

STATE OF WISCONSIN
SUPREME COURT

Case No. 2012AP1652

MILWAUKEE BRANCH OF THE NAACP, VOCES DE LA FRONTERA,
RICKY T. LEWIS, JENNIFER T. PLATT, JOHN J. WOLFE, CAROLYN
ANDERSON, NDIDI BROWNLEE, ANTHONY FUMBANKS, JOHNNIE M.
GARLAND, DANETTA LANE, MARY MCCLINTOCK, ALFONSO G.
RODRIGUEZ, JOEL TORRES, and ANTONIO K. WILLIAMS,

Plaintiffs-Respondents,

v.

SCOTT WALKER, THOMAS BARLAND, GERALD C. NICHOL,
MICHAEL BRENNAN, THOMAS CANE, DAVID G. DEININGER,
and TIMOTHY VOCKE,

Defendants-Appellants-Petitioners,

ON APPEAL FROM A JULY 17, 2012, ORDER FOR JUDGMENT
AND JUDGMENT GRANTING DECLARATORY
AND INJUNCTIVE RELIEF BY THE DANE COUNTY
CIRCUIT COURT HON. DAVID T. FLANAGAN, PRESIDING
Case No. 11-CV-5492

BRIEF OF *AMICUS CURIAE* MARGARET FARROW, GEORGE MITCHELL,
MIKE SANDVICK, AARON RODRIGUEZ, DEBORAH HAYWOOD, AND
MARY ANN HANSON IN SUPPORT OF PETITION TO BYPASS AND
MOTION FOR CONSOLIDATION

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INTRODUCTION

Voter fraud is real. Voter fraud matters. Of the two circuit judges who concluded Act 23 was unconstitutional, one gave short shrift to these simple truths and the other thought they were irrelevant. Neither court took into account the fact that a majority of Wisconsin voters believe that they are being robbed of their own right to vote by fraud. While *Amici* fully support the reasoning used by the State in its Petition, we focus specifically on the instructions in the Court's Internal Operating Procedures, II.B.2., that "[a]t times, a petition for bypass will be granted where there is a clear need to hasten the ultimate appellate decision."

The people's representatives adopted Act 23 to reduce the risk of fraud and bolster public confidence in the electoral process. The arguments against its constitutionality are insubstantial. To allow that legislative choice to be frustrated and rendered inapplicable in a critical election would be tragic. American history is replete with examples of elections

being stolen through fraud, and this brief relates recent instances locally and nationwide.

This brief will also show how voter fraud matters. Elections are won by extremely close margins far more frequently than one might suspect; a literal handful of fraudulent votes is enough to tip many elections.

We ask this Court to take these cases on bypass and consolidate them.

I) VOTER FRAUD IS REAL.

As the United States Supreme Court recognized in upholding Indiana’s Voter ID law, in-person voter fraud – persons claiming to be someone who they are not and who may not even exist – has a long and inglorious history in the United States.¹ *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 195-96 (2008). Justice Stevens related the story of New York’s Boss Tweed and “Big Tim” Sullivan, whose strategically barbered “repeaters” (voting sequentially with

¹ The Court even referenced Wisconsin as a state with “recent” examples of in-person voter fraud. 553 U.S. at 195, n. 12.

full beards, without chin fringe, without moustache and, finally, “plain face”) were good for at least four votes. *Id.* at 195, n. 11. Tammany Hall deployed a full panoply of election imposters, including “floaters” who would go from one precinct to another casting multiple votes and “colonizers” – illegal voters imported from another jurisdiction. Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Tradition - 1742-2004* 19 (2005). Few of us with even a casual interest in politics have not heard of the time-honored admonition to “vote early and often.” This is, of course, a joke, but one with deep roots in our political history.

