

Nos. 16-3083, 16-3091

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

ONE WISCONSIN, 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, No. 3:15-cv-324
The Honorable James D. Peterson, Presiding

MOTION OF THE LEAGUE OF WOMEN VOTERS OF WISCONSIN,
THE CITY OF MADISON, AND MILWAUKEE MAYOR TOM BARRETT
FOR LEAVE TO FILE A BRIEF AS AMICI CURIAE IN SUPPORT OF
THE PLAINTIFFS-APPELLEES-CROSS APPELLANTS AND
IN SUPPORT OF AFFIRMANCE IN PART AND REVERSAL IN PART
OF THE DISTRICT COURT'S ORDER

Susan M. Crawford
Diane M. Welsh
Christa O. Westerberg
Pines Bach LLP
122 West Washington Avenue, Suite 900
Madison, WI 53703

*Attorneys for Amici Curiae
League of Women Voters of Wisconsin, the
City of Madison, and
Milwaukee Mayor Tom Barrett*

October 26, 2016

**FEDERAL RULE OF APPELLATE PROCEDURE AND CIRCUIT RULE 26.1
DISCLOSURE STATEMENT**

The undersigned, counsel of record for amici League of Women Voters of Wisconsin, the City of Madison, and Tom Barrett, Mayor of the City of Milwaukee, hereby furnishes the following information in accordance with Rule 26.1 of the Federal Rules of Appellate Procedure and Rule 26.1 of the Circuit Rules of the United States Court of Appeals for the Seventh Circuit:

- 1) The full name of every party or amicus the attorney represents¹:
 - League of Women Voters of Wisconsin
 - City of Madison, Wisconsin
 - Tom Barrett, Mayor of the City of Milwaukee

- 2) If such party or amicus is a corporation:
 - a. Its parent corporation, if any:

None

 - b. A list of stockholders that are publicly held companies owning 10% or more of stock in the party:

None. No publicly held company has any ownership interest in the League of Women Voters of Wisconsin. The remaining amici are a municipality and a municipal elected official.

¹ Disclosure forms for counsel for *amici* are included in the proposed brief.

- 3) The names of all law firms whose partners or associates have appeared for the party or amicus in the case or are expected to appear for the party in this Court:

Pines Bach LLP

MOTION FOR LEAVE TO FILE A BRIEF AS *AMICI CURIAE*

Pursuant to Federal Rule of Appellate Procedure 29(b), amici curiae League of Women Voters of Wisconsin, the City of Madison, Wisconsin, and Milwaukee Mayor Tom Barrett respectfully move this Court for leave to file the attached amicus curiae brief in support of Plaintiffs-Appellees-Cross-Appellants. The amici urge affirmance and reversal of the order of the U.S. District Court for the Western District of Wisconsin.

I. Identity and Interests of Amici Curiae

The League of Women Voters of Wisconsin (“the League”) was founded in 1920 by the suffragists who fought to win the right to vote for women. Since then it has continually publicly asserted that voting is a fundamental right for all citizens that must be guaranteed. The League has long publicly advocated that Wisconsin election laws should provide citizens with maximum opportunities for registration, voting at the polls, and absentee voting. It has maintained that election administration should be adequately coordinated and funded to achieve both statewide standards uniformly applied and local municipal effectiveness. The League has previously participated as a party and as an amicus in other court cases affecting voting rights for Wisconsin residents.

Since the Wisconsin legislature began making changes to the state's voting laws in 2011, including the addition of a voter photo identification ("voter ID") requirement to vote and restrictions on absentee voting opportunities, the League has worked to educate voters about the new legal requirements and court rulings that have affected implementation of these laws. The League has also endeavored to assist individual voters as they attempt to obtain voter ID in time for elections and prepare to vote absentee. In the course of this process, the League has witnessed the effects of voter ID requirements on Wisconsin voters, and the shortcomings of accommodations developed by the State for individuals unable to present the underlying documentation necessary to obtain a qualifying ID.

The City of Madison is a municipality in Dane County, Wisconsin, with a population of approximately 250,000 residents.² The City of Madison has charge and supervision over voter registration and elections in the municipality through the office of its municipal clerk. Wis. Stat. § 7.15(1). The City of Madison has an interest in ensuring that its citizens have access to the polls, as well as in the efficient and effective administration of elections in the City of Madison.

As the elected mayor of the City of Milwaukee, Tom Barrett serves as the chief elected executive officer of the State's largest and most diverse municipality. The City of Milwaukee is a municipality in Milwaukee County, Wisconsin with a population of

² U.S. Census Bureau, Quick Facts, <http://www.census.gov/quickfacts/table/PST045215/5548000> (last visited October 24, 2016).

approximately 600,000 residents.³ The City of Milwaukee's Board of Election Commissioners, comprised of three commissioners appointed by the Mayor and confirmed by the Common Council, oversee election administration and the registration of voters. Wis. Stat. § 7.20. Mayor Barrett has an interest in ensuring that his constituents have access to the polls, as well as in the efficient and effective operation of voter registration and administration of elections in the City of Milwaukee.

