure

SS 093-23 Updated Notice of Preliminary Hearing

Elections Commission (EL)

ch. EL 6

Mandatory use of uniform instructions for absentee voting

SS 094-23 Updated Notice of Preliminary Hearing

Elections Commission (EL)

ch. EL 6

Mandatory use of uniform instructions for absentee voting

Notices of Submittal of Proposed Rules to Legislative Council Clearinghouse

CR 23-059

Office of the Commissioner of Insurance (Ins)

ch. Ins 3

The inclusion of “veterans” as a category of “eligible risks” under Ins 3.15 (4) (a).

Rule-Making Notices (Hearing Notices)

CR 23-059

Office of the Commissioner of Insurance (Ins)

ch. Ins 3

The inclusion of “veterans” as a category of “eligible risks” under Ins 3.15 (4) (a).

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ATTACHMENT C



JOINT COMMITTEE FOR THE REVIEW OF ADMINISTRATIVE RULES

COMMITTEE CO-CHAIRS: SENATOR STEVE NASS AND REPRESENTATIVE ADAM NEYLON

November 8, 2023

Don Millis, Chairperson
Meagan Wolfe, Administrator
Wisconsin Elections Commission
P.O. Box 7984
Madison, WI 53707-7984

RE: SS 089-23, SS 090-23, SS 091-23, SS 092-23, SS 093-23, and SS 094-23 – Ballot Access and Election Petition Challenge Procedure & Mandatory Use of Uniform Instructions for Absentee Voting

Dear Chairperson Millis:

As co-chairperson of the Joint Committee for Review of Administrative Rules (JCRAR) and pursuant to s. 227.136 (1), Stats., I write to direct the Wisconsin Elections Commission (WEC) to hold a preliminary public hearings and comment periods on Scope Statements SS 089-23, SS 090-23, SS 091-23, SS 092-23, SS 093-23, and SS 094-23, which were published in the Wisconsin Administrative Register on October 30, 2023.

Additionally, pursuant to s. 227.135 (2), Stats., please note that a scope statement may not be approved by the Commission or other individuals within the agency until after the preliminary public hearing and comment period are held by the agency, and accordingly, no activity may be conducted in connection with the drafting of a proposed rule until after such hearing and approval have occurred.

I am aware of the scheduled hearings on these scope statements by the commission. However, in case there was a change in that plan, I wanted to ensure the hearings and comment periods occurred via this official letter.

Please confirm receipt of this letter directing a preliminary hearing and comment period on the above scope statement.

Sincerely,

Senator Steve Nass
Co-Chair, JCRAR

ATTACHMENT D



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 Concerning Statements of Scope SS 089-23, SS 090-23, SS 091-23, SS 092-23, SS 093-23, and
SS 094-23

201 W. Washington Avenue, Second Floor
Madison, Wisconsin
1:00 p.m. November 9, 2023

Public Hearing Minutes

Present: Commissioner Ann Jacobs, by teleconference.

Staff present: Sharrie Hauge, Brandon Hunzicker, Robert Kehoe, Anna Langdon, Riley Willman, and Jim Witecha, all by teleconference.

At 1:00 p.m., Staff Attorney Brandon Hunzicker gave attendees another minute to enter the meeting. He began his remarks at 1:02 p.m. He noted that anyone who joined while he was talking was still free to comment or submit written comment. He noted that the six scope statements were three pairs of emergency and permanent rules: one concerning Declaration of Candidacy challenges, one concerning nomination paper challenges, and one requiring municipalities to use the approved Uniform Instructions for absentee voting.

Commissioner Ann Jacobs entered the meeting at 1:03 p.m.

