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OF WISCONSIN**

**STATE OF WISCONSIN
COURT OF APPEALS, DISTRICT IV**

Case No. 2012-AP-584

**LEAGUE OF WOMEN VOTERS OF WISCONSIN
EDUCATION NETWORK, INC., and MELANIE G. RAMEY,**

Plaintiffs-Respondents,

vs.

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

Defendants-Appellants

**DOROTHY JANIS, JAMES JANIS, and
MATTHEW AUGUSTINE,**

Intervenors-Co-Appellants.

***AMICUS CURIAE* BRIEF
ON BEHALF OF
THE WISCONSIN DEMOCRACY CAMPAIGN**

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INTRODUCTION

This *Amicus Curiae* brief is submitted on behalf of the Wisconsin Democracy Campaign (“WDC”) a nonprofit and nonpartisan political watchdog group dedicated to open and transparent government. WDC believes that effective government in a democracy requires the greatest possible participation by citizens in the electoral process. WDC and its Board of Directors are on record in opposition to the policy of requiring eligible Wisconsin voters to show a state-issued photo identification card in order to cast a ballot.

There are two important and over-arching principles that should apply to the fundamental right of voting. First, the right of suffrage must be as broad and as all encompassing as possible. The right to vote must be available to all who meet the three qualifications of Section 1, Article III of the Wisconsin Constitution and are otherwise competent to vote:

- 1) They must be United States citizenship;
- 2) They must be at least 18 years old; and
- 3) They must reside in a Wisconsin election district.

The Constitution provides no other qualification for an elector to vote, although it authorizes the legislature to enact laws relating to the eligibility of persons who are felons whose civil rights have not been restored or have been adjudged incompetent. Art. III, Section 2 (4) and (5), Wis. Constitution.

The second over-arching principle of this fundamental right is that it must be easy to exercise that right. Thus, registration and voting must not be burdened with complex requirements and conditions that are potentially difficult to meet, such as requiring all eligible voters to have a photo identification document. The more complicated voting is, the fewer people will cast ballots.¹ When fewer people cast ballots, democracy suffers.

ARGUMENT

I. ACT 23 DENIES TO ALL THE BENEFIT OF FULL PARTICIPATION IN THE ELECTORAL PROCESS

¹ See, e.g., “The Effect of Voter Identification Laws On Turnout”, by Alvarez, et. al., Social Science Working Paper, California Institute of Technology, (October 2007, Revised January 2008). (“[w]e find that the strictest forms of voter identification requirements – combination requirements of presenting an identification card and positively matching one’s signature with a signature either on file or on the identification card, as well as requirement to show - have a negative impact on the participation of registered voters relative to the weakest requirement, stating one’s name.”)

The Wisconsin Constitution does not allow the Legislature to adopt or enforce a requirement that a voter produce photo identification at the polling place as a qualification for casting a ballot.

There is a body of published academic research concluding that the voting rights of both students and senior citizens are threatened by requirements that photo I.D.s be presented at the polling place.² The Wisconsin Democracy Campaign asserts that the requirement that a photo I.D. be produced by an already registered voter in order to cast a ballot will disproportionately disenfranchise students and senior citizens. A registered voter (who incidentally does not need a photo I.D. in order to register (see §6.34(3)(b), Stats.)) who is unable to produce a photo I.D. at the polls is unequivocally denied the right to exercise his or her duty as a citizen. That vote will not be counted, in spite of the fact that the voter meets all three qualifications of the Wisconsin Constitution, thus denying that voter his or her rights and denying to all citizens the benefit of that individual's participation in the electoral process.

² See, e.g., a memorandum submitted to the Wisconsin Government Accountability Board by a group of UW faculty members, found at http://gab.wi.gov/sites/default/files/story/uw_voter_I.D._memo_pdf_15200.pdf.

II. ACT 23 IMPOSES UNCONSTITUTIONAL REQUIREMENTS THAT WILL HINDER THE FUNDAMENTAL RIGHTS OF STUDENTS TO CAST BALLOTS

A. Students whose only form of identification is a student I.D. may be denied the right to cast a ballot.

On May 25, 2011, when Wisconsin Act 23 was adopted, no Wisconsin colleges or universities issued student I.D.s that included all of the requirements of Sections 1 and 2 of the Act³. Most did not include expiration dates, and many did not include signatures or dates of issuance.⁴

Since the Act's passage, Wisconsin's colleges and universities have developed new photo I.D.s that are compliant with the law and acceptable to the Government Accountability Board ("GAB"). A student who does not have any of the more common forms of acceptable photo I.D., such as a driver's license or state-issued identification card, must seek out the new acceptable student

³ In support of the factual arguments in this section, see the Affidavit of Analiese Eicher, R. 17-1 to 3

⁴ The Legislature included student I.D.s in the list of acceptable I.D.s in Act 23 under the following conditions: the photo identification card must be issued by a Wisconsin accredited university or college and contain a photo of the student, the signature of the student, the date of issuance, and an expiration date no more than two years after the date of issuance. Act 23, § 1.