In each case, the duties of these cities include registering residents to vote, issuing notices and publications relating to elections and registration, training election workers, equipping polling places, and sending absentee ballots. *See* Wis. Stat. §§ 6.26(1), 7.15, 7.21. Both the City of Madison and the City of Milwaukee maintain a website to educate residents about elections and voting⁴ and take other measures to inform citizens of their rights and otherwise "give effect to the will of the voters." Wis. Stat. § 5.01. On September 26, 2016, both cities initiated the early voting process, which allows electors to cast an absentee ballot in person, at designated locations, for the November 8, 2016, general election. The City of Madison and the City of Milwaukee have substantial on-the-ground experience with voter registration and education, pre-existing absentee voting procedures, the effects of voter ID requirements and other recent changes

³ U.S. Census Bureau, Quick Facts, <http://www.census.gov/quickfacts/table/RHI125215/5553000> (last visited October 24, 2016).

⁴ City of Madison, City Clerk's Office, Elections and Voting, <http://www.cityofmadison.com/clerk/elections-voting> (last visited October 24, 2016); City of Milwaukee, Elections Commission, <http://city.milwaukee.gov/vote> (last visited October 24, 2016).

imposed by the legislature, and the effectiveness of the ID petition process developed for residents who cannot immediately obtain voter ID.

II. Amici's Brief Will Assist the Court's Resolution of this Appeal.

Based upon their substantial and recent experience in Wisconsin and in matters of access to voting, amici's brief will help inform this Court's resolution of this appeal with relevant, up-to-date information about the critical issues this Court must consider.

The criterion for admitting an amicus curiae brief in the Seventh Circuit is "whether the brief will assist the judges by presenting ideas, arguments, theories, insights, facts, or data that are not to be found in the parties' briefs." *Voices for Choices v. Illinois Bell Tel. Co.*, 339 F.3d 542, 545 (7th Cir. 2003). This criterion is most likely to be satisfied

in a case in which a party is inadequately represented, or in which the would-be amicus has a direct interest in another case that may be materially affected by a decision in this case; or in which the amicus has a unique perspective or specific information that can assist the court beyond what the parties can provide.

Id. (citing cases).

Amici offer a unique perspective and information not provided by the parties in this case. *See id.* Plaintiffs-Appellants-Cross-Appellants are two research and advocacy organizations and a number of individual voters, and Defendants-Appellants-Cross-Appellees are state government officials and entities defending the voter ID law at issue in this case. The League, meanwhile, is an organization dedicated to statewide voter education and assistance, founded in its long history and knowledge of Wisconsin election laws and procedures. The City of Madison directly implements the state laws as it administers elections at the local level for its residents. Mayor Barrett is the elected

chief executive officer of the state's largest and most diverse municipality. All of the amici have firsthand experience with how the voter ID law has burdened Wisconsin's citizens and their right to exercise the franchise, how election officials administer absentee voting, and how other recent voting law changes have been implemented.

Based on their unique perspectives, amici provide additional facts and information that will assist the Court in evaluating Wisconsin's voting laws and the potential need for additional remedies to guarantee that voters are not disenfranchised by recent voting law changes. In the past several weeks, the League has coordinated information-gathering about the State's ID petition process with volunteers who visited Wisconsin Department of Motor Vehicle Offices across the state. They found that DMV employees were providing incorrect, incomplete, and misleading information to voters about the voter ID law and the ID petition process, in ways that if not corrected would deprive otherwise eligible electors of their right to vote in the upcoming general election. The volunteers reported their findings to the League and its counsel, and their stories are shared in the attached brief.

Participation in the attached brief by the City of Madison and Mayor Barrett also provides the Court with an enhanced understanding of how the voter ID law is affecting absentee voting for the November 8, 2016, election. These parties also provide up-to-date information on absentee voting, including data on elector participation during the period and in locations where legislature changes would have prohibited early voting, had the district court not enjoined those changes. These facts and information will allow the Court to better evaluate the issues in this case, and will

inform the Court about the impacts of the voter ID law and changes to the absentee voting process.

Amici's brief does not repeat the legal arguments of the parties. The parties' briefs primarily focus on broad legal arguments and do not discuss the information on voting and local election administration presented by amici. *Cf. Voices for Choices*, 339 F.3d at 545. By presenting facts and information that provide the on-the-ground context that will be affected by the Court's decision, this brief will assist the Court in evaluating the validity of the challenged Wisconsin voting law provisions.

CONCLUSION

The accompanying amici curiae brief would aid this Court as explained above. Accordingly, movants the League of Women Voters of Wisconsin, the City of Madison, and City of Milwaukee Mayor Tom Barrett respectfully request leave to file the accompanying amicus curiae brief.

Respectfully submitted this 26th day of October, 2016.

