



Wisconsin Elections Commission

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TO: All Wisconsin Election Officials

FROM: Meagan Wolfe Richard Rydecki
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SUBJECT: Observers at Voting and Counting Locations for the November 3, 2020 General Election

Overview

Wisconsin state law allows that any member of the public, other than a candidate whose name appears on the ballot, can observe voting at in-person absentee voting sites, polling places and ballot processing at central count facilities. The public's right to observe is provided by Wis Stat. § 7.41 and the Wisconsin Elections Commission (WEC) has established guidelines for observers to ensure that observation does not interfere with the conduct of in-person absentee voting, voting at a polling place or the processing of absentee ballots at a central count location. Local election officials and Chief Election Inspectors should familiarize themselves with these rules so that they can effectively manage any observers present during voting or ballot processing at central count or during any canvass meetings. The updated "Election Observers at a Glance" brochure that should be provided to observers can be found here: <https://elections.wi.gov/publications/brochures/observer-rules>.

Setup

A designated observation area at the polling place or other location where votes are being cast, counted, canvassed or recounted should permit observers to hear instructions and to readily observe all public aspects of the process without disrupting the activities. State law requires the area to be within 3 to 8 feet of the poll book and voter registration areas of the polling place.

Due to COVID-19 concerns, and to maintain proper social distancing, Commission staff recommend that the observer area should be located at least 6 feet from these tables in order to limit proximity to poll workers and voters. The 6-foot threshold is within the allowable distance between the observation area and the poll book and registration tables. Tape can be used to mark an area on the floor to clearly identify each observer area. Chairs should be provided for observers and those seats should be spaced at least 6 feet apart, if possible. The size and location of the observation area needs to balance access to the poll book and voter registration areas while also accommodating social distancing standards.

Check-in Procedures

An observer log is used at each location where observers may be present. This form is provided on the agency website at: <https://elections.wi.gov/forms/el-109>. An observer should legibly print his/her full name, street address and municipality, and the name of the organization or candidate the observer represents, if any, in the

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Election Observer Log. The observer also signs this form acknowledging that the observer understands the rules and will abide by them. Additionally, an observer will be asked to present photo identification to an election inspector which contains the observer's name and photo. Any type of photo identification is acceptable if it contains a photo of the observer and the observer's name. The photo identification requirement allows chief inspectors to keep an accurate list of individuals and their organization affiliation (if applicable) present at the polling place, in-person absentee voting site or absentee central count location.

Observers must wear a name tag or badge which reads "Election Observer." This name tag must be worn at all times the observer is inside of the polling place or other location where votes are being cast, counted, or canvassed. The name of the observer need not appear on the tag or badge. The name tag helps voters identify and eliminate confusion as to who are election officials conducting the election and who are individuals acting as an observer. Observers should be provided with the "Election Observers at A Glance" pamphlet which outlines the conduct and options for observers.

Managing Observers

Observers should be directed to the designated area after they check in with the Chief Election Inspector and sign in. They can observe the proceedings and may ask questions regarding the procedures being used but they should not interfere with the orderly processing of voters or cause any unnecessary disruptions. If observers are unable to hear the election inspectors and voters, they may ask for the instructions or information to be repeated. However, there is no requirement the instructions or information be broadcast at a specific volume. If space permits, observers may move within the designated observer area to better view and/or hear the interactions, but social distancing should be practiced as much as possible given the setup or space considerations of the location.

To ensure the orderly conduct of any voting or ballot counting events, and if necessary due to space limitations of the location, an election official may reasonably limit the number of observers representing the same organization or candidate. Establishing reasonable limitations for observers will be especially important due to COVID-19 concerns and to avoid overcrowding. If multiple representatives of the same political party or organization are present at a location and wish to observe, it may be necessary to establish a rotation or schedule, so each representative has the opportunity to observe without overcrowding the voting area or central count location. Party balance should be considered when making these decisions and each political party should be offered equal opportunity to observe throughout the day.

Public Health Considerations

All election observers are required to wear face coverings while inside the polling place, central count location or in-person absentee voting location. More information about face coverings requirements and recommendations for observers and voters can be found here: <https://elections.wi.gov/node/6981>. Any observer who refuses or fails to follow required public health procedures may be removed from the location where they are observing by the local election official or Chief Election Inspector in charge of that in-person absentee voting site, polling place, or central count facility.

Conduct of Observers

Observers may silently use cell phones in the polling area. Observers may not use cell phones to take or make voice calls (ringer should be silenced) inside the observation area. Any voice calls should be made outside of the polling location, central count location, or in-person absentee location to avoid disrupting the process. Observers may not take photographs or videos in the polling place as Commission staff believe those actions

are inherently intimidating to voters. The chief inspector may prohibit an observer from using a cell phone if it is deemed disruptive.