I.D. at the I.D. office on his or her campus. This requirement – go get an acceptable I.D. before one can vote – will lower voter turnout among students and will have a chilling effect on participation in the democratic process, if, for no other reasons, finding the I.D. office, going there during hours of operation, and getting the card processed and issued, is an imposition of time for busy students who are taking classes and perhaps also holding down a job.

Undoubtedly, some students will show up at the polls and seek to cast a ballot and then be denied the right of doing so because they lack acceptable photo I.D.s. Because no I.D.s have been required in the past, students will not bring one, they will forget, or they will not know that one is required. Additionally students will show up at the polls with their regular student I.D. not realizing that they needed to obtain a compliant student I.D. in order to exercise their right to vote. Once again, some of those who show up without the necessary I.D. will be frustrated or discouraged by the process required, at what is then the last minute for that student to get a valid photo I.D. and then return to the polls, and will thus choose not to vote simply because of the inconvenience and hassle-factor.

B. The Requirement that a Voter Using a Student I.D. Must Show Proof of Current Enrollment is an Additional Unconstitutional Requirement.

As if the requirement for a photo I.D. was not enough, the Act requires,⁵ an additional requirement for students (and only for students) that is not in the Wisconsin Constitution. If the student presents a student I.D. that complies with the requirements of the law, he or she must also present proof of current enrollment, “on the date the card is presented”, in the college or university that issued the student I.D. §5.02(6m)(f), Stats. See also § 6.34(3a)(7), Stats. A student with an Act 23 compliant student I.D. who does not have acceptable proof of current enrollment will be denied the right to cast a ballot. This additional voter qualification in and of itself is as onerous and unconstitutional as the requirement of a photo I.D.

Furthermore, there is nothing in the law that describes what can or cannot be accepted as proof of current enrollment.⁶ This

⁵ 2011 Act 23, §1 and 33m

⁶ §6.34(3)(a)(7), Stats., provides that a student I.D. card that contains a photograph and does not have an address is adequate proof of residence for students whose names appear on a certified list of students living in student housing if accompanied by “ a fee payment receipt issued to the cardholder by the university..... dated no earlier than 9 months before the date of the election.” There is nothing in the statutes that defines current enrollment; a student with an I.D. card could have dropped out after paying his

means that two students who attend the same school but live in different municipalities may be subject to different and inconsistent standards imposed by the local election officials when they try to show proof of enrollment. One may be permitted to vote, and the other may not, even though both meet the three requirements of Article III of the Wisconsin Constitution: both are U.S. citizens, both are over 18 years of age, and both reside in a Wisconsin election district.

There is an additional problem: Students rarely have proof of enrollment. As a practical matter, the student I.D. has served that purpose. They now will have to somehow obtain separate documentation that serves this purpose and will be satisfactory to the poll worker, who will judge it with no standards or criteria.

Furthermore, the student who uses a valid driver's license to vote does not have to show any proof of current enrollment, while her roommate who uses an acceptable student I.D. must show proof of current enrollment. Just as the Wisconsin Constitution does not require a photo I.D. to be a qualified elector, it does not require

or her fees, or could be living off campus, in which case his or her name would not appear on the certified list of students living in campus housing.

proof of current enrollment for electors who happen to be college or university students.⁷

The right of every eligible elector to cast a ballot is at the very heart of our representative democracy. Different standards for eligibility to cast a ballot should not apply to different potential electors, whether they are students or not. All potential electors should be required to meet the same basic and simple eligibility requirements. The requirement that a photo I.D. (and in some cases proof of current enrollment) must be produced in order to vote is in violation of the qualifications established by Section III of the Wisconsin Constitution.

Students who vote presumably get in the habit of voting, and continue to do so throughout their lives. Discouraged from voting early on, they may never develop the habit; it is a habit upon which a representative democracy depends for its very survival.

⁷ Neither a student I.D. nor proof of enrollment is required for a student to register to vote. §6.34(3)(b), Stats.

III. ACT 23 IMPOSES UNCONSTITUTIONAL REQUIREMENTS THAT WILL HINDER THE FUNDAMENTAL RIGHT OF SENIOR CITIZENS TO CAST BALLOTS

An estimated 23 percent of persons aged 65 and over do not have a Wisconsin driver's license or a photo I.D.^{8 9} This represents more than 177,000 people, 70 percent of whom are women.¹⁰ They no longer drive, so they have given up their operator's licenses, and many do not have photo I.D.s issued by the State of Wisconsin or any other entity. They have had no need for photo I.D.s. There is almost no occasion in the lives of many seniors when they are ever asked to show a photo I.D., and so they do not have one.

Senior citizens, like other voters, have not previously been required to show any I.D. to register or to vote. If they are United States citizens, are over 18 years of age, and meet the residency requirements, and are registered, they have been permitted to cast a ballot. No other requirement has been imposed on them.