/s/ Susan M. Crawford

Susan M. Crawford, SBN 1030716

Diane M. Welsh, SBN 1030940

Christa Westerberg, SBN 1040530

PINES BACH LLP

122 West Washington Ave., Suite 900

Madison, WI 53703

Telephone: (608-251-0101

Facsimile: (608) 251-2883

E-mail: scrawford@pinesbach.com

dwelsh@pinesbach.com

cwesterberg@pinesbach.com

*Attorneys for Amici Curiae League of Women Voters of
Wisconsin, the City of Madison, and Milwaukee Mayor
Tom Barrett*

No. 16-3083, 16-3091

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

ONE WISCONSIN, 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, No. 3:15-cv-324
The Honorable James D. Peterson, Presiding

**BRIEF OF AMICI CURIAE, THE LEAGUE OF WOMEN VOTERS OF WISCONSIN,
THE CITY OF MADISON, AND MILWAUKEE MAYOR TOM BARRETT
IN SUPPORT OF THE PLAINTIFFS-APPELLEES-CROSS-APPELLANTS AND
IN SUPPORT OF AFFIRMANCE, IN PART, AND REVERSAL, IN PART, OF THE
DISTRICT COURT'S ORDER**

Susan M. Crawford
Diane M. Welsh
Christa O. Westerberg
Pines Bach LLP
122 West Washington Avenue, Suite 900
Madison, WI 53703

*Attorneys for Amici Curiae
League of Women Voters of Wisconsin, the
City of Madison, and
Milwaukee Mayor Tom Barrett*

October 26, 2016

**CORPORATE DISCLOSURE STATEMENT
PURSUANT TO FED. R. APP. P. 29(c)(1)**

None of the amici are corporations that issue stock or have parent corporations that issue stock.

STATEMENT PURSUANT TO FED. R. APP. P. 29(c)(5)

No counsel for a party authored this brief, in whole or in part, and no party, party's counsel, or person other than amici curiae, their members, and their counsel made any monetary contribution to fund the preparation or submission of this brief.

TABLE OF CONTENTS

	Page
STATEMENT OF IDENTITY AND INTERESTS OF AMICI CURIAE	1
I. INTRODUCTION	3
II. As a result of the District Court’s injunction, Wisconsin’s two largest municipalities expanded the hours and locations for in-person absentee voting, assisting the orderly and efficient administration of in-person absentee voting.....	4
A. Absentee voting in Milwaukee for the November 2016 election.....	5
B. Absentee voting in Madison for the November 2016 Election	9
III. As a result of the District Court’s injunction, municipal clerks for Wisconsin’s two largest municipalities have obtained “dorm lists” from colleges and universities within their jurisdictions, facilitating the orderly and efficient election administration.....	12
IV. As a result of the District Court’s injunction, election officials for Wisconsin’s two largest municipalities are able to fax or email absentee ballots, facilitating the orderly and efficient election administration.	14
V. The State’s implementation of the ID Petition Process has failed to provide an adequate safety net to vulnerable citizens and has required federal court supervision that is not sustainable in the long term.	15
CERTIFICATE OF COMPLIANCE WITH F.R.A.P. RULE 32(a)(7).....	20

TABLE OF AUTHORITIES

	Page
Cases	
<i>Frank et al. v. Walker et al.</i> , 16-3003, 16-3052.....	15
<i>Frank v. Walker</i> , 819 F.3d 384, 387 (7th Cir. 2016).....	15, 18
<i>Milwaukee Branch of NAACP v. Walker</i> , 2014 WI 98, ¶ 70, 357 Wis. 2d 469, 503, 851 N.W.2d 262, 279.....	16
<i>Voices for Choices v. Illinois Bell Tel. Co.</i> , 339 F.3d 542, 545 (7th Cir. 2003).....	4
Statutes	
Wis. Stat. § 5.01.....	2
Wis. Stat. § 6.26(1).....	2, 9
Wis. Stat. § 6.34.....	13
Wis. Stat. § 7.15(1).....	2, 9

STATEMENT OF IDENTITY AND INTERESTS OF AMICI CURIAE

The League of Women Voters of Wisconsin (“the League”) was founded in 1920 by the suffragists who fought to win the right to vote for women. Since then the League has continually asserted that voting is a fundamental right for all citizens that must be guaranteed. The League has long publicly advocated that Wisconsin election laws should provide citizens with maximum opportunities for registration, voting at the polls and absentee voting. It has maintained that election administration should be adequately coordinated and funded to achieve both statewide standards uniformly applied and local municipal effectiveness. The League has previously participated as a party in other court cases affecting voting rights for Wisconsin residents.

The League has worked to educate voters about changes in the legal requirements for voting and court rulings affecting implementation of the laws and has assisted individuals in registering and otherwise complying with the legal requirements to vote. The League has also observed elections and reported on the effects on Wisconsin voters of the numerous changes in voting laws enacted in Wisconsin since 2011. The League has also observed and documented Wisconsin’s efforts to implement an effective ID petition process for citizens who lack the underlying documentation to obtain a qualifying ID to vote.

The City of Madison is a municipality in Dane County, Wisconsin, with a population of approximately 250,000 residents.¹ Through its clerk, the City of Madison has charge

¹ U.S. Census Bureau, Quick Facts, <http://www.census.gov/quickfacts/table/PST045215/5548000> (last visited October 6, 2016).

and supervision of elections and voter registration in the municipality. Wis. Stat. § 7.15(1). These duties include voter registration, issuing notices and publications relating to elections and registration, training election workers, equipping polling places, sending absentee ballots, and administering in-person absentee voting. Wis. Stat. §§ 6.26(1), 7.15. The City of Madison maintains a website to educate residents about elections and voting² and takes other measures to inform citizens of their rights and to “give effect to the will of the voters.” Wis. Stat. § 5.01. The City of Madison has substantial on-the-ground experience with voter registration and education, the effects of changes in the legal requirements for voting, in-person absentee voting, and the effectiveness of the ID petition process.