While we may be tempted to believe that we have transcended the temptations that ensnared our ancestors, we have not. Human nature is stubbornly flawed and inclined toward cheating, especially when stakes are high and cheating is easy. As noted below, a 1984 New York Grand Jury uncovered a long standing and extensive conspiracy of voter impersonation, ghost voters and multiple voting. The 2008

City of Milwaukee Police Report, co-authored by *amicus* Sandvick, uncovered numerous examples of fraud – in a single election in a single city – that could have been prevented, deterred, or more easily detected with photo identification. Report of the Investigation into the November 2, 2004 General Election in the City of Milwaukee (“2004 Election Report”) available at http://media2.620wtmj.com/breakingnews/ElectionResults_2004_VoterFraudInvestigation_MPD-SIU-A2474926.pdf, last accessed September 10, 2012:

- “[S]everal persons . . . appear to have voted multiple times.” *Id.* at 32.
- 39 people were allowed to vote with a same-day registration despite presenting no form of identification. *Id.* at 12.
- A same-day registration was allowed with an Illinois identification card. *Id.* at 16.
- One “ghost” voter, *i.e.*, an elector who voted after death. *Id.* at 31.

- At least 16 out-of-state campaign and 527-organization workers and volunteers registered and voted despite being in Wisconsin only temporarily. *Id.* at 49-51.

Although this investigation resulted in only a small number of prosecutions and convictions, the authors of the report repeatedly expressed their frustration with that result, blaming the incompetence of the Milwaukee Election Commission and the shoddy state of their records. They lamented that, “[i]n case after case where it appeared that a violation of the law had been committed, investigators could find no documentary proof” due to the unreliability of the Election Commission’s records. *Id.* at 62.

Recent voter fraud in Wisconsin can also be confirmed by reviewing news sources and actual convictions:

- Three non-Wisconsin residents are currently being investigated for voter fraud for voting in the April 2011 election out of a hotel room in Glendale, including one who voted using an out-of-state

identification card. Roth, Collin, *UPDATE: Search Warrant Issued, Charges May Be Coming in Glendale Hotel Voter Case*, Jan. 5, 2012,

<http://mediatrackers.org/2012/01/05/update-search-warrant-issued-charges-may-be-coming-in-glendale-hotel-voter-case>, last accessed September 10, 2012.

- An Oshkosh woman has been bound over for trial for submitting false nomination papers and voting illegally in Milwaukee in 2008. Wisconsin Department of Justice, *Former Wisconsin Woman Charged with Election Fraud and Falsification of Nomination Papers is Bound Over for Trial*, May 3, 2012, http://www.doj.state.wi.us/absolutenm/templates/template_share.aspx?articleid=2902&zoneid=1, last accessed September 10, 2012.
- A man pled guilty to a misdemeanor for obtaining an absentee ballot² in his late wife's name in order to fulfill her dying wish to vote for Barack Obama. John

² Act 23 imposes a photo identification requirement for absentee ballots as well. 2011 Wis. Act 23, §§19, 33, 56, 61, 63.

K. MacIver Institute for Public Policy, *Convicted ACORN Worker Sentenced to 10 Months in Jail for Vote Fraud in Wisconsin*, November 18, 2010, <http://www.maciverinstitute.com/2010/11/convicted-acorn-worker-sentenced-to-10-months-in-jail-for-vote-fraud/>, last accessed September 10, 2012 (citing the Wisconsin Department of Justice).

The fact that successful prosecutions are rare has mostly to do with the difficulties of detection and proof beyond a reasonable doubt. It does not mean that voter fraud does not exist or that it is not a serious problem. *See Building Confidence in U.S. Elections: Report of the Commission on Federal Election Reform (“Carter-Baker Report”)*, September 2005, at 18, *available at* http://www1.american.edu/ia/cfer/report/full_report.pdf, last accessed September 10, 2012 (“There is no evidence of extensive fraud in U.S. elections or of multiple voting, but both occur, and it could affect the outcome of a close

election.”). The Supreme Court in *Crawford* held that, despite a complete lack of record evidence of any in-person voter impersonation fraud in Indiana, the mere risk of such fraud, along with the incontrovertible evidence of such fraud throughout the country, justified Indiana’s photo identification requirements. 553 U.S. at 195, 202-03. The Seventh Circuit, when the *Crawford* case was before it, concluded that the paucity of prosecutions was “explained by the endemic underenforcement of minor criminal laws (minor as they appear to the public and prosecutors, at all events) and by the extreme difficulty of apprehending a voter impersonator.” *Crawford v. Marion County Elections Bd.*, 472 F.3d 949, 953 (7th Cir. 2007).

This difficulty in detection is particularly pronounced in a state like Wisconsin, which allows same-day registration based on easily fabricated “proofs” of residency such as leases and utility bills. Where there are no mechanisms in place to detect fraud, we should not be surprised that little fraud is detected.

