

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ONE WISCONSIN INSTITUTE, INC.,
et al.,

Plaintiffs,

v.

Case No. 15-CV-324

MARK L. THOMSEN, *et al.*,

Defendants.

DOCKETING STATEMENT

Defendants Mark L. Thomsen, Ann S. Jacobs, Beverly R. Gill, Julie M. Glancey, Steve King, Don M. Millis, Michael Haas, Mark Gottlieb, and Kristina Boardman, by their attorneys, Attorney General Brad D. Schimel and Assistant Attorneys General S. Michael Murphy, Gabe Johnson-Karp, and Jody J. Schmelzer, concurrent with their Notice of Appeal, submit this Docketing Statement. *See* 7th Cir. R. 3(c)(1).

Defendants are sued in their official capacities. The occupants of Defendants' positions have changed in some instances since the filing of the second amended complaint in March 2016. (Dkt. 141.) The Wisconsin Government Accountability Board (the "GAB") ceased operations in June 2016 and was replaced by the Wisconsin Elections Commission

(the “Elections Commission”). Pursuant to Federal Rule of Civil Procedure 25(d), the parties stipulated to the substitution of Defendants sued in their official capacities (Dkt. 230). The GAB Defendants as of June 2016—namely, Gerald C. Nichol, Elsa Lamelas, Thomas Barland, Harold V. Froehlich, Timothy Vocke, and John Franke—are succeeded by the Elections Commission Defendants as shown in the following table.

GAB Defendant, <i>position</i> (as of June 2016)	Elections Commission Defendant, <i>position</i> (as of August 2016)
Gerald C. Nichol, <i>Chair</i>	Mark L. Thomsen, <i>Chair</i>
Elsa Lamelas, <i>Vice Chair</i>	Ann S. Jacobs, <i>Vice-Chair</i>
Thomas Barland, <i>Secretary</i>	Beverly R. Gill, <i>Secretary</i>
John Franke, Timothy Vocke, and Harold V. Froehlich, <i>Board Members</i>	Julie M. Glancey, Steve King, and Don M. Millis, <i>Commissioners</i>

Defendant Kevin J. Kennedy was director and general counsel of the GAB. His position does not exist at the Elections Commission. He is no longer a defendant. Defendant Michael Haas was Administrator of the Elections Division of the GAB in June 2016. He is now Interim Administrator of the Elections Commission.

Defendant Mark Gottlieb is Secretary of the Wisconsin Department of Transportation (the “DOT”). Defendant Kristina Boardman is Administrator of the DOT’s Division of Motor Vehicles (DMV).

**RELATED CASE INFORMATION REQUIRED
BY SEVENTH CIRCUIT RULE 3(c)(1)**

This case is related to a case currently pending before this Court, *Ruthelle Frank, et al., v. Scott Walker, et al.*, Nos. 16-3003 and 16-3052. Both cases involve challenges to Wisconsin’s voter ID law—specifically, to the petition process for obtaining free IDs from the Wisconsin Department of Transportation, Division of Motor Vehicles. The district court in this case incorporated the factual findings of the district court in *Frank*, which in turn based its decision on evidence presented in this case. (See Dkt. 234:8 (“The court also adopts the facts found by Judge Adelman [in *Frank*] concerning the history and operation of the [ID petition process], which he based substantially on the evidence presented in this case. *Frank v. Walker*, No. 11-cv-1128, 2016 WL 3948068 (E.D. Wis. July 19, 2016).”).

INFORMATION REQUIRED BY SEVENTH CIRCUIT RULE 28(a)(1)

The district court had jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343(a)(3), and 1357; and 42 U.S.C. §§ 1983 and 1988, over this action brought for alleged violations of the First, Fourteenth, Fifteenth, and Twenty-Sixth Amendments to the United States Constitution, as well as 28 U.S.C. §§ 2201 and 2202 over the requests for declaratory relief. (Dkt. 141 (Second Amended Complaint).)

INFORMATION REQUIRED BY SEVENTH CIRCUIT RULE 28(a)(2)

The United States Court of Appeals for the Seventh Circuit has jurisdiction pursuant to 28 U.S.C. §§ 1291 and 1292(a)(1) over this appeal from the district court's July 29, 2016, order granting injunctive relief (Dkt. 234:118–19 (Findings of Fact and Conclusions of Law)) and the district court's August 1, 2016, judgment (Dkt. 235.)

No party has filed a motion for a new trial or alteration of a judgment, or any other motion claimed to toll the time within which to appeal. *See* 7th Cir. R. 28(a)(2)(ii), (iii).

Defendants filed their Notice of Appeal on August 3, 2016, along with a copy of the district court's July 29, 2016, Findings of Fact and Conclusions of Law (Dkt. 234). *See* 7th Cir. R. 28(a)(2)(iv). The Notice of Appeal was timely filed within 30 days after judgment was entered on August 1, 2016. Fed. R. App. P. 4(a)(1)(A).

This case is not a direct appeal from the decision of a magistrate judge. *See* 7th Cir. R. 28(a)(2)(v).

INFORMATION REQUIRED BY SEVENTH CIRCUIT RULE 28(a)(3)

There are no claims that remain for disposition in the district court. *See* 7th Cir. R. 28(a)(3)(i).

The district court stated that it intends its order “to be immediately appealable; for the avoidance of doubt, the court grants permission to any

party to file an interlocutory appeal if this order is not final for appeal purposes.” (Dkt. 234:119.) The portion of the district court’s order (Dkt. 234) granting a permanent injunction constitutes a final order, appealable under 28 U.S.C. § 1291. To the extent that any portions of the district court’s order granted injunctive relief that was not intended to be permanent, those portions are appealable under 28 U.S.C. § 1292(a)(1).

The ground for appellate jurisdiction is not the “collateral order doctrine.” *See* 7th Cir. R. 28(a)(ii).

The order sought to be reviewed does not remand a case to a bankruptcy judge or administrative agency. *See* 7th Cir. R. 28(a)(3)(iii).

Finally, issues remain before the district court; namely, the district court retained jurisdiction to oversee compliance with the injunction. (Dkt. 234:119.)

Dated this 3rd day of August, 2016.

Respectfully submitted,

BRAD D. SCHIMEL
Wisconsin Attorney General

/s/S. Michael Murphy
S. MICHAEL MURPHY
Assistant Attorney General
State Bar #1078149

GABE JOHNSON-KARP
Assistant Attorney General
State Bar #1084731

JODY J. SCHMELZER
Assistant Attorney General
State Bar #1027796

Attorneys for Defendants

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-5457 (Murphy)
(608) 267-8904 (Johnson-Karp)
(608) 266-3094 (Schmelzer)
(608) 267-2223 (Fax)
murphysm@doj.state.wi.us
johnsonkarp@doj.state.wi.us
schmelzerjj@doj.state.wi.us