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Gino J. Agnello
Clerk of the U.S. Court of Appeals
for the Seventh Circuit
Room 2722
Chicago, IL 60604

Re: *One Wisconsin Institute, Inc. v. Thomsen,* Case Nos. 16-3083 & 16-3091

Dear Mr. Agnello:

We write in response to the January 13, 2017 letter Defendants filed ("Letter") regarding 2015 Wis. Act 261, which eliminated all Special Registration Deputies ("SRDs") in the State of Wisconsin. Contrary to Defendants' assertion, Act 261 did not moot Plaintiffs' claims that the State intentionally discriminated on the basis of race and age in eliminating statewide SRDs and SRDs at high schools.

First, Plaintiffs did not waive their intentional discrimination claims with respect to the elimination of SRDs. Plaintiffs clearly explained the evidence of discriminatory intent underlying 2011 Wis. Act 23, which, among many other restrictions, eliminated statewide SRDs, and 2011 Wis. Act 240, which eliminated high school SRDs. *See* Pls.' Opening Br. 5–6, 11–20; Pls.' Reply Br. 3, 6–9. As explained in Plaintiffs' briefs, these restrictions on SRDs were part and parcel of an omnibus effort to discriminate against Wisconsin voters on the basis of their race and age. *See N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 214 (4th Cir. 2016).

Second, 2015 Wis. Act 261 did not render Plaintiffs' claims moot. Defendants contend that Plaintiffs can no longer challenge the elimination of statewide and high school SRDs because all SRDs have now been eliminated. In essence, Defendants contend that a state can cure an intentionally discriminatory law by subsequently passing an even more restrictive measure. If accepted, this argument would allow a state to shield an intentionally discriminatory law from constitutional scrutiny by continuing to restrict the franchise through subsequent enactments.

The situation in *McCrory* is instructive. There, the State of North Carolina had enacted a highly restrictive voter ID law in 2013. Shortly before the trial

challenging that law was set to begin in 2015, the state amended the law to ameliorate some of its harshest impacts. *McCrory*, 831 F.3d at 219. Nevertheless, the court analyzed the discriminatory intent underlying the original 2013 enactment. *Id.* at 227–30. If a subsequent less restrictive measure cannot shield a prior act from constitutional challenge, then *a fortiori* a subsequent more restrictive measure cannot moot a challenge to prior laws.

Respectfully,

/s/ Bruce V. Spiva
Bruce V. Spiva
Counsel for Plaintiffs-Appellees, Cross-Appellants

cc: Counsel of record (via ECF)

CERTIFICATE OF SERVICE

I hereby certify that on January 19, 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.

s/ *Bruce V. Spiva*

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