

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ONE WISCONSIN INSTITUTE, *et al.*,

Plaintiffs,

v.

Case No. 15-CV-324

GERALD C. NICHOL, *et al.*,

Defendants.

DEFENDANTS' PROPOSED FINDINGS OF FACT

Pursuant to this Court's Procedure to Be Followed on Motions for Summary Judgment, *see* Dkt. 29:11, Defendants hereby submit the following proposed findings of fact in support of their motion for summary judgment.

1. Wisconsin Government Accountability Board ("GAB") form GAB-131 is the Wisconsin Voter Registration Application, which is completed by a voter and returned to the municipal clerk. (Declaration of Michael Haas, Jan. 7, 2016, ¶ 10 & Ex. D.)

2. There are three things that a registered voter must do to obtain a ballot at the polling place on Election Day: (1) "State it": state his or her full name and address to election officials, (2) "Show it": present election officials with a proof of identification document, and (3) "Sign it": sign the poll list. (Declaration of Michael Haas, Jan. 7, 2016, ¶ 13 & Ex. G.)

3. Voters must show qualifying proof of identification at the polling place to prove that they are who they claim to be. (Declaration of Michael Haas, Jan. 7, 2016, ¶¶ 13–14 & Exs. G, H.)

4. GAB form GAB-121 is the Wisconsin Application for Absentee Ballot. (Declaration of Michael Haas, Jan. 7, 2016, ¶ 11 & Ex. E.)

5. A voter can indicate on the GAB-121 form his or her preference to receive an absentee ballot in the mail or to vote the ballot in-person at a municipal clerk's office. (Declaration of Michael Haas, Jan. 7, 2016, ¶ 11 & Ex. E.)

6. A voter can request an absentee ballot to be mailed to him or her for elections on specific dates, for all elections that year, or for every election after the date the GAB-121 form is signed if the voter certifies that he or she is “indefinitely confined because of age, illness, infirmity or disability.” (Declaration of Michael Haas, Jan. 7, 2016, ¶ 11 & Ex. E.)

7. A military or permanent overseas voter can request that an absentee ballot be sent to him or her via fax or e-mail. (Declaration of Michael Haas, Jan. 7, 2016, ¶ 11 & Ex. E.)

8. Each of the individual voter Plaintiffs has a form of qualifying ID under the voter photo ID law. (Declaration of Clayton P. Kowski, Jan. 11, 2016, ¶¶ 4–5 & Ex. C at Response to Request for Admission No. 1, Ex. D at Response to Interrogatory No. 10.)

9. The following table summarizes the facts regarding Plaintiffs' qualifying IDs:

<u>Plaintiff</u>	<u>Forms of qualifying ID</u>
Renee M. Gagner	Wisconsin DOT-issued driver license and U.S. passport
Anita Johnson	Wisconsin DOT-issued driver license
Cody R. Nelson	Wisconsin DOT-issued driver license
Jennifer S. Tasse	Wisconsin DOT-issued driver license and U.S. passport
Scott T. Trindl	Wisconsin DOT-issued driver license and U.S. passport
Michael R. Wilder	Wisconsin DOT-issued driver license and U.S. passport

(Declaration of Clayton P. Kawski, Jan. 11, 2016, ¶¶ 4–5 & Ex. C at Response to Request for Admission No. 1, Ex. D at Response to Interrogatory No. 10.)

10. Plaintiffs One Wisconsin Institute, Inc. and Citizen Action of Wisconsin Education Fund, Inc. are corporations. (Declaration of Clayton P. Kawski, Jan. 11, 2016, ¶¶ 4–5 & Ex. C at Response to Requests for Admission No. 3, 4, Ex. D at Response to Interrogatory Nos. 18, 19, 20.)

