

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN**

ONE WISCONSIN INSTITUTE, INC.,  
CITIZEN ACTION OF WISCONSIN  
EDUCATION FUND, INC., RENEE M.  
GAGNER, ANITA A. JOHNSON, CODY R.  
NELSON, JENNIFER S. TASSE, SCOTT T.  
TRINDL and MICHAEL R. WILDER,

Plaintiffs,

v.

JUDGE GERALD C. NICHOL, JUDGE  
ELSA LAMELAS, JUDGE THOMAS  
BARLAND, JUDGE HAROLD V.  
FROEHLICH, JUDGE TIMOTHY VOCKE,  
JUDGE JOHN FRANKE, KEVIN J.  
KENNEDY and MICHAEL HAAS,

Defendants.

Case No. 3:15-CV-324

**JOINT PRELIMINARY PRETRIAL CONFERENCE STATEMENT**

Pursuant to Fed. R. Civ. P. 26(f), counsel for Plaintiffs One Wisconsin Institute, Inc., et al., and counsel for Defendants Judge Gerald C. Nichol, et al., met and conferred on July 17, 2015, and July 31, 2015, regarding a discovery plan and case schedule. The parties submit this Joint Preliminary Pretrial Conference Statement in anticipation of the Telephonic Preliminary Pretrial Conference set for August 11, 2015.

**A. Plaintiffs' Proposed Case Schedule**

Event	Plaintiffs' Proposed Date
Exchange of Rule 26(a)(1) Initial Disclosures	August 21, 2015
Deadline to Amend Pleadings without Leave of Court	September 21, 2015
Plaintiffs' Expert Designations/Reports	November 30, 2015

<b>Event</b>	<b>Plaintiffs' Proposed Date</b>
Defendants' Expert Designations/Reports	December 11, 2015
Plaintiffs' Sur-Rebuttal Expert Reports	December 17, 2015
Dispositive Motions	December 18, 2015
Discovery Cut-Off	January 29, 2016
Rule 26(a)(3) Disclosures and Motions in Limine	February 1, 2016
Objections to Rule 26(a)(3) Disclosures and Responses to Motions in Limine	February 8, 2016
Final Pretrial Conference	February 11, 2016
Trial	February 15, 2016

#### **B. Defendants' Proposed Case Schedule**

<b>Event</b>	<b>Defendants' Proposed Date</b>
Exchange of Rule 26(a)(1) Initial Disclosures	August 21, 2015
Deadline to Amend Pleadings without Leave of Court	September 21, 2015
Plaintiffs' Expert Designations/Reports	November 20, 2016
Defendants' Expert Designations/Reports	December 23, 2015
Dispositive Motions	January 15, 2016
Discovery Cut-Off	March 31, 2016
Rule 26(a)(3) Disclosures and Motions in Limine	April 15, 2016
Objections to Rule 26(a)(3) Disclosures and Responses to Motions in Limine	April 29, 2016
Final Pretrial Conference	May 9, 2016
Trial	May 16, 2016

**C. Modifications to Limitations on Discovery Imposed by the Federal Rules**

**1. Interrogatories**

The parties agree that each side is entitled to 100 interrogatories.

**2. Depositions**

The Plaintiffs propose that each side be entitled to take 30 depositions without seeking leave of the Court. Plaintiffs believe this number of depositions is reasonable in light of the large number of statutory provisions at issue in this case; the importance of the right at issue—the fundamental right to vote; and the decentralized nature of the State of Wisconsin’s system for keeping records pertaining to elections (pursuant to which many records are kept by county or municipal clerks). In particular, Plaintiffs anticipate that they will seek to depose (1) county and/or municipal clerks and/or members of their staffs; (2) members and/or staff of the Government Accountability Board; (3) defense experts; (4) legislative sponsors of 2011 Wis. Act 23; 2011 Wis. Act 75; 2011 Wis. Act 240; 2011 Wis. Act 227; 2013 Wis. Act 146; 2013 Wis. Act 182; 2013 Wis. Act 76; and 2013 Wis. Act 177; and (5) Defendants’ fact witnesses. Plaintiffs may also seek to depose other witnesses, such as employees or representatives of the Wisconsin Department of Transportation.

Defendants propose that each side be permitted 15 depositions without seeking leave of Court. Defendants do not believe that 30 depositions should be allowed without having to justify the need or purpose of the depositions. Fifteen depositions should be sufficient for the plaintiffs, who can always ask Defendants and/or the Court to authorize additional depositions once discovery has begun and the parties have a better sense of how many depositions are appropriate. Defendants cannot agree to a limit of 30 depositions before discovery has even started.

The parties agree that all depositions pursuant to Federal Rule of Civil Procedure 30(b)(6) shall count against the deposition limit.

The parties agree that depositions shall presumptively be subject to the time limits set out in Fed. R. Civ. P. 30(d). The parties agree to negotiate in good faith if additional time for any deposition is necessary, and any reasonable request in this regard will not be denied. If the parties are unable to reach agreement, they will promptly submit the dispute to the Court.