As instructed by the Supreme Court, *Crawford*, 553 U.S. at 195-96, we may look to other states for evidence of voter fraud addressed by photo identification:

Double Voting

- In North Carolina in 2011, four individuals were charged with double voting after having admitted to doing so. WTVD-TV, *Four Wake Residents Charged with Voting Twice*, August 12, 2011, <http://abclocal.go.com/wtvd/story?section=news/local&id=8301269>, last accessed September 10, 2012.
- The Kansas City Star found 300 potential cases of voter fraud, including one woman who had voted twice. Bill Gifford, *People Who Vote Twice*, Oct. 28, 2004, http://www.slate.com/articles/news_and_politics/politics/2004/10/people_who_vote_twice.html, last accessed September 10, 2012.

Ghost Voting

- In North Carolina in 2010, a court ordered a new election after the result of an election with a four-vote margin of victory was called into question by seven ghost voters. Further investigation uncovered 600 challenged ballots that could not be verified. Carolina Journal Online, *General Assembly Looks for Creative Answer for Voter ID Veto*, August 25, 2011, http://www.carolinajournal.com/exclusives/display_exclusive.html?id=8160, last accessed September 10, 2012.
- A study of the 2008 election in Minnesota revealed thousands of ghost voters, nearly 100 double votes (as well as 1,000 more requiring further investigation), and nearly 2,000 under-18 voters. Minnesota Majority, *Letter to U.S. Department of Justice, Civil Rights Division Chief Christopher Coates*, November 17, 2008, available at <http://www.minnesotamajority.org/Portals/0/document>

s/2008-11-17-DOJ-Letter.pdf, last accessed September 10, 2012.

- In North Carolina in 2007, an investigation by the state auditor uncovered 380 people who appeared to have voted after their death and a handful of votes cast by 17-year-olds. Carolina Journal Online, *Gaps in Voter Registration Process Raise Concerns of Fraud*, Oct. 26, 2010, http://www.carolinajournal.com/exclusives/display_exclusive.html?id=7012, last accessed September 10, 2012.
- In a 2004 Washington gubernatorial race with a 129-vote margin, an investigation found 53 ghost voters, two illegal alien voters, and 27 people who had voted twice. Wright Talley, *The Stunning Reality of Voter Fraud*, December 4, 2007, <http://www.humanevents.com/article.php?id=23731>, last accessed September 10, 2012.

- A 2005 Tennessee Senate election with a 13-vote margin was thrown out after discovery of votes by felons, non-residents, and three ghost voters. *Id.*

Illegal Aliens

- A 2005 U.S. Government Accountability Office study found that 3% of the people called for federal jury duty (based on voter registration rolls), were non-citizens, meaning those jurors were illegally registered to vote.³
Hans A. Von Spakovsky, *The Threat of Non-Citizen Voting*, July 10, 2008,
<http://www.heritage.org/research/reports/2008/07/the-threat-of-non-citizen-voting>, last accessed September 10, 2012.
- The result of a 1996 congressional race in California, decided by 979 votes, was called into question by a congressional investigation that found 624 votes by

³ In states where non-citizens, whether in this country legally or illegally, cannot get the forms of ID necessary to cast a vote, such photo identification requirements can prevent illegal votes by non-citizens.

non-citizens. Because those illegal votes were found by comparing the roll of voters in that election to databases of legal aliens and known illegal aliens, there were likely hundreds, if not thousands, of votes cast by illegal aliens who appeared in no database. *Id.*

- In 1984, a federal grand jury found 80,000 illegal aliens registered to vote in Chicago, resulting in dozens of indictments and convictions. *Id.*
- The 2006 testimony of a Texas county official revealed extensive voting by illegal aliens, including 35 aliens confirmed to have received voter cards and a woman who kept registering and voting illegally despite being repeatedly removed from the voter rolls. *Id.*
- More recent investigations in Texas revealed hundreds of illegal aliens registered in one county, including 41 who voted. *Id.*
- Since Proposition 200 – a law requiring proof of citizenship in order to register to vote – passed in

Arizona in 2005, over 30,000 registrations have been denied due to a lack of proof of citizenship. *Id.*