Mayor Tom Barrett is the elected mayor of the City of Milwaukee and has served as Milwaukee’s mayor since 2004. As the chief elected official overseeing Wisconsin’s largest municipality, Mayor Barrett has an interest in ensuring that his constituents have access to the polls. Because the City of Milwaukee is responsible for the supervision of elections and voter registration in the municipality, Mayor Barrett also has an interest in ensuring the efficient and effective operation of voter registration and election processes in the City of Milwaukee.

² City of Madison, City Clerk’s Office, Elections and Voting, <http://www.cityofmadison.com/clerk/elections-voting> (last visited October 6, 2016).

I. INTRODUCTION

At issue in this appeal are several Wisconsin statutory provisions related to voting, enacted between 2011 and 2014:

- A restriction limiting municipalities to one location for in-person absentee voting
- A restriction limiting the hours and days during which municipalities could administer in-person absentee voting
- A requirement that college and university dorm lists (which fulfill a proof of residence requirement for a student ID to be used to vote) include citizenship information
- A change in the duration of residency requirement from 10 days to 28 days
- A prohibition on distributing absentee ballots by fax or email to voters other than military electors and permanent overseas electors
- A prohibition on the use of expired, but otherwise qualifying, student ID cards as an ID to vote
- The voter ID law, as applied to citizens who use the court-ordered ID petition process to obtain a qualifying ID to vote.

The district court found that the above provisions unduly burden the right to vote in violation of the First and Fourteenth Amendments to the U.S. Constitution. The district court further found that the State's restriction on the hours and days during which municipalities may administer in-person absentee voting is intentionally discriminatory on the basis of race, in violation of the Fifteenth Amendment. Notably, the district court rejected the State's arguments, which it reasserts on appeal, that the above provisions are justified because they promote efficient, orderly elections.

The amici provide information and data concerning the efficiency and orderliness of the absentee voting process in Wisconsin's two largest municipalities following the district court's injunction of the above provisions relating to absentee voting. The amici also provide information about the State's administration of the ID Petition Process

(IDPP), which is supposed to serve as a “safety net” to ensure that qualified voters can obtain IDs with reasonable effort, in the run-up to the November election. The information the amici present concerning the recent experiences of local election officials, Wisconsin voters, and voter assistance advocates will materially assist this Court in resolving the issues presented in this case. *See generally* *Voices for Choices v. Illinois Bell Tel. Co.*, 339 F.3d 542, 545 (7th Cir. 2003) (amicus brief may assist court by presenting ideas, arguments, theories, insights, facts, or data not found in the parties’ briefs).

II. As a result of the District Court’s injunction, Wisconsin’s two largest municipalities expanded the hours and locations for in-person absentee voting, improving the orderly and efficient administration of in-person absentee voting while increasing access to voting.

The State’s primary justification for restricting the hours and locations for in-person absentee voting was that these restrictions facilitate orderly elections and leave municipal clerks “more time for other tasks” during the “busy...election season.” A. 60. The state’s premise apparently is that requiring municipal clerks to process the same number of in-person absentee ballots³ in fewer days, shorter hours, and at a *single site* will foster a more orderly process, even in the State’s largest municipalities, which have

³Not surprisingly, in arguing that the restrictions would facilitate the orderly administration of elections, the State did not explicitly argue that the restrictions would do so by suppressing in-person absentee voting in the State’s large municipalities, where most of the State’s minority citizens reside.

populations of nearly 250,000 (Madison)⁴ and over 600,000 (Milwaukee).⁵ The recent experiences of Madison and Milwaukee in conducting in-person absentee voting for the November 2016 election, following the district court's injunction of these restrictions, show that the opposite is true: allowing municipal election officials to expand the days, hours, and sites for absentee voting has resulted in a more orderly, efficient process in the state's largest municipalities while improving access to voting for citizens.

A. Absentee voting in Milwaukee for the November 2016 Election

In the City of Milwaukee, elections are administered by the Election Commission, the director of which is Neil Albrecht.⁶ The Election Commission began accepting in-person absentee ballots from City of Milwaukee voters on September 26, 2016 for the November 8, 2016 general election. In-person absentee voting will continue until November 5, 2016. The City has made three sites available for in-person absentee voting: the Zeidler Municipal Building in downtown Milwaukee (from September 26 through October 10), the Midtown Center on the north-central side of the city, and the Forest Home Library in south-central Milwaukee.

Had the federal court not enjoined the state restrictions on in-person absentee voting, the City of Milwaukee would have been restricted to conducting in-person

⁴ The estimated population of Madison, Wisconsin is 248,951 as of July 1, 2015. See U.S. Census Bureau, Quick Facts for Madison, WI, <http://www.census.gov/quickfacts/table/PST045215/5548000> (last visited on Oct. 25, 2016).

⁵ The estimated population of Milwaukee, Wisconsin is 600,155 as of July 1, 2015. See U.S. Census Bureau, Quick Facts for Milwaukee, WI, <http://www.census.gov/quickfacts/table/RHI125215/5553000> (last visited on Oct. 25, 2016).

⁶ The information in this brief relating to the administration of the election in Milwaukee is from a declaration executed by Neil Albrecht on October, 26, 2016. The declaration is on file with the Election Commission for the City of Milwaukee.

absentee voting at a single downtown location for a total of 110 hours. The district court's injunction of this restriction has allowed Milwaukee to conduct in-person absentee voting for 725 hours at each of three sites.