Attorney Hunzicker noted that the comments collected at the hearing would be presented via minutes to the Commissioners along with the submitted written comments. He provided instructions to attendees for how to raise their hand in Zoom and via phone and how to submit written comment. He noted that written comments would be accepted to the Legislative Reference Bureau, Angela O'Brien's email or elections@wi.gov until 4:00 p.m. that day. He stated that each speaker would get four minutes to speak per scope statement, for a total of twelve minutes should they choose to speak on every scope statement. Attorney Hunzicker noted he was not there to answer questions and the hearing was for the public to provide comment, but that he was happy to answer procedural questions.

At 1:07 p.m., Attorney Hunzicker opened the meeting to public comment and reiterated the instructions for requesting to speak via Zoom.

No one appeared to comment on the scope statements.

At 1:15 p.m., Attorney Hunzicker noted he had waited for speakers to arrive, and this would conclude the live portion of the hearing. He stated that the screen containing contact information would be left up and written comments would be provided to the Commission, likely during their meeting in December.

A slide remained in the Zoom meeting, reading:

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

Thank you!
Your feedback is appreciated!
Written comments can be submitted to
angela.obrien@wisconsin.gov until 4:00 p.m. today, November 9
For further information, contact WEC.
PH: 608-266-8005 Email: elections@wi.gov

####

November 9, 2023 Wisconsin Election Commission public hearing minutes prepared by:



Anna Langdon, Help Desk Staff

November 9, 2023

ATTACHMENT E

From: [LRB-Administrative-Code-and-Register](#)
To: [O'Brien, Angela B - ELECTIONS](#)
Cc: [Witecha, James - ELECTIONS](#); [Administrative-Code-Register](#)
Subject: RE: Action Requested: Comments Received for SS 089-23 - SS 094-23?
Date: Tuesday, November 14, 2023 1:46:44 PM

Hello Angela,

LRB does not receive comments on rules. Our site is set up such that comments are sent to the agency at an email address provided by the agency. In your case, that is elections@wi.gov. So any comments should have gone to that email address. If for some reason something is amiss, let us know,

Mike Duchek
Senior Legislative Attorney and Administrative Rules Counsel
Wisconsin Legislative Reference Bureau
(608) 504-5830

From: O'Brien, Angela B - ELECTIONS <angela.obrien@wisconsin.gov>
Sent: Tuesday, November 14, 2023 1:25 PM
To: LRB-Administrative-Code-and-Register <Administrative-Code-Register@legis.wisconsin.gov>; DOA SBOAdminRules <SboAdminRules@webapps.wi.gov>
Cc: Blazel, Ted <Ted.Blazel@legis.wisconsin.gov>; Champagne, Rick <Rick.Champagne2@legis.wisconsin.gov>; Wolfe, Meagan - ELECTIONS <Meagan.Wolfe@wisconsin.gov>; Hunzicker, Brandon L - ELECTIONS <brandon.hunzicker@wisconsin.gov>; Witecha, James - ELECTIONS <james.witecha@wisconsin.gov>
Subject: Action Requested: Comments Received for SS 089-23 - SS 094-23?

Good afternoon,

On November 9, 2023, the Wisconsin Elections Commission held a public hearing and comment period for SS 089-23 through SS 094-23. The statements of scope were published in the Administrative Register on October 30, and updated hearing notices were also published in the Register on November 6.

Can you please confirm whether the LRB received any comments from the public regarding SS 089-23 through SS 094-23? If so, please provide those written comments at your convenience. If not, please confirm that no comments from the public were received.

Please let me know if you have questions, or if you need any additional information.

Best,

Angela O'Brien

Staff Attorney
Wisconsin Elections Commission
201 West Washington Avenue
Madison, WI 53703
608.264.6764 (direct)
608.267.0500 (fax)
angela.obrien@wisconsin.gov

ATTACHMENT F

From: [Kathryn Bartelli](#)
To: [Sen.Nass - LEGIS](#); [Rep.Neylon - LEGIS](#); [Sen.Stroebe - LEGIS](#); [Sen.Bradley - LEGIS](#); [Sen.Roys - LEGIS](#); [Sen.Larson - LEGIS](#); [Rep.Petersen - LEGIS](#); [Rep.Spiros - LEGIS](#); [Rep.Conley - LEGIS](#); [Rep.Baldehy - LEGIS](#); [O'Brien, Angela B - ELECTIONS](#)
Cc: [Mikalsen, Mike - LEGIS](#)
Subject: Wisconsin Elections Commission Public Hearing & More
Date: Thursday, November 9, 2023 2:57:51 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.**

Hello Members of the Wisconsin Legislative Joint Committee for Review of Administrative Rules!

