

Nos. 16-3083, 16-3091

**UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

ONE WISCONSIN INSTITUTE, INC., *et al.*,

Plaintiffs-Appellees,
Cross-Appellants,

v.

MARK L. THOMSEN, *et al.*,

Defendants-Appellants,
Cross-Appellees.

On Appeal From The United States District Court
For The Western District of Wisconsin, Case No. 3:15-cv-324
The Honorable Judge James D. Peterson, Presiding

MOTION TO ADVANCE RESCHEDULING OF ORAL ARGUMENT

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On January 10, 2017, this Court vacated its Order setting oral argument in the instant appeal and *Frank v. Walker*, Nos. 16-3003, 16-3052, for January 17, 2017. Because the challenged provisions still in effect will burden, and in some cases deny, the right of eligible voters to vote in upcoming Wisconsin elections in 2017 (including in February and April) and 2018, Plaintiffs respectfully move the Court to reschedule oral argument (assuming that it plans to do so) for a date in late January or early February so that this case can be resolved as expeditiously as possible.

I. These Cross-Appeals Should Be Resolved As Soon As Feasible Given Upcoming Elections

These cross-appeals involve questions of exceptional importance, including whether provisions of Wisconsin election law intentionally discriminate against certain voters, whether Wisconsin's voter ID law should be invalidated, and whether the *en banc* Court should overrule *Frank v. Walker*, 768 F.3d 744 (7th Cir. 2014). As set forth in Sections II and III of Plaintiffs' Response and Cross-Appeal Brief ("Plaintiffs' Brief"), the record in these cross-appeals demonstrates that Wisconsin's voter ID law severely burdens the right to vote, particularly for minority voters, and that the State continues to administer the voter ID law in an unconstitutional manner despite repeated assurances to the contrary. *See, e.g.*, A.46, 82. Wisconsin will hold elections in February and April of this year and again

in February, April, August, and November of next year.¹ Yet, until this Court determines the future of Wisconsin’s voter ID regime, many voters will continue to be subject to the unjustified requirements and other substantial burdens associated with obtaining a qualifying ID in order to vote in Wisconsin. Or worse, they will be disenfranchised.

Moreover, the district court has determined that the supposed “safety net” that the State put in place in response to litigation, the ID Petition Process (“IDPP”), is a “wretched failure” that “has disenfranchised citizens who are unquestionably qualified to vote, and these disenfranchised citizens are overwhelmingly African American and Latino.” A.71. The district court has ordered that the IDPP must be fundamentally reformed, but stayed its Order until after the November 2016 election. Although the district court has the authority to order a permanent remedy pending resolution of these appeals, doing so would waste judicial resources if the Seventh Circuit’s ultimate resolution of these appeals either facially invalidates the ID law, or substantially informs the manner in which it may continue to be implemented.

II. If The Voter ID Law Is Upheld, The IDPP Must Be Fully Reformed Prior To The Upcoming Elections

Prior to the November 2016 election, the State represented to this Court and the district court that “initiation” of the IDPP would mean only that the voter must show up at a DMV with as much as he or she has, and the State will not refuse to

¹ Wisconsin Election Commission Calendar, *available at* http://elections.wi.gov/sites/default/files/publication/65/2017_calendar_of_election_events_pdf__33371.pdf.

recognize the ‘initiation’ of the process because a birth certificate, proof of citizenship, Social Security card, or other particular document is missing. Based on the State’s representations, the *en banc* Court denied Plaintiffs’ petition for expedited initial *en banc* review.

But after the full Court’s Order denying initial *en banc* review, it came to light that the State was not keeping the promises it had made to the district court and the *en banc* Court, that numerous individuals were continuing to be severely burdened by the IDPP, and that the State had utterly failed to undertake adequate public education or training of its own officials. Following an evidentiary hearing in October 2016 detailing the continuing failures of the State to follow the district court’s Order concerning the IDPP, the district court ordered the State to undertake certain steps to temporarily remedy some of the most pressing problems with the IDPP, recognizing that the IDPP could not be fully reformed until after the election but could be patched up “to put it in good enough shape to get us to the November election.” SA.1245.

Even if this Court upholds the ID law, the IDPP will still need to be fundamentally reformed—a process that will plainly take significant time. The reform process should thus start as soon as possible in order to minimize the extent to which voters in upcoming elections will have their right to vote denied or abridged due to the State’s repeated failures. However, as noted above, this is unlikely to happen until these cross-appeals have been fully resolved. Accordingly,

Plaintiffs respectfully move the Court to reschedule oral argument in this case for late January or early February.

DATED: January 13, 2017

Respectfully submitted,

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By s/ Bruce V. Spiva

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CERTIFICATE OF SERVICE

I hereby certify that on January 13, 2017, I caused the foregoing to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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