In-person absentee voting has been brisk in Milwaukee. From September 26, 2016, through October 25, 2016, a total of 21,289 voters have cast absentee ballots in person at the City's three locations. The number of ballots cast at each in-person absentee voting location from October 10 through October 25, 2016 is as follows:

Zeidler Building	Midtown Center	Forest Home	Total
6,412	8,031	2,998	17,441
37%	46%	17%	100%

All three locations are in areas with high minority populations. The heavily-used Midtown Center is located in Aldermanic District 2 and on the border of Aldermanic District 7. The population of Aldermanic District 2 is 84.9% minority and 70.35% Black. The population of Aldermanic District 7 is 92% minority and 86.7% Black. The Forest Home Library is located in Aldermanic District 12, the population of which is 85.44% minority and 71.86% Hispanic. The Zeidler Building is located in downtown Milwaukee in a district that is 54.14% minority and 37.69% Black.⁷

The ability to provide voters with expanded hours, days, and sites for in-person absentee voting has resulted in a more orderly election process in the City of

⁷ The City of Milwaukee population statistics cited above are included in Mr. Albrecht's declaration and are based on the City's demographic data, which is current as of the 2010 census.

Milwaukee and has improved citizens' access to voting. In past years, when in-person absentee voting was only available at the Zeidler Building over a shorter period of time, long lines formed, particularly during high-turnout presidential elections. Long lines are a deterrent to voting.

The ability to provide multiple locations and a longer period for in-person absentee voting has allowed the Elections Commission staff to administer in-person absentee voting more efficiently. Voters wishing to cast in-person absentee ballots have been able to cast ballots closer to where they live or work and, in most cases, without waiting in a long line. Even when there are lines, in-person absentee voters are typically tolerant of delays, having selected a day and time to vote that is conducive to their schedules. The expanded opportunities for in-person absentee voting reduces the potential for Election Day conflict arising from delays and long lines.

Further, election officials have access to technology and infrastructure during in-person absentee voting that is not available to election workers at polling places on Election Day, improving their ability to administer voting effectively and efficiently. The biggest advantage is access to the statewide voter registration database. Access to the database allows election officials to identify the voter's registration record in real time and troubleshoot when voter records cannot be located. This greatly enhances registration capacity and provides citizens with better access to voting. By contrast, election workers are limited to hard copy poll books at polling places on Election Day and lack time to resolve issues one-on-one with voters.

Expanded in-person absentee voting has other benefits for voters besides a more convenient time and location for voting. The six-week in-person absentee voting schedule gives voters a more realistic opportunity to address barriers that may prevent their vote from being counted, especially proof of residence for registration and photo ID for voting. The three days allowed for voters to cure provisional votes cast on Election Day is inadequate in many cases resulting in uncounted ballots.

Milwaukee Election Commission staff have interacted daily with voters participating in in-person absentee voting over the past several weeks. Election Commission staff have not encountered any voters confused by the multiple locations available for in-person absentee voting. Furthermore, the multiple voting locations and expanded period of time for in-person absentee voting has improved the Election Commission staff's ability to educate voters, answer questions, and resolve problems. The in-person absentee voting process has overall proceeded in an orderly and efficient manner. If the City is not forced under state law to return to a single location for in-person absentee voting, it anticipates expanding in-person absentee voting to additional sites in future elections.

Further, an increased number of voters casting absentee ballots before the election facilitates a more orderly and efficient process for both absentee voting and voting at polling places on Election Day. First, the pace at in-person voting sites, the space, and the staffing provide a more conducive environment for election officials to provide education and instructions to voters who need such assistances, such as first-time voters, those with literacy challenges, and people with disabilities. This one-on-one

assistance to voters is almost impossible at polling places on Election Day. Second, an increase in in-person absentee voting generally reduces the number of people voting at the polls, allowing for a more orderly process and shorter lines at polling place on Election Day.

The number of voters seeking to cast in-person absentee ballots has increased each day in Milwaukee as the election draws closer. With eleven days of in-person absentee voting remaining as of this writing, Milwaukee election officials project between 50,000 and 55,000 in-person absentee ballots will be cast for the November 2016 election. This number reflects a 33 to 35% increase over the 37,500 voters who cast in-person absentee ballots in 2012. It is reasonable to assume that condensing all of those 50,000 to 55,000 absentee voters into a single location, in a fraction of the time, would create significantly longer lines, require voters to wait longer to cast a ballot, and ultimately drive away many voters. These are not the markers of a more efficient and orderly election process.

B. Absentee voting in Madison for the November 2016 Election

Elections in the amicus City of Madison are overseen by Maribeth Witzel-Behl, the City Clerk.⁸ *See* Wis. Stat. §§ 6.26(1), 7.15. The City Clerk's staff began conducting in-person absentee voting for City of Madison voters on September 26, 2016 for the November 8, 2016 general election. In-person absentee voting will continue until November 6, 2016.

⁸ The information in this brief relating to the administration of the election in Madison is from a declaration executed by Maribeth Witzel-Behl on October, 26, 2016. The declaration is on file with the amicus City of Madison.

