

Comment on the Draft Rules for Election Observers by John Washburn

The primary comment I have for the Draft Rules for Election Observers is the rules make no distinction between the duties and requirements of observers before polling begins, while polling is occurring, and after polling closes. There are activities to be observed before ***“Hear Ye, Hear Ye. Polling is now open”***, after ***“Hear Ye, Hear Ye. Polling is now closed.”*** and between these two public announcements.

All of my election observation over the course of the last three years has been of the non-polling activities which occur in a polling location; the activities before ***“Hear Ye, Hear Ye. Polling is now open.”*** and those after ***“Hear Ye, Hear Ye. Polling is now closed.”*** These activities are generally described as the equipment setup and the canvass performed by the local board of canvassers.

Equipment setup:

Observers attempting to verify compliance to the new security rules (e.g. record the software version numbers for the firmware) require the observer be considerably closer than six feet. For example on the Accuvote OS scanners used in my home voting district of Germantown the version number flashes briefly on a small (approx 6 inch by 1 inch) LCD display and on the cash register tape beginning of day report. Because of the transient nature of the LCD display, video recording is the only practical way for an observer to record the data displayed. If there is no video, then the even if the displayed information is accurately recorded using a pen and paper, the rebuttal is that the observer has recorded the information incorrectly. Since the displayed data is ephemeral patterns of darkened starch crystals, there is no way for the observer to rebut the assertion of the election official.

Video recording must be allowed for these, non-polling activities. Prior to the start of polling the activities within the polling location are an open meeting and thus subject to reasonable recording by observers.

Local Board of Canvassing

For the canvassing of votes pursuant to 7.51, the limitation of 6 feet and no video cameras is whole inadequate to allow observers to actually observe what is being done. The LED display of the Optech IIP Eagles is larger and easier to record at a distance of six feet than is the LCD display of an Accuvote, there is still the problem of reading the numbers printed on the cash register tap reports. One of the requirements of the canvassing of the local board of canvassers is to record the number of ballots cast into the machine and compare this number to the number of ballots handed to electors as determined by the poll lists. WI Stats. 7.51 forbids the local board of canvassers from adjourning until this minimal check of numbers is completed. As recently as September 12, 2006 this requirement was violated. But, without getting closer than 6 feet with a video camera in order to capture the discrepancy between the LED and the cash register tape report there would be no record of this violation.

Conclusion

The propose rules ***LIMIT*** the ability of observers to observe the events occurring within the polling location. This is especially true for the non-polling events carried out pursuant to WI Stats. 7.51.

The proposed rules fail to conform to WI Stats. 7.41(2) . WI Stats. 7.41(2) reads [emphasis mine]:
Designated observation areas shall be so positioned to permit any authorized individual to readily observe all public aspects of the voting process.

Prohibiting video cameras, still cameras, and other recording devices during the non-polling activities is a direct infringement of observer's ability to readily observe all public aspects of the voting process. Also this prohibition also violates the open meeting laws of WI Stats. 19.90; which reads:

Whenever a governmental body holds a meeting in open session, the body shall make a reasonable effort to accommodate any person desiring to record, film or photograph the meeting. This section does not permit recording, filming or photographing such a meeting in a manner that interferes with the conduct of the meeting or the rights of the participants.

The set up of equipment on election morning, the canvassing of votes by the local board of canvassers on election night (after 8:00 pm), as well as the municipal, county, and state canvassing activities are all open meetings as defined by 19.82 and thus, subject to recording by any member of the public. The granting of special access to some citizens (Media personnel) and not others (designated observers) is affront to Wisconsin's proud tradition of open and transparent government.

Proposed Changes:

1. Remove GAB 4.07 in its entirety. It is a clear violation of the open meetings laws of Wisconsin. Also, granting special access to an open meeting for some citizens (media personnel) denied to other citizens (election observers) is a clear violation of the equal protection clause.
2. If proposed rule GAB 4.07 is not removed, then I propose the following revision:
 - a. Drop GAB 4.07(2) completely, and
 - b. Re-write proposed rule GAB 4.07(1) as follows: *Observers wishing to record activities within the polling location shall identify themselves and the organization they represent to the chief inspector upon arriving at the polling place. The inspector shall enter that information into the Inspectors' Statement, EB-104.*
3. Remove proposed rule GAB 4.01(19). It is a clear violation of the open meetings laws of Wisconsin and a violation of the 7.41(2) in that it limits the ability of election observers to accurately record their observations.
4. If GAB 4.01(19) is not removed, then re-write proposed rule GAB 4.01(19). I propose the following:
 - a. *Observers shall not use any video or still cameras inside the polling place in a manner which would compromise the anonymity of any ballot or in a manner which would expose how a particular elector voted his or her ballot. Failure to adhere to this sub. will result in a warning under sub. 10 and, if the conduct continues, removal under sub. 11.*

A less palatable revision would be:

 - b. *Observers shall not use any video or still cameras inside the polling place during polling hours. Failure to adhere to this sub. will result in a warning under sub. 10 and, if the conduct continues, removal under sub. 11.*
5. The inclusion of proposed rule GAB 4.01(11) into proposed rules GAB 4.02 through 4.06 means the illegal prohibition of recording open meetings, is propagated to these other proposed rules. Remove this prohibition against recording open meetings from proposed rules GAB 4.02-4.06. This can be done by
 - a. Removing GAB 4.01(11), or
 - b. Adding a specific inclusion for the use of video and still photography in proposed rules GAB 4.02 through 4.06.

Thank you for your time on this matter