11. Plaintiffs One Wisconsin Institute, Inc. and Citizen Action of Wisconsin Education Fund, Inc. have no members. (Declaration of Clayton P. Kawski, Jan. 11, 2016, ¶¶ 4–5 & Ex. C at Response to Request for Admission Nos. 3, 4, Ex. D at Response to Interrogatory Nos. 18, 19, 20.)

12. Each of the individual voter Plaintiffs is registered to vote. (Declaration of Clayton P. Kawski, Jan. 11, 2016, ¶¶ 4–5 & Ex. C. at Response to Request for Admission No. 2.)

13. Some of the challenged laws were passed with the support of Republicans and Democrats. (Declaration of Clayton P. Kawski, Jan. 11, 2016, ¶¶ 6–12 & Exs. E–K.)

14. The following chart shows which of the challenged laws were passed with bipartisan support:

<u>Legislative Act</u>	<u>Legislative Bill</u>	<u>Bipartisan Votes</u>
2011 Wis. Act 23	2011 Assembly Bill 7	<ul style="list-style-type: none"> •Rep. Peggy Krusick (D), 7th Assembly District; •Rep. Anthony J. Staskunas (D), 15th Assembly District; and •Rep. Bob Ziegelbauer (I), 25th Assembly District
2011 Wis. Act 75	2011 Senate Bill 116	<ul style="list-style-type: none"> •Rep. JoCasta Zamarripa (D), 8th Assembly District; •Rep. Leon D. Young (D), 16th Assembly District; •Rep. Christine Sinicki (D), 20th Assembly District; •Rep. Gordon Hintz (D), 54th Assembly District; •Rep. Robert L. Turner (D), 61st Assembly District; •Rep. Cory Mason (D), 64th Assembly District; and •Rep. Amy Sue Vruwink (D), 70th Assembly District

2011 Wis. Act 227	2011 Senate Bill 271	<ul style="list-style-type: none"> •Rep. Peggy Krusick (D), 7th Assembly District; and •Rep. Bob Ziegelbauer (I), 25th Assembly District
2013 Wis. Act 76	2013 Senate Bill 179	<ul style="list-style-type: none"> •Rep. Andy Jorgensen (D), 43rd Assembly District

(Declaration of Clayton P. Kawski, Jan. 11, 2016, ¶¶ 6–12 & Exs. E–K.)

15. When asked in written interrogatories to identify and describe all the facts that support the allegations of intentional racial discrimination asserted in their amended complaint, Plaintiffs responded by first objecting and then referring Defendants back to the allegations in the amended complaint, none of which show evidence of intentional racial discrimination that would meet the standards under the Fifteenth Amendment and Equal Protection Clause. (Declaration of Clayton P. Kawski, Jan. 11, 2016, ¶ 3 & Ex. B at Response to Interrogatory No. 5.)

16. The Government Accountability Board is in the process of promulgating a permanent rule that will permit voters to use technical college ID cards to vote. (Declaration of Michael Haas, Jan. 7, 2016, ¶ 3.)

17. The permanent rule regarding technical college ID cards for voting will be published in the Wisconsin Administrative Register and will become effective on February 1, 2016. (Declaration of Michael Haas, Jan. 7, 2016, ¶ 4.)

18. Two Democratic legislators, Rep. Anthony Staskunas, 15th Assembly District, and Rep. Peggy Krusick, 7th Assembly District, and one Independent legislator, Rep. Bob Ziegelbauer, 25th Assembly District, voted to enact 2011 Assembly Bill 7. (Declaration of Clayton P. Kawski, Jan. 11, 2016, ¶¶ 6–7 & Exs. E, F.)

19. The current in-person absentee voting deadlines are helpful to local election officials. (Declaration of Diane Hermann-Brown, Jan. 8, 2016, ¶¶ 9–17; Declaration of Susan Westerbeke, Jan. 5, 2016, ¶¶ 7–13; Declaration of Tim McCumber, Jan. 6, 2016, ¶¶ 5–10; Declaration of Constance McHugh, Jan. 5, 2016, ¶¶ 5–10; Declaration of Kathleen Novack, Jan. 7, 2016, ¶¶ 14–17.)