The Clerk's Office has established thirteen locations in Madison for in-person absentee voting, and a fourteenth will open on October 31, 2016 on the Edgewood College campus. Many of the locations are open for in-person absentee voting during expanded hours, including evenings and weekends.⁹ The locations include the City Clerk's office, a city streets department building, nine public library locations, and two locations on the University of Wisconsin campus.

As of October 25, 2016, the numbers of in-person absentee ballots received at these locations are as follows:

Location	Number of Votes Cast
City Clerk's Office	4,062
Ashman Library	3,510
Central Library	2,328
Goodman Library	710
Hawthorne Library	1,329
Lakeview Library	1,873
Meadowridge Library	1,892
Monroe Library	1,166
Pinney Library	3,027
Sequoia Library	4,768
Streets Dept.	548
University of Wisconsin, Student Activity Center*	554
University of Wisconsin, Union South*	760
Total	26,527
*In-person absentee voting began at these two locations on October 24, 2016	

⁹ The hours and locations for City of Madison in-person absentee voting are published on the City's website: <https://www.cityofmadison.com/clerk/elections-voting/voting/vote-absentee/in-person-absentee-voting-hours-and-locations> (last visited Oct. 26, 2016).

Notably, the number of in-person absentee ballots already cast in the City of Madison as of October 25, 2016 broke the previous record of 18,752 in-person absentee ballots cast in the 2012 election.¹⁰

Many of the additional locations for in-person absentee voting in Madison are in neighborhoods with significant minority populations. The Goodman Library is located in a neighborhood with a population that is up to 34% African American and 29% Hispanic; Meadowridge, Lakeview, and Streets are in neighborhoods that are up to 24% African American; and Meadowview, Lakeview, and Hawthorne are in neighborhoods that are up to 10% Hispanic.¹¹ These neighborhood locations have increased the accessibility of in-person absentee voting for Madison voters.

The ability to provide voters with expanded hours, days, and sites for in-person absentee voting has resulted in a more efficient and orderly election process in the City of Madison and has improved citizens' access to voting. In past years, when in-person absentee voting was only available at the Clerk's office for a shorter period of time, the Clerk's office experienced long lines during in-person absentee voting, particularly for presidential elections. The multiple locations and longer period for in-person absentee voting has reduced pressure on the Clerk's office, improving the staff's ability to perform all of its duties. This belies the State's argument that a "reduced window

¹⁰ Greg Neuman, *City of Madison Shatters Early Voting Records*, WKOW.com, <http://www.wkow.com/story/33488042/2016/10/26/city-of-madison-shatters-early-voting-record> (last visited Oct. 26, 2016).

¹¹ The City of Madison population statistics cited above are included in Ms. Witzel-Behl's declaration and are also available in a report on the website for the University of Wisconsin Applied Population Lab at: http://madison.apl.wisc.edu/documents/2015_NI_Appendix_C.pdf

allows [municipal clerks] to take care of other responsibilities before turning their exclusive attention to voting.” A. 60.

The multiple locations have also benefited voters by reducing the lines and waiting times that can occur when in-person absentee voting is concentrated in one location. The Clerk’s Office staff interact daily with voters participating in in-person absentee voting and have not encountered any voters confused by the multiple locations available for in-person absentee voting. In fact, the multiple voting locations and expanded period of time for in-person absentee voting have improved the ability of the Clerk’s Office to educate voters and answer their questions. The in-person absentee voting process for the November 2016 election has proceeded in an orderly and efficient manner. Further, the City of Madison Clerk believes that the record-breaking number of voters submitting in-person absentee ballots before the election will facilitate a more orderly and efficient process at polling places on Election Day.

III. As a result of the District Court’s injunction, municipal clerks for Wisconsin’s two largest municipalities have obtained “dorm lists” from colleges and universities within their jurisdictions, facilitating the orderly and efficient election administration.

Before 2011 Wisconsin Act 23 was enacted, college students could register to vote by presenting a student ID and proof of residence via a “dorm list” provided by their institution to municipal election officials. Act 23 mandated that such “dorm lists” disclose the citizenship of students, which is not permitted under federal law without the individualized consent of each student. As a result, colleges and universities stopped providing such lists to election officials. The district court enjoined this

requirement, finding that it “burdens student voters who want to use their student IDs as proof of residence to register because it conditions their registration on proof of citizenship, which is something that no other voter must present to register.” A. 68.

The injunction of the State requirement that dorm lists disclose citizenship is facilitating administration of elections in the State’s two biggest municipalities. Madison and Milwaukee, in addition to being the state’s largest municipalities, are also home to the state’s largest college student populations. Election officials in Madison and Milwaukee have observed that large numbers of students utilize same-day registration, often because they have moved to a new residence, resulting in long lines and long waits in student polling places.¹² Further, Madison and Milwaukee election officials have observed that college students often do not possess the documents allowable as proof of residence, including utility bills, leases, property tax bills, or paychecks or paystubs. *See* Wis. Stat. § 6.34 (documents acceptable as proof of residence).

Since the requirement was enacted that dorm lists include confirmation of U.S. citizenship, Madison and Milwaukee officials have not received dorm lists from local universities. This year, due to the district court’s injunction, the City of Milwaukee and City of Madison are again receiving dorm lists from local colleges and universities, including UW-Madison, Edgewood College, UW-Milwaukee, Marquette University, Milwaukee School of Engineering, and Milwaukee Institute of Art and Design.