**D. Other Information Required by Standing Order**

**1. Nature of the Case**

This is an action brought under Section 2 of the Voting Rights Act (“VRA”), 52 U.S.C. § 10301, as well as the First Amendment, the Equal Protection Clause of the Fourteen Amendment, the Fifteenth Amendment, and the Twenty-Sixth Amendment to the United States Constitution. As set forth in the Amended Complaint, Plaintiffs allege that the State of Wisconsin has enacted restrictive measures intended to burden, abridge, and/or deny, and that will have the effect of burdening, abridging, and/or denying, the voting rights of Wisconsinites generally and African-American, Latino, young and/or Democratic voters in Wisconsin in particular.

Defendants dispute that any of the challenged regulations violate the Voting Rights Act or the various constitutional provisions at issue.

**2. Names of related cases**

Related cases include *Frank v. Walker*, 768 F.3d 744 (7th Cir. 2014); *Frank v. Walker*, Case No. 11-CV-1128 (E.D. Wis.); *League of United Latin American Citizens (LULAC) of Wisconsin v. Deininger*, Case No. 12-CV-185 (E.D. Wis.); *Milwaukee Branch of NAACP v. Walker*, 2014 WI 98 (Wis. 2014); and *League of Women Voters of Wisconsin Educ. Network, Inc. v. Walker*, 2014 WI 97 (Wis. 2014).

**3. Material factual and legal issues to be resolved**

The material factual and legal issues to be resolved at trial are the Wisconsin State Legislature's intent in enacting (or not changing), the burden on voting rights and the benefit to the State of Wisconsin from, and the constitutionality and/or legality under Section 2 of the VRA of several provisions of Wisconsin election law, including, without limitation, Wisconsin's limitation on in-person absentee voting locations to one location per municipality, Wisconsin's voter ID requirement, and changes to provisions pertaining to in-person absentee voting, voter registration, residency requirements, poll monitoring, and absentee voting.

**4. Descriptions of any amendments to the pleadings the parties intend to make**

Neither Plaintiffs nor Defendants presently intend to amend the pleadings.

**5. Identify any new parties to be added**

Neither side is presently aware of any additional necessary parties.

**6. Estimated trial length**

The parties estimate that this case can be tried in two weeks.

**7. Any other matters affecting the just, speedy, and inexpensive disposition of this case, or which the Court should take into account in setting the schedule.**

Plaintiffs request that this matter be resolved expediently so that any necessary changes to election procedures may to be implemented with sufficient time prior to the general election on November 8, 2016.

Defendants request that this matter be resolved expediently prior to the general election on November 8, 2016.

**E. Other items**

**1. Electronic Discovery**

The parties agree to discuss and seek agreement on protocols with respect to the identification, review, and production of electronically stored information (“ESI”). ESI shall be produced, on a rolling basis, in an electronic format to be agreed upon by the parties.

The parties have agreed to negotiate in good faith on the following issues:

- a. The need to produce various forms of ESI.
- b. Limitation on production of ESI, for example, on the basis of search terms to be agreed upon by the parties;
- c. Scheduled timing for updating the production of ESI during the course of litigation;
- d. The format of document production; and
- e. Defining the scope of production of ESI that is “not reasonably accessible because of undue burden or cost,” including without limitation the identification of such information, and procedures to compel production of such information, including cost allocation.

**2. Claims of privilege and work product**

The parties agree that the inadvertent production or disclosure of privileged or otherwise protected materials shall not be deemed per se a waiver or impairment of any claim of privilege or protection. The parties will negotiate in good faith a provision concerning inadvertent production in connection with a Proposed Protective Order and/or stipulation regarding ESI.

The parties agree that communications between a party and its trial counsel do not need to be included on any privilege log provided pursuant to Rule 26(b)(5). The parties further agree that other communications and documents generated after the commencement of the litigation on June 22, 2015, if privileged or protected as work product, do not need to be included on any privilege log provided pursuant to Rule 26(b)(5).

**3. Protective Order**

Prior to the production of documents in this case, the parties will seek from the Court the entry of a Protective Order governing confidential information.

**4. Draft Expert Reports and Communications with Experts**

The parties agree that Fed. R. Civ. P. 26(b)(4) governs the application of the work product protection to a testifying expert's draft reports and communications between the testifying expert and counsel for a party. The foregoing does not preclude opposing counsel from obtaining any facts, data, or assumptions the expert is relying on in forming his or her opinion, including that coming from counsel, or from otherwise inquiring fully of an expert as to what facts, data, or assumptions the expert considered, or into the bases and validity of the expert's opinions. All other materials and information that an expert considered and/or relied upon will be discoverable.

Dated: August 6th, 2015

*s/ Joshua L. Kaul*

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## General Information

<b>Court</b>	United States District Court for the Western District of Wisconsin; United States District Court for the Western District of Wisconsin
<b>Federal Nature of Suit</b>	Civil Rights - Voting[441]
<b>Docket Number</b>	3:15-cv-00324