20. The current in-person absentee voting deadlines make elections more cost-effective to administer. (Declaration of Diane Hermann-Brown, Jan. 8, 2016, ¶¶ 9–11; Declaration of Tim McCumber, Jan. 6, 2016, ¶ 4; Declaration of Susan Westerbeke, Jan. 5, 2016, ¶ 8; Declaration of Kathleen Novack, Jan. 7, 2016, ¶ 17.)

21. In the case of the City of Sun Prairie, the breathing room allowed by the current in-person absentee voting deadlines saves the money it would cost to hire additional limited term employees. (Declaration of Diane Hermann-Brown, Jan. 8, 2016, ¶ 11.)

22. The logistical complexities and workload faced by Wisconsin's local election officials is enormous in the weeks ahead of an election. (Declaration of Kathleen Novack, Jan. 7, 2016, ¶¶ 14–17; Declaration of Susan Westerbeke, Jan. 5, 2016, ¶¶ 11–13.)

23. Clerks work nights and weekends before an election just to get ready. (Declaration of Susan Westerbeke, Jan. 5, 2016, ¶ 12.)

24. Election officials do much more than just hand out absentee ballots. (Declaration of Susan Westerbeke, Jan. 5, 2016, ¶¶ 11–13.)

25. Statewide databases of registration must be coordinated, and ballots need to be prepared. (Declaration of Susan Westerbeke, Jan. 5, 2016, ¶¶ 11.)

26. Election officials also mail absentee ballots and coordinate voting at nursing homes before in-person absentee voting begins. (Declaration of Constance McHugh, Jan. 5, 2016, ¶ 7.)

27. In Waukesha County, many municipal clerks are part-time workers. (Declaration of Kathleen Novack, Jan. 7, 2016, ¶ 17.)

28. For the upcoming spring primary election, Waukesha County anticipates printing as many as 190 different types of specific ballots for the elections unique to each voting district. (Declaration of Kathleen Novack, Jan. 7, 2016, ¶ 16.)

29. The Waukesha County Clerk's ballot preparation schedule is as follows:

- January 12 – clerk finalizes the order of candidates that will appear on the ballot.
- January 19 – print test batches of 20 to 25 ballots of each ballot type to make sure each will work on Election Day.
- January 25 – deliver ballots to voting locations by coordination with the municipal clerks.
- January 26 – special voting ballots delivered to nursing homes.
- January 26 – mail all absentee ballots that are being delivered by mail.
- February 1 – start of in person absentee voting
- February 12 – the last day for in person absentee voting
- February 15 – final preparation for February 16, 2016, Election Day, including finalizing ballots and getting them to the printer.

(Declaration of Kathleen Novack, Jan. 7, 2016, ¶ 16.)

30. Returning to the 30-day in-person absentee voting timeline would be a strain on local election officials' staff and time. (Declaration of Susan Westerbeke, Jan. 5, 2016, ¶¶ 7–13; Declaration of Constance McHugh, Jan. 5, 2016, ¶ 7; Declaration of Tim McCumber, Jan. 6, 2016, ¶¶ 5, 9–10.)

31. The current deadlines for in-person absentee voting give clerks time to do their jobs and lead directly to better election accountability. (Declaration of Diane Hermann-Brown, Jan. 8, 2016, ¶ 9–17; Declaration of Susan Westerbeke, Jan. 5, 2016, ¶¶ 7–13; Declaration of Constance McHugh, Jan. 5, 2016, ¶¶ 5–10; Declaration of Tim McCumber, Jan. 6, 2016, ¶¶ 4–10.)

32. 2013 Wisconsin Act 146 created uniformity for voters and is important to municipalities who cannot staff their offices on weekends and evenings. (Declaration of Constance McHugh, Jan. 5, 2016, ¶¶ 5–7; Declaration of Susan Westerbeke, Jan. 5, 2016, ¶ 7–9.)