Observers are prohibited from electioneering or interfering with the orderly conduct of the election and/or election administration event. Any observer who engages in disruptive behavior with other observers or voters that the election official believes threatens the orderly conduct of the activity or interferes with voting may receive a warning from the election official. If a warning has been issued, and the offending observer continues the disorderly behavior, the chief inspector should order the offending observer to depart the location. If the offending observer declines or otherwise fails to comply with the chief inspector's order to depart, the chief inspector should summon local law enforcement to remove the offending observer.

In the event that the chief inspector orders an observer to leave a location, the chief inspector should provide a written order to the observer (EL-110) which includes the reason for the order and the signatures of the chief inspector as well as another election inspector and an election official representing the opposite political party, if available. The chief inspector has sole authority to order the removal of an observer, but another election inspector may note his or her concurrence or disagreement with the decision on the Inspectors' Statement (EL-104).

When an EL-110 is completed, the municipal clerk or board of election commissioners should notify the WEC of the incident within seven days. This notification should include a copy of the EL-110, if available, and the portion of the Inspectors' Statement which documents the incident. WEC staff will use this information to provide a summary to the Commission after each election of all reported incidents.

Allowable Observer Activities

Observers may ask questions of election officials regarding procedures being used to check in voters, register voters, issue and process ballots. Observers may examine the poll list so long as they do not interfere with election official responsibilities. The election official determines when it is an appropriate time to allow an observer to examine or photograph the poll list. If voters are standing in line to have their names recorded and to receive a ballot, it is not an appropriate time to allow observers to view the poll lists. The poll list must always remain under the control of election officials.

Under Wisconsin state law, election observers are allowed to challenge the qualifications of a voter but may not challenge a voter's ballot based on their compliance with voting procedures. Challenges that may be brought by any qualified elector of the state, including election observers, are as follows:

1. Citizenship
2. Age
3. Residency
4. Felony Status
5. Competency to Vote
6. Bet or Wager on the Outcome of the Election
7. Voted Previously at the Same Election

If a challenge is made by an observer for one of these reasons, they are placed under oath and asked to make a sworn statement giving the reason for the challenge. The observer has the ability to withdraw their challenge after the challenged voter provides their answer to the challenge. Challenges cannot be brought for reasons outside of the ones listed above and observers should not be permitted to make frivolous challenges designed to interfere with the orderly processing of voters or ballots. Election Inspectors should consult the Commission's

challenge documentation ([EL-104c](#)) to ensure that all challenges are conducted uniformly and in accordance with applicable statutes.

Prohibited Activities of Observers

The poll list may not be handed to the observers and observers are prohibited from viewing the confidential portion of the poll list. Observers are not permitted to make a photocopy of or take photographs or video of proof of residence documents and voted ballots. Observers are not permitted to handle an original version of any official election document, including absentee ballot certificate envelopes, voter registration forms and/or proof of residence documents while voters are registering.

Observers may not conduct any of the following disorderly activities while monitoring the conduct of the election and/or election administration event:

1. Wear clothing or buttons related to candidates, parties, or referenda that are intended to influence voting at the election.
2. Interact with voters, except when asked by an elector to provide assistance in marking their ballot.
3. Watch voters mark their ballots.
4. Have conversations about candidates, parties, or ballot questions.

Gatherings Outside of the Voting or Counting Location

Large gatherings outside of the polling place, in-person absentee site or central count facility should be monitored to ensure electioneering restrictions are being followed and voters are able to freely enter and exit the building. The 100-foot electioneering-free zone should be enforced and no behavior that violates electioneering laws should be allowed. Please note that electioneering is defined as any activity intended to influence voting at an election, including specific references to candidates or issues on the ballot for this election. The Chief Election Inspector retains the same statutory authority to remove an individual that is electioneering in violation of Wis. Stat. §§ 12.03 and 12.035.

It may be difficult for the Chief Election Inspector or local election officials to monitor the exterior of the in-person absentee site, or polling place or central count facility on election day, so a greeter or other election official can be used for this purpose. Gatherings that restrict the ability for voters to enter or exit the polling place or in-person absentee voting site or that violate electioneering law should not be allowed. It may be necessary to contact local law enforcement for assistance with dealing with any potential issues outside of these locations. Clerks should contact law enforcement officials prior to the start of in-person absentee voting or election day to discuss these potential issues, share contact information, and establish protocols for handling any potential situations for which engagement of law enforcement may be necessary to maintain order.