I am contacting you today for two purposes; first to make a complaint, offer a suggestion pertaining to the complaint and the second to give you my observations/opinions on the Wisconsin Elections Commission Statements of Scope/Rule Making.

First Issue: Last week WEC had scheduled a public hearing on several “Statements of Scope” to get public opinion on them.

- I went to attend the Zoom meeting Friday, Nov. 3rd 1-4pm at 1pm but found that it had been rescheduled to today, Nov. 9th 1-4. It had not been noted on the WEC calendar, just simply removed from the 3rd and added to the 9th but how would someone know to bother checking that ahead of time?
- I get a lot of the Legislative notifications including for WEC and the Administrative Code and Register but saw nothing to let me or other members of the public know the “public hearing” had been changed. I can only assume it was a last minute change but talk about inconveniencing the people who well might have attended on the 3rd.
- Then, today I was late getting on Zoom only to find out that no one from the public had attended in the first 15 minutes so they shut the zoom down. Gee I wonder why no one attended!
- One reason this public hearing probably never should have been scheduled in this time period is that the agency contact person, staff attorney Angela O’Brien, who signed off on all of the scope statements is on her honey moon and wouldn’t have been back in time for either meeting to answer questions from the public.
- There has to be a better way to notify people of meeting dates & changes.
- My suggestion is to have a category just for cancellations/date & time changes separate from the other notification categories in the Notification Service.
- The method of posting public notices is obsolete and needs to be addressed with a better option than just posting in newspapers or even on the newspaper websites when many times now a subscription is required to access that information. Most people, myself included, don’t know where to look; you all just assume we know where these notices are posted.

Second Issue: I copied Angela O’Brien on this email also so I wouldn’t need to send her my “public comments” that I would have offered up at the Zoom public hearing in a separate

email. The comments that you all should be privy to anyway since any potential rules would be coming to this committee for approval. Those comments are as follows:

- WEC Commissioners and staff, including Meagan Wolfe who should not even still be “on the job”, have no business offering up any statements of scope or promulgating any rules this close to an important and major election cycle, especially since they have not offered up one rule to my knowledge since Meagan Wolfe became the administrator. In addition, the effort to try to do so under an “emergency rule” is a joke!
- Another reason not to entertain some of these statements of scope/potential rules is the possible underlying intent which appears to be potentially allowing challenges that would prevent certain people from being included on the ballots (can you say Trump; or maybe competitors for some races).
- Using SS 089-23 as an example, if they are offering up a statement of scope but do not give actual details of how the rule would be written what good is it to get public opinion?
- In SS 091-23 (b) (and similar wording in SS 092-23) it partially states “the proposed rule would also incorporate existing Commission guidance” well, yet again, how is the public to offer up comments on something when they are not provided the applicable information that is referenced in the statement of scope?
- Funny how in all of the statements of scope where it says: “description of all of the entities that may be affected by the proposed rule” neither voters/electors nor election inspectors are included!
- Another reason to wait until after the 2024 election cycle is because there are so many election related bill proposals on the table (many horrible for Wisconsin) that are trying to be rushed through and would need to be addressed by WEC but would hopefully instead be tabled or filed in the trash bin of history!

I have great hope that all of you on this committee will put consideration of the upcoming election cycle as your first priority and turn down any and all rushed “emergency” statements of scope or administrative rules by a Commission that had plenty of time over the last 3+ years to address these issues.