⁸ In support of the factual arguments presented in this section, see the Affidavit of Ingrid. Thompson, R. 18-1 to 3

⁹ John Pawasarat, "The Driver License Status of the Voting Age Population in Wisconsin," University of Wisconsin-Milwaukee Employment and Training Institute, www.eti.uwm.edu, June 2005.

¹⁰ *Id.*

Many seniors in every community continue to live independently, but they may be frail and have health problems. They are often relatively isolated and depend on family, volunteers or other services for transportation. It is often difficult for them to arrange transportation, and when they do, they are dependent on the schedule of their drivers.

Many volunteer drivers or other senior transportation services do not have the time it may take to drive a senior to the nearest DMV office to get a photo I.D. and then wait an indeterminate length of time for the DMV to call that individual to the service window and issue the I.D. before making the return trip. Drivers may not be able to do it in the limited hours that the nearest DMV office is open¹¹, or may not be able to go at times when the DMV

¹¹ The Brennan Center for Justice at NYU's Law School has issued a report (http://www.brennancenter.org/content/resource/the_challenge_of_obtaining_voter_identification) that included some interesting information pertaining to Wisconsin. Among the problems identified in the study is that "many ID-issuing offices maintain limited business hours. For example, the office in Sauk City, Wisconsin is open only on the fifth Wednesday of any month. But only four months in 2012 — February, May, August and October — have five Wednesdays." The report goes on to note that "voters may be particularly affected by the significant costs of the documentation required to obtain a photo ID. Birth certificates can cost between \$8 and \$25. Marriage licenses, required for married women whose birth certificates include a maiden name, can cost between \$8 and \$20. By comparison, the notorious poll tax — outlawed during the civil rights era — cost \$10.64 in current dollars."

office is less crowded and the wait is shorter. The result is that many seniors are not able to get to a DMV office to get a photo I.D.

For example, a senior who lives in McFarland, Wisconsin and is blind was able to arrange a trip to the DMV office. It took more than three hours for him to get his photo I.D.¹² Because of incontinence, need for medications, and frailty, many of the seniors who are helped by senior advocates across the state cannot wait that long.

Some senior citizens do not have birth certificates. They do not know how to get them, may not be able to afford them¹³, or were born in other states and understand it may take weeks to get a birth certificate from that state, and have no other proof that they are who they say they are that meets the requirements of Act 23 for getting a photo I.D.¹⁴

The Intervenor-Appellants conveniently do not discuss voters who were born out of state and need a birth certificate. (Intervenor-

¹² Affidavit of Ingrid Thompson, R.18-3

¹³ *Id.*

¹⁴ See Trans 102.15(3), Wis. Admin. Code, for requirement that a birth certificate is required as proof of identity to acquire a state-issued I.D. card under s. 343.50, Wis. Stats.

Appellants Brief at p. 13). They imply that all qualified voters were born in Wisconsin and can get a birth certificate in this state.

The new requirements of Act 23 are complex, scary, and intimidating to many frail and isolated senior citizens. They do not understand the requirements and they fear that they may not correctly do whatever it is that they are supposed to do to comply. Under the provisions of Act 23, many seniors are afraid that if they go to the polls on election day they may not be allowed to vote because they do not have the proper documents with them showing identification and residency. They fear being turned away and embarrassed in public. Social workers, health care workers, advocates, and others who work with seniors are being told by seniors that the photo I.D. requirement is too much trouble¹⁵: The law is having a chilling effect on them.

The problems presented by the photo I.D. requirement for seniors are compounded many times for seniors of color, particularly those who have lived through an era where people of color, especially African-Americans, were intimidated and

¹⁵ Affidavit of Ingrid Thompson, R. 18-3,4.

threatened if they tried to vote, had poll taxes imposed on them, and found little support in the law. They are likely to be even more intimidated by the Act 23 requirements and consequently less likely to vote.

IV. CONCLUSION

Those who drafted the Wisconsin Constitution included just three qualifications for one to be a “qualified elector”. At no time has the Constitution been amended to provide that these three conditions – citizenship, age, and residency – should be augmented with a fourth – the required showing of a photo I.D. at the polls.

The photo I.D. requirement strikes at the very heart of this state’s democratic traditions and practice. It will prevent some people from being able to cast a ballot, and it will discourage many others from even attempting to do so.

The Wisconsin Democracy Campaign respectfully urges this Court to affirm the sound decision of the Circuit Court and conclude that it is unconstitutional under Section III of the Wisconsin Constitution to require voters to present a photo I.D. to cast a ballot in any local, state or federal election in the State of Wisconsin.

Dated this 1st day of October, 2012.

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CERTIFICATION

I 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 2,329 words.

I hereby certify, 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 with the Court and served on all opposing parties.

Dated this 1st day of October, 2012.

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