¹² The University of Wisconsin-Madison is the state’s largest university, with over 43,000 students. *See* <http://www.wisc.edu/about/facts/> (last visited Oct. 26, 2016).

Election officials in Madison and Milwaukee, home to the state's largest college student populations, have observed that the "dorm lists" allow poll workers to more efficiently register student voters on Election Day. They anticipate that the renewed availability of the dorm lists, especially at polling places on campus and in other locations with large concentrations of students, will assist election officials in the orderly and efficient administration of the election, and will likely reduce the lines and wait times for voters in these locations.

IV. As a result of the District Court's injunction, election officials for Wisconsin's two largest municipalities are able to fax or email absentee ballots, facilitating the orderly and efficient election administration.

The State justifies the provision prohibiting municipal clerks from transmitting absentee ballots by fax and email except to a narrow class of voters (permanent overseas and military voters) on grounds that it reduces burdens on clerks' offices, minimizes risk of error, and protects voter privacy by not exposing a voter's selections to election officials. (Br. at 33-34.) But these claims are not borne out by the experiences of election officials in the State's largest municipalities. The City of Madison clerk reports that, as of October 26, 2016, her office has sent 1,415 absentee ballots by email for the upcoming November 8, 2016, general election. The City of Milwaukee has sent 582.

When clerks are prohibited from provide email or facsimile ballot delivery to these voters, there is an undeniable risk that some voters will be disenfranchised. The City of Madison today reported a call from a voter in China, who only this week received his absentee ballot by mail for the August 2016 primary election. His case illustrates why clerks need to be able to send absentee ballots by email or facsimile to a wider class of

voters, including voters who are temporarily overseas. As the district court pointed out, a voter is perfectly capable of deciding whether she or he will accept a potential loss of privacy through the email and faxed voter process, versus the risk that a mailed ballot may not be received in time to be counted. Sending absentee ballots by email or fax is an efficient and timely way to reach absentee voters, especially those who are overseas temporarily and in countries with unreliable mail service.

V. The State's implementation of the ID Petition Process has failed to provide an adequate safety net to vulnerable citizens and has required federal court supervision that is not sustainable in the long term.

The district court also ordered changes to the State's ID Petition Process (IDPP), which is supposed to function as a "safety net for qualified electors who cannot get a voter ID with reasonable effort." A. 4. *See also Frank v. Walker*, 819 F.3d 384, 387 (7th Cir. 2016). The IDPP has proven to be an unreliable means for ensuring that qualified electors can obtain an ID without undue difficulty. The State of Wisconsin has repeatedly demonstrated that it is unable to effectively protect the voting rights of its citizens from disenfranchisement at the hands of its rigid Voter ID law without extensive federal court oversight.

First, information gathered by the League in September and early October, 2016¹³ shows that DMV employees have not consistently offered the IDPP to voters who lack

¹³ The information summarized in this section was filed in the district court and can be found Dkt. 263 & 264, *One Wisconsin Institute, Inc. et al. v. Thomsen et al.*, case no. 3:15-cv-324 (W.D. Wis.) (declarations of Molly McGrath and Susan McGrath and exhibits). This evidence is discussed in greater detail in the amici's brief filed in this Court in *Frank et al. v. Walker et al.*, 16-3003, 16-3052.

documentation to obtain an ID. Second, even when the IDPP is offered, DMV employees have provided incorrect information about it or even discouraged citizens from utilizing the process. Volunteers working with the amicus League observed:

- DMV employees failing to initiate the IDPP after confirming the citizen lacked a birth certificate or passport
- DMV employees who were uncertain as to how to carry out the IDPP,
- DMV employees who did not advise the citizen that he or she would promptly receive a credential for voting, and
- DMV employees discouraging citizens from entering the IDPP on the belief that it would be “faster” for the citizen to obtain the missing documents.¹⁴

The uneven execution of the IDPP at DMV offices has raised a significant risk that the opportunity to enter the IDPP has not been extended to every citizen who needs it. Further, the fact that DMV employees have urged citizens to obtain out-of-state birth certificates, at their own cost, instead of utilizing the IDPP is particularly troubling. Wisconsin’s Voter ID law survived a facial constitutional challenge in state court only by virtue of the Wisconsin Supreme Court’s “saving construction” of DOT’s administrative rules, which directed the Wisconsin DOT to make IDs available at no cost to citizens who are unable to furnish the underlying documents required for a state ID without paying a fee to a government agency to obtain them. *Milwaukee Branch of NAACP v. Walker*, 2014 WI 98, ¶ 70, 357 Wis. 2d 469, 503, 851 N.W.2d 262, 279. The fact that the State’s DMV employees continue to believe that voters are better served by

¹⁴ *Id.* ¶ 5, ¶ 8 & Ex. A; Declaration of Susan McGrath, Ex. A (Dkt. ##264 and 264-5).

paying fees to obtain IDs, rather than employing the State's so-called "safety net," strongly suggests that the Voter ID law is beyond saving for some voters.