Angela- my sympathies to you that you had to process all of these statements of scope right before your wedding and honeymoon! Hopefully you had an awesome event and I wish you many years of happiness!

From a concerned Wisconsin citizen and election inspector!
Kathryn A Bartelli
N3082 Willow Rd
Lake Geneva, WI 53147
712-540-2125

Comments for the Commission 11/2/2023

WEC: Keep Non-Subjective Criteria already in place

Submitted

October 26, 2023 at 11:44

Requester

Srwc <srwc@wi.rr.com>

CCs

Elections <elections@wi.gov>

Srwc October 26, 2023 at 11:44

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.

I am **strongly opposed to subjective criteria**, such as "character" (& whatever other related words might be used in its place) be a criterion for challenging a nomination or potential candidacy of any candidate.

Therefore, I am letting you know **I oppose the proposed rule changes** to the Nomination of Candidates process allowing such challenges.

Citizens must currently meet statutory requirements to be "fit to hold office" & if they do meet these long-standing, non-subjective criteria, then they meet the criterion & have the right to run for office.

A citizen who meets the current statutory requirements must not be hindered by any individual & or groups from becoming a candidate. **Do not build in subjective criteria** which will empower parties to delay, restrain, intimidate, demoralize & or otherwise obstruct the process of running for office.

A concerned citizen.

Sharon Foley

Oct 25 17:02

To:

Wisconsin Elections Commission
electioncomments@wi.gov

To Election Commissioners

I am writing in opposition to proposed rule changes to the Nomination of Candidates process which would allow anyone to challenge the potential candidacy of any candidate on the grounds of “character” or other subjective criteria. Citizens, once meeting the statutory requirements for office and having appropriate nomination papers, should be allowed to run for office unchallenged by another’s opinion of the candidate’s fitness to hold office.

Thank you

Sincerely,

Sharon Baureis

Louis E. Baureis

Oct 25 09:10

To:

Support
Elections

Dear Members of WEC:

I write in opposition to proposed rule changes to the Nomination of Candidates process which would allow anyone to challenge the potential candidacy of any candidate on the grounds of “character” or other subjective criteria. Citizens, if meeting the statutory requirements for office, should be allowed to run for office unencumbered by challenges based upon another individual’s opinion of the candidate’s fitness to hold office.

I am reminded of the political career of Adam Clayton Powell whom Congress refused to seat due to allegations of misappropriation of funds and other scandals but who had been returned to Congress by his district’s voters. In June 1968, his case was heard in the US Supreme Court, [Powell v. McCormack](#), and the Court ruled the House of Representatives had acted unconstitutionally when it excluded Powell, as he had been duly elected by his constituents. The Court in its ruling made it clear: under our system of governance, it is the voters alone who determine the fitness of candidates. While reasonable people may disagree about the character of a candidate, that disagreement must be expressed in the political process culminating in an election wherein voters have the authority to accept or reject the candidate.

In short, fitness to hold office should be determined by voters, not administrators, officials, judges, or legislators.

Respectfully submitted,

Lou Baureis

To Election Commissioners

I am writing in opposition to proposed rule changes to the Nomination of Candidates process which would allow anyone to challenge the potential candidacy of any candidate on the grounds of “character” or other subjective criteria. Citizens, once meeting the statutory requirements for office and having appropriate nomination papers, should be allowed to run for office unchallenged by another’s opinion of the candidate’s fitness to hold office.

Thank you

Sincerely,

Sharon Baureis

Dear Wisconsin Election Commissioners:

I'm writing in opposition to the proposed rule changes to the Nomination of Candidates process, which would allow anyone to challenge the potential candidacy of any candidate on the grounds of “character” or other subjective criteria. This criteria should be based on Wisconsin laws, not on rules and guidelines that can change without legislative approval.

