

# WISCONSIN ELECTIONS COMMISSION

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**DATE:** December 1, 2016

**TO:** Wisconsin County Clerks  
Milwaukee County Election Commission

**FROM:** Michael Haas  
Administrator

Richard Rydecki  
Elections Specialist

**SUBJECT:** Statewide Recount for President of the United States Update #4

This communication should serve as an update on the status of the statewide recount for the President of the United States. The recount began today, December 1, 2016, at 9:00 a.m., and we have received several requests from local election officials to clarify recount procedures. Thank you for all of your pre-recount preparation. All of your hard work and dedication will serve to ensure the integrity of the process.

**Recount Observers:** State law allows that the recount of any election shall be open to any interested member of the public, including candidates and their counsel. ~~Similar to Election Day, all observers should provide photo identification, sign the observers log and wear a name badge or nametag identifying themselves and their role.~~ **12/2/2016 Update: Meetings of the Board of Canvassers are public meetings and observers cannot be required to sign in or present a photo ID as a condition of attending. Both candidate representatives and public observers may be required to wear a name badge or name tag identifying themselves and their role. This conclusion is based on a 2014 opinion from the Wisconsin Attorney General and more information on this opinion can be found here: [Canvass Boards as Open Meetings](#).** There are several different categories of observers and we have provided specific information regarding the rights of each type of observer below:

- **Primary Candidate Representative:** Each candidate on the ballot for President of the United States may designate a primary candidate representative at each site where the recount is taking place. The primary candidate representative has the right to review each ballot and bring challenges or objections with the Board of Canvassers (BOC). They may also take photographs of the ballots and ask clarifying questions of recount staff. If members of the BOC or recount staff have questions about the legitimacy of a candidate representative, they should contact the WEC for verification.
- **Secondary Candidate Representative:** Each candidate on the ballot for President of the United States may also designate secondary candidate representatives who can observe the recount proceedings. Secondary candidate representatives have the right to review each ballot and should convey any concerns to the primary candidate representative who can issue a

challenge or objection. Secondary candidate representatives may ask questions of recount staff and request that ballots be set aside for further review. There is no limit on the number of secondary candidate representatives allowed at each location, but space considerations in the recount area may require the rotation of secondary representatives throughout the day to ensure that all candidates have an opportunity for equal representation.

- **Public Observers:** All members of the public are allowed to observe the recount proceedings. All questions from public observers should be directed to a designated member of the BOC. Public observers should not disrupt the proceedings or impact the orderly recounting of ballots. Public observers must stay in the designated observer areas. Space considerations in the designated observer areas may require the rotation of public observers.

**Members of the Board of Canvassers:** The recount for each county should proceed under the direction of the Board of Canvassers. Two members of the BOC constitutes a quorum, which would allow the BOC to make a decision, but it is recommended that all members of the BOC are present to settle a dispute or reach a final decision on a ballot counting issue. It is our opinion that the entire BOC does not have to physically be present during all hours that the recount is taking place, but they should be available if a situation arises where the BOC is required to make a decision.

**Board of Canvassers Decisions:** The final decision on ballot counting issues should be made by the BOC. They can consider all information available to them, including, but not limited to, how a ballot was counted on Election Day, how a ballot should have been counted on Election Day, if an error was made by an election official that impacted the final disposition of a ballot, if an error was made by the voter, and advice offered by county's corporation counsel.

One new example of a ballot counting issue involves absentee ballot certificate envelopes which are missing witness address information. A change in statute, in effect for the first time at the 2016 General Election, states that "If a certificate is missing the address of a witness, the ballot may not be counted." Wis. Stat. § 6.87(6d). The provision in the recount statutes defining defective absentee ballot envelopes (s. 9.01(1)(b)2. was not revised to include a missing witness address. The Commission staff has received many inquiries on whether ballots returned the clerk, or voted in the clerk's office without witness address information should have been counted or rejected. Again, the above sample factors – who made the error, whether the ballot was already counted on Election Day, legal advice from corporation counsel should be considered by the Board of Canvassers when ultimately making a decision.

Because this a new statutory requirement and no court has ruled directly on this issue, Commission staff cannot dictate the decision of the Board of Canvassers in specific cases. Although we can help to talk through the circumstances and relevant considerations, ultimately the BOC must make such decisions.

We hope your recount got off to a good start. In many cases the initial organization and processing may take the most time as issues are identified and resolved, and often the pace subsequently accelerates after tabulators and the Board settle into a routine. Beginning on Friday we will post the cumulative recount results as compared to the initial county canvass results, so we appreciate receiving your updates each night.