Besides these problems with the IDPP, volunteers have also observed DMV employees treating the issuance of an ID as a matter of discretion, for example by accepting photocopied documents in place of originals.¹⁵ These inconsistencies are also troubling. The right of Wisconsin citizens to vote should not be subject to the discretion of DMV customer service staff.

The information briefly summarized above was presented to the district court on October 12, 2016. The district court found that the State had "not complied with the court's [July 29, 2016] order concerning the IDPP, because the public has not been adequately informed about the IDPP and DMV staff had not been adequately trained to administer it." Dkt 293-1. The district court specifically found that the DMV had failed to adequately train its staff, despite having repeatedly issued "technical training bulletins" to staff on May 12, May 16, September 6, and September 23, 2016. Dkt. 293-4. The district court found that the DMV initiated more comprehensive retraining on the IDPP only after news media reported on the grave shortcomings in the IDPP uncovered by Molly and Susan McGrath. Dkt 293-4.

The court ordered additional remedies targeted to these problems, including the development of specific informational documents to provide to citizens entering the IDPP; the development of additional quality assurance measures, including follow-up

¹⁵ Declaration of Molly McGrath, ¶¶ 21-22.

training and competency checks; and the development of an improved public information campaign. Dkt. 293-7. The court also ordered the State to file *weekly* status reports with the court, through the November election, to demonstrate its compliance with the court's orders. Dkt. 293-8.

Despite the district court's well-warranted efforts to micro-manage the State's IDPP process, the practical reality in Wisconsin is that the State has failed to administer the IDPP in a manner that provides an effective safeguard for qualified electors who cannot get an ID to vote with reasonable effort. The district court's requirement of weekly check-ins on the State's efforts to administer the process shows that the IDPP is not sustainable. As the district court observed, "Wisconsin may adopt a strict voter ID system only if that system has a *well-functioning* safety net, as both the Seventh Circuit and the Wisconsin Supreme Court have held." A. 5 (emphasis added). The amici urge this Court to reject the State's IDPP and to consider a remedy that does not require active and interventionary federal court supervision, such as the affidavit procedure before the Court in *Frank v. Walker*, to provide a safety net for qualified electors who otherwise risk being disenfranchised by Wisconsin's strict voter ID law.

Dated this 26th day of October, 2016.

/s/ Susan M. Crawford_____.

Susan M. Crawford, SBN 1030716

Diane M. Welsh, SBN 1030940

Christa Westerberg, SBN 1040530

PINES BACH LLP

122 West Washington Ave., Suite 900

Madison, WI 53703

Telephone: (608-251-0101

Facsimile: (608) 251-2883

E-mail: scrawford@pinesbach.com

dwelsh@pinesbach.com

cwesterberg@pinesbach.com

*Attorneys for Amici Curiae League of Women Voters of
Wisconsin, the City of Madison, and Milwaukee Mayor
Tom Barrett*

CERTIFICATE OF COMPLIANCE WITH F.R.A.P. RULE 32(a)(7)

The undersigned, counsel of record for the Amici Curiae, furnish the following in compliance with F.R.A.P. Rule 32(a)(7).

We hereby certify that this brief conforms to the rules contained in for a brief produced with a proportionally spaced font. The length of this brief is 4,864 words.

Dated this 26th day of October, 2016.

/s/ Susan M. Crawford _____.

Susan M. Crawford, SBN 1030716

Diane M. Welsh, SBN 1030940

Christa Westerberg, SBN 1040530

PINES BACH LLP

122 West Washington Ave., Suite 900

Madison, WI 53703

Telephone: (608-251-0101

Facsimile: (608) 251-2883

E-mail: scrawford@pinesbach.com

dwelsh@pinesbach.com

cwesterberg@pinesbach.com

Attorneys for Amici Curiae League of Women Voters of Wisconsin, the City of Madison, and Milwaukee Mayor Tom Barrett

No. 16-3083, 16-3091

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

ONE WISCONSIN, 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, No. 3:15-cv-324
The Honorable James D. Peterson, Presiding

CERTIFICATE OF SERVICE

Susan M. Crawford
Diane M. Welsh
Christa O. Westerberg
Pines Bach LLP
122 West Washington Avenue, Suite 900
Madison, WI 53703

*Attorneys for Amici Curiae
League of Women Voters of Wisconsin, the
City of Madison, and Milwaukee Mayor Tom
Barrett*

I hereby certify that on October 26, 2016, I electronically filed a Motion for Leave to File Brief and Brief as an Amici Curiae in Support of Plaintiffs-Appellees-Cross-Appellants and Affirmance, in part, and Reversal, in part, of the District Court's Order on behalf of amici League of Women Voters of Wisconsin, the City of Madison, and Milwaukee Mayor Tom Barrett, 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.

Respectfully submitted this 26th day of October, 2016.

/s/ Susan M. Crawford

Susan M. Crawford, SBN 1030716

Diane M. Welsh, SBN 1030940

Christa Westerberg, SBN 1040530

PINES BACH LLP

122 West Washington Ave., Suite 900

Madison, WI 53703

Telephone: (608-251-0101

Facsimile: (608) 251-2883

E-mail: scrawford@pinesbach.com

dwelsh@pinesbach.com

cwesterberg@pinesbach.com

*Attorneys for Amici Curiae League of Women Voters of
Wisconsin, the City of Madison, and Milwaukee Mayor
Tom Barrett*