Citizens should be allowed to run for office unencumbered by challenges based upon another individual’s opinion of the candidate’s fitness to hold office. Candidacy should be based on meeting the Wisconsin statutory requirements for office.

Sincerely,

Elizabeth Bruders

Waukesha, WI

Attn:

WEC Commissioners,

In regards to the proposed rule changes to the Nomination of Candidates process, which would allow anyone to challenge the potential candidacy of any candidate on the grounds of "character" or other subjective criteria, I am whole-heartedly OPPOSED to ratification.

Citizens, if meeting the statutory requirements for office, should be allowed to run for office unencumbered by challenges based upon another individual's opinion of the candidate's fitness to hold office.

"Let those without sin cast the first stone." What would you think if someone looked briefly at YOUR views, employment history, entrepreneurial endeavors, etc., and found YOU to be lacking in character without even knowing you?

The WEC cannot be allowed to play God and place judgment on a ballot nominee if they have fulfilled every legal requirement to appear on said ballot. Blocking candidates subjectively smells suspiciously like communism.

Who are you to modify the ballot on subjective information and views? One day we might end up with only government-sanctioned candidates (which is what you are proposing), this is a very dangerous road to go down. STOP THE JOURNEY NOW!

I am counting on all six of you to uphold American values now. Not for Republicans or Democrats, but for our citizenry.

Thank You,

Connie Newbauer

West Allis, Wi 53214

Join me on the Edge!

[Blog — Kingdom Edge Magazine](#)

or @

<http://www.GiftofSimplicity2.blogspot.com>

ATTACHMENT G

From: [Erin Grunze \(Wisconsin Elections Commission\)](#)
To: [O'Brien, Angela B - ELECTIONS](#)
Subject: Zendesk Ticket Reopened Re: Fw: CCWI Written comments on 510 – EL 6 – Uniform Instructions for Absentee Voting for 11.9.23 WEC Hearing
Date: Thursday, November 9, 2023 2:51:16 PM

**CAUTION: This email originated from outside the organization.
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This ticket ([#25135](#)) has been reopened. Please visit Zendesk to review this ticket. Do not reply to this email.

Erin Grunze

Nov 9, 2023, 14:50 CST

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Thank you for that point of clarification, Brandon. That is helpful.

Kindly,
Erin

Erin L Grunze
Voting and Elections Consultant
Common Cause Wisconsin



Brandon Hunzicker (Wisconsin Elections Commission)

Nov 9, 2023, 14:49 CST

Hi Erin,

The text is not quite the same. Scope statement 094-23 has one additional section pertaining to the finding of emergency for an emergency rule. The rest of the text is identical to 093-23, which is for the permanent rule. Because the substantive text is the same for both rules and your comments do not appear to address the Emergency Rule aspect, I do not think you need to submit again. If you wanted to comment specifically on

the emergency rule, then you might want to submit an additional comment.

Thanks,

Brandon

Erin Grunze

Nov 9, 2023, 14:43 CST

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Thanks, Brandon for confirming.

Can you answer a clarifying question...is the text of SS 094-23 and SS093-23 the same? I'm just seeing now that these are both listed in relation to absent ballots and uniform instructions. Should I submit CCWI's comments to both of them?

Thanks for your assistance in helping me understand.

Kindly,
Erin

Erin L Grunze
Voting and Elections Consultant
Common Cause Wisconsin



Brandon Hunzicker (Wisconsin Elections Commission)

Nov 9, 2023, 13:37 CST

Dear Ms. Grunze,

The Wisconsin Elections Commission acknowledges receipt of your comments concerning the scopes statements on the mandatory use of Uniform Instructions. Your comments will be presented to the Commission before the Commission considers approving the scope statements.