- An Arizona district attorney's investigation into aliens appearing in jury pools resulted in 10 indictments. *Id.*
- In 1998, the California Secretary of State found that 2,000-3,000 people summoned for jury duty in Orange County claimed an exemption from service because they were not citizens, and 85-90% of those people were on the voter registration list. *Id.*

Coordinated Fraud Efforts

- A 1984 New York grand jury uncovered a 14-year-long conspiracy to commit vast in-person voter impersonation fraud by “the forgery of voter registration cards with the names of fictitious persons, the filing of these cards with the Board of Elections,” and the “recruit[ing of] people to cast multiple votes on behalf of specified candidates using these forged cards or the cards of deceased and other persons.”

Hans von Spakovsky, *Stolen Identities Stolen Votes: A Case Study in Voter Impersonation*, March 10, 2008, <http://www.heritage.org/research/reports/2008/03/stolen-identities-stolen-votes-a-case-study-in-voter-impersonation>, last accessed September 10, 2012.

- In Mississippi in 2007, local party officials set up a Tammany Hall-style political machine, including having people vote under false identities. *Id.*
- In New Jersey in 2007, a group of homeless men were paid \$10 each to cast fraudulent votes in other people's names. *Id.*
- In a trial over the result of a 1996 Louisiana U.S. Senate election, campaign operatives testified under oath that they ferried people around to vote multiple times in multiple voting locations. Talley, *supra*.

Personal Stories & Other Fraud

- The woman who was the centerpiece of the League of Women Voter's amicus brief in *Crawford* appears to

have been trying to cast a fraudulent Indiana vote, as she presented a Florida driver's license, was registered to vote in Florida, and claimed a Florida homestead property tax exemption. Cindy Bevington, *Voter Cited by Opponents of Indiana's ID Law Registered in Two States*, Evening Star, January 9, 2008, available at <http://www.freerepublic.com/focus/news/1951133/posts>.

- A New Mexico elections director told election officials, "I have been in conversations with people who have told me that, at various times, they've voted more than once on Election Day." He also said, "I know people who have gone on Election Day and voted multiple times because they knew people who weren't going to vote. I've never participated in that, but I know people who have." Talley, *supra*.
- A Pennsylvania campaign worker admitted, "When people say to me there is no such thing as evidence to

commit voter fraud, it is false. I've seen it. I've witnessed it. I've lived through it." *Id.*

- Ironically, the executive director of the Carter-Baker Report was himself a victim of voter fraud, appearing at the polls one election to find that "he" had already voted. von Spakovsky, *Stolen Identities Stolen Votes*, *supra*.
- The Carter-Baker Report uncovered 180 investigations into voter fraud by U.S. Department of Justice officials, leading to 89 indictments and 59 convictions. Carter-Baker Report at 45.

Voter fraud is real. It exists here in Wisconsin as throughout the rest of the country. Photo ID can prevent it, deter it, and help detect it when it actually does occur. It can be effective at combating in-person voter fraud, absentee voter fraud, and even curtailing the potential for voter fraud caused by registration fraud.

II) VOTER FRAUD MATTERS.

The opponents of photo identification for voting, when they can be forced to admit that voter fraud does exist, typically fall back on the argument that proven occurrences are so rare – often tiny percentages of the total votes cast in a state – that they have no effect on elections.

But voter fraud presents the real danger of affecting the outcome of an election. “[N]ot only is the risk of voter fraud real . . . it could affect the outcome of a close election.” *Crawford*, 553 U.S. at 196. “In close or disputed elections, and there are many, a small amount of fraud could make the margin of difference.” Carter-Baker Report at 18. Even Judge Niess, in the lower case of *LWV v. Walker*, who found voter fraud’s prevalence and potentially-determinative effect legally irrelevant, conceded that “[w]ithout question, where it exists, voter fraud corrupts elections and undermines our form of government.” Judge Niess, March 12, 2012 Decision and Order Granting Summary Declaratory Judgment and

Permanent Injunction, Dane County Case No. 2011-CV-4669,
at 7 (P-Ap. 127).

For examples of elections where even a minimal amount of voter fraud could change the result, we need look no further than Wisconsin's most recent non-partisan spring elections held on April 3, 2012. Looking only at races in southeast Wisconsin, 11 elections were decided by 10 or fewer votes; none of those margins represented more than a single percent of the total votes cast. Expand the margin of victory to 50 votes and there were a stunning 49 elections that could and may have been decided by a small, concerted effort to cast fraudulent votes.

