

**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

GERALD C. NICHOL, *et al.*,

Defendants.

**PLAINTIFFS' MOTION FOR PARTIAL REINSTATEMENT OF VOTER ID CLAIMS
IN COUNTS ONE AND TWO OF
FIRST AMENDED COMPLAINT DUE TO
DISCOVERY OF ADDITIONAL EVIDENCE AND NEW DEVELOPMENTS**

Plaintiffs, by their undersigned counsel, and pursuant to Fed. R. Civ. P. 15(a)(2), respectfully move this Court for partial reinstatement of the voter ID claims in Counts I and II of Plaintiffs' Amended Complaint (Dkt. 19), which were dismissed without objection in *One Wisconsin Institute, Inc. v. Nichol*, No. 15-cv-324-jdp, 2015 WL 9239014, *1 (W.D. Wis. Dec. 17, 2015). Plaintiffs seek reinstatement of these claims to the extent they challenge the multiple abuses of discretion by state officials and employees in implementing and enforcing the voter ID provisions of Act 23, including the voter ID Petition Process administered pursuant to Wis. Admin. Code Trans. § 102.15(5m).

The grounds for this motion, as set forth in the accompanying brief and the cited evidence of record, are that Defendants have recently produced evidence demonstrating that the State is exercising its discretion in administering the free ID program in general, and the ID Petition Process in particular, in an arbitrary, capricious, abusive, and racially discriminatory manner that

only further exacerbates the disproportionate impacts of the voter ID law on people of color, students, senior citizens, the poor, Democrats, and other populations targeted by Act 23 and the other registration and voting laws challenged in this litigation. The federal and state courts allowed Act 23's voter ID provisions to go into effect conditioned on the State's assurances that it would "alleviat[e]" unreasonable and costly impacts through the IDPP waiver process so that it is not "needlessly hard" for *anyone* to vote. *Frank v. Walker*, 768 F.3d 744, 753, 755 (7th Cir. 2014), *rehearing en banc denied by an equally divided court*, 773 F.3d 783 (7th Cir. 2014), *cert. denied*, 135 S. Ct. 1551 (2015). And the Seventh Circuit emphasized that a "separate" as-applied challenge could be brought if the State's discretion under the voter ID law is not "properly exercised." 768 F.3d at 747 n.1 (emphasis added).

The new evidence demonstrates the State is abusing its discretion in implementing and enforcing Act 23's voter ID provisions. Because plaintiffs are seeking to reinstate claims in an amended complaint that already is on file, and because of the liberal pleading standards of Fed. R. Civ. P. 8, plaintiffs do not believe it is necessary to file another amended pleading. Rather, they seek the Court's order reinstating the voter ID claims in Counts I and II to the extent they fall within the exceptions expressly recognized in the *Frank* panel decision—claims that the State is abusing its discretion in administering the IDPP safeguard for "hardship" cases, along with other "as applied" challenges to the specific application and enforcement of the voter ID provisions (as opposed to the "facial" claims involved in *Frank*). *See* 768 F.3d at 747 & n.1. Plaintiffs stand ready to submit another amended pleading if the Court so instructs.

Plaintiffs emphatically seek no delay in the May 16, 2016 trial date, nor do they believe any such delay would be necessary or appropriate as a result of this proposed reinstatement. But if this Court were to disagree and believe the choice was between granting reinstatement or

proceeding with trial on May 16, Plaintiffs reluctantly would choose to keep the May 16 trial date and pursue the voter ID issues in Counts I and II in a separate lawsuit. It is important that, if this Court ultimately concludes that one or more of the registration and voting restrictions challenged in this litigation are illegal, it enter appropriate relief as soon as possible prior to the November 8 general federal and state elections.

But such a false choice is unnecessary. The voter ID claims can be tried in the upcoming May 16 trial under Counts I and II as well as under Counts IV, V, and VI without any undue prejudice to the State. If the Court disagrees, Plaintiffs respectfully request in the alternative that the Court grant this motion, set a separate trial date for the reinstated voter ID claims in Counts I and II for later this year, and treat the May 16 trial on the merits of the other claims as a preliminary injunction hearing on the reinstated claims. That would eliminate any potential for undue prejudice to the State while at the same time maximizing judicial economy and the public interest in avoiding having elections go forward under rules that have been found by the courts to be discriminatory and illegal.

Dated this 24th day of February, 2016.

Respectfully submitted,

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