Sincerely,

Brandon Hunzicker
Staff Attorney
Wisconsin Elections Commission
201 West Washington Avenue
P.O. Box 7984
Madison, WI 53707-7984
brandon.hunzicker@wisconsin.gov

Erin Grunze

Nov 9, 2023, 12:25 CST

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the content is safe.**

Per email instructions from Angela Davis ("If you are corresponding about a verified complaint, public records request, or public comment on a proposed administrative rule, please forward your email to elections@wi.gov."), I am forwarding this email.

Thanks,
Erin

Erin L Grunze
Voting and Elections Consultant
Common Cause Wisconsin



From: Erin Grunze <egrunze@commoncause.org>
Sent: Thursday, November 9, 2023 12:22 PM
To: angela.obrien@wisconsin.gov <angela.obrien@wisconsin.gov>
Cc: Jay Heck <jheck@commoncause.org>
Subject: CCWI Written comments on 510 – EL 6 – Uniform Instructions for Absentee Voting for 11.9.23 WEC Hearing

Dear Angela,

Please see below the written comments submitted to the Wisconsin Elections Commission for the public hearing on 11.9.23 re: 510 – EL 6 – Uniform Instructions for Absentee Voting.

Any questions or further comments can be directed to Jay Heck, Executive Director, copied on this email.

Kindly,
Erin

Erin L Grunze
Voting and Elections Consultant
Common Cause Wisconsin



Common Cause Wisconsin is pleased to be able to submit comments re: 510 – EL 6 – Uniform Instructions for Absentee Voting – Concerning the creation of a new administrative rule to require municipalities to use the Uniform Instructions that are approved by the Commission for absentee voting.

Common Cause Wisconsin strongly supports having the Wisconsin Elections Commission provide uniform instructions to clerks and election officials concerning absentee voting. These instructions will be a benefit to clerks, voters, the media, groups that assist voters, and the general public about the process and what needs to be done for an absentee ballot to be properly completed and returned so the ballot can be counted. Clerks, election officials, and voters have explicitly expressed and all agree that clear, uniform instructions are desired in advance of voting in elections. We encourage the Commissioners to consider the importance of having clear and uniform instructions for clerks across the state to provide to all voters which would reduce confusing and conflicting information that in turn damages our ability to be able to fully participate and engage in a functioning representative democracy.

From: [Eileen Newcomer](#)
To: [O'Brien, Angela B - ELECTIONS](#)
Cc: [Debra Cronmiller](#)
Subject: Public Comment on Admin Rule Scope Statements
Date: Thursday, November 9, 2023 8:01:28 AM
Attachments: [11.9.2023 WEC Admin Rules Public Hearing.pdf](#)

**CAUTION: This email originated from outside the organization.
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Hi Angela,

Attached you will find written public comment from LWVWI for today's public hearing on the Uniform Instructions for Absentee Voting scope statements.

Thanks for your consideration. Please let me know if you have any questions.

Best,
Eileen

--
Eileen Newcomer
(she, her, hers)
Voter Education Manager
League of Women Voters of Wisconsin

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!](#)



612 W. Main Street, #200
Madison, WI 53703

Phone: (608) 256-0827
www.lwvwi.org



November 9, 2023

To: Wisconsin Elections Commission

Re: Public Comments from the League of Women Voters of Wisconsin Regarding 510 – EL 6 – Uniform Instructions for Absentee Voting – Concerning the creation of a new administrative rule to require municipalities to use the Uniform Instructions that are approved by the Commission for absentee voting.

The Uniform Instructions for Absentee Voting serve to provide clear instructions to voters utilizing absentee voting to cast their ballot. All voters, no matter their zip code or municipality, should have access to the same information about the requirements they must follow to ensure their absentee ballot is properly completed and counted. Voters need clear, easy to read and understandable instructions that include information about how to successfully return your ballot, as well as the rights of voters with disabilities to have assistance returning their ballots.

The League of Women Voters of Wisconsin supports the Wisconsin Election Commission's effort to promulgate an administrative rule to make it clear that all absentee voters must be sent uniform absentee voting instructions.

Thank you for your consideration.