Election or Referendum	Vote Margin	Margin %
Palmyra Village Trustee	2	0.20%
Whitewater Common Council 4	2	0.20%
Randall School Board	3	0.20%
Mitchell Town Supervisor	3	0.70%
Silver Lake Village Trustee	6	0.30%
Fontana Village Trustee	7	0.60%
Northern Ozaukee School Board	7	0.60%
Wilmot Union HS Board	9	0.20%
Wauwatosa Common Council 5	9	0.80%
Washington County Board 29	9	1.00%
Paris School Board	10	0.80%

Thiensville Village Trustee	11	0.60%
Jackson Village Trustee	12	0.50%
Fredonia Village Trustee	12	1.00%
Jefferson County Board 14	12	1.80%
Elkhorn Common Council 6	12	4.80%
Kenosha County Board 18	13	1.20%
Grafton Village Trustee	14	0.20%
Kewaskum Village Trustee	14	0.70%
Lake Geneva Common Council 3	14	4.00%
Whitewater: Appoint Clerk Treasurer	15	2.80%
Dodge County Board 3	17	3.00%
Brighton School Board	17	5.80%
Wauwatosa Common Council 3	18	1.20%
Paddock Lake Village Trustee	18	1.40%
Sheboygan County Board 19	18	2.40%
Waldo Village Trustee	18	10.40%
Oostburg School Board	19	0.50%
Kenosha County Board 12	19	1.40%
Elkhart Lake Village Trustee	19	1.70%
Oak Creek Common Council 6	19	2.60%
Randolph Village Trustee	19	3.20%
Oconomowoc School Board	21	0.10%
Silver Lake-Salem School Board	21	2.40%
Kenosha Common Council 13	23	1.60%
Cascade Village Trustee	24	6.10%
Rochester Village Trustee	31	1.40%
Sturtevant Village Trustee	36	1.70%
Kenosha Common Council 15	36	2.80%
Kenosha Common Council 12	36	3.40%
Random Lake Village Trustee	36	4.10%
Delavan Town Supervisor	37	2.30%
Sheboygan County Board 20	37	3.40%
Wauwatosa Common Council 1	38	2.40%
North Prairie Village Trustee	38	3.00%
Sheboygan Common Council 2	39	5.00%
Kenosha Common Council 8	39	5.80%
Waterford Village Trustee	47	2.10%
Brown Deer School Board	49	0.80%

Milwaukee Journal Sentinel, April 2012 Election Results,

available at

<http://www.jsonline.com/news/statepolitics/145794945.html>,

last accessed September 10, 2012. Thus, in southeastern

Wisconsin on one single election day, voter fraud had the

potential to change outcomes in dozens of races. Upcoming

fall and spring elections remain just as vulnerable without this

Court's intervention.

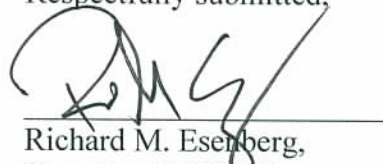
CONCLUSION

The investigation into the 2004 Milwaukee election concluded that there was a “strong possibility” of “an illegal organized attempt to influence the outcome of an election in the state of Wisconsin.” 2004 Election Report, at 53. Given the prevalence of close elections, fraudsters may have succeeded in changing outcomes in the past, and they may succeed again in 2012, 2013, and beyond without swift action by this Court. This Court should grant the Defendant-

Appellant-Petitioner's request to bypass the Court of Appeals
and consolidate these two cases.

Dated this 10th day of September, 2012.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'RME', is written over a horizontal line.

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CERTIFICATION

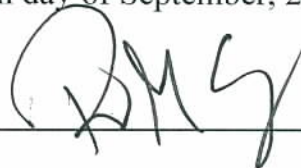
I hereby certify that this brief conforms to the rules contained in § 809.19(8)(b) and (c) for a brief and appendix produced with a proportional serif font. The length of this brief is 3,000 words.

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of § 809.19(12).

I further certify that this electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the Court and served on all opposing parties.

Dated this 10th day of September, 2012.



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