33. The standardized election hours help coordinate the many tasks required to collect and process absentee ballots, such as getting ballots ready and mailing them. (Declaration of Diane Hermann-Brown, Jan. 8, 2016, ¶¶ 9–10; Declaration of Susan Westerbeke, Jan. 5, 2016, ¶ 8–11; Declaration of Constance McHugh, Jan. 5, 2016, ¶ 5–7.)

34. Holding in-person absentee voting in one location helps orderly election administration and saves costs. (Declaration of Diane Hermann-Brown, Jan. 8, 2016, ¶¶ 3–8; Declaration of Constance McHugh, Jan. 5, 2016, ¶¶ 3–4; Declaration of Susan Westerbeke, Jan. 5, 2016, ¶¶ 3–5; Declaration of Kathleen Novack, Jan. 7, 2016, ¶¶ 3–13.)

35. Having all absentee ballots in one location increases ballot security and decreases voter confusion over where to vote. (Declaration of Diane Hermann-Brown, Jan. 8, 2016, ¶¶ 6–7.)

36. Having multiple locations for in-person absentee voting would mean less control over election procedures and over the absentee ballots. (Declaration of Susan Westerbeke, Jan. 5, 2016, ¶ 4; Declaration of Diane

Hermann-Brown, Jan. 8, 2016, ¶¶ 3–8; Declaration of Kathleen Novack, Jan. 7, 2016, ¶ 3–13.)

37. Adding additional locations for in-person absentee voting would create additional logistical problems for municipalities that are already under a tight schedule to distribute and collect ballots. (Declaration of Kathleen Novack, Jan. 7, 2016, ¶ 3–14.)

38. Voters may arrive at an absentee voting site before an election intending to both register and apply for an in-person absentee ballot. (Declaration of Susan Westerbeke, Jan. 5, 2016, ¶ 5.)

39. Access to the registration computer system is separate from absentee-voting applications, resulting in potential confusion for a person who shows up at a location where he or she can get an absentee ballot, but cannot register. (Declaration of Susan Westerbeke, Jan. 5, 2016, ¶ 5.)

40. Municipalities did not have multiple locations for in-person absentee voting prior to 2013. (Declaration of Susan Westerbeke, Jan. 5, 2016, ¶ 3; Declaration of Kathleen Novack, Jan. 7, 2016, ¶ 3; Declaration of Constance McHugh, Jan. 5, 2016, ¶ 3.)

41. The prior system that authorized the provision of absentee ballots to all voters by fax or email was burdensome on municipal clerks because, when such ballots were returned by voters, election officials needed to re-create the ballots before they could be run through the vote-tabulating

machine and deposited into the ballot box. (Declaration of Constance McHugh, Jan. 5, 2016, ¶ 22; Declaration of Susan Westerbeke, Jan. 5, 2016, ¶ 30.)

42. Re-creating ballots creates a possibility of human error on the part of the election official. (Declaration of Constance McHugh, Jan. 5, 2016, ¶ 22; Declaration of Susan Westerbeke, Jan. 5, 2016, ¶ 30.)

43. Fax and email transmission of absentee ballots caused many ballots to be disqualified because of certification problems. (Declaration of Diane Hermann-Brown, Jan. 8, 2016, ¶ 35.)

44. Voters also forwarded their electronic ballots to others, resulting in non-compliant ballots being received by municipal clerks. (Declaration of Constance McHugh, Jan. 5, 2016, ¶ 23.)

45. Clerks reported that the change to in-person or mail delivery of absentee ballots has not resulted in ongoing problems and that voters are now aware of the change and have adjusted to the current process. (Declaration of Diane Hermann-Brown, Jan. 8, 2016, ¶ 34.)

46. Asking local election officials to determine whether a particular ballot contains a “mistake” is an unworkable task, which would be piled on top of the already hectic schedule of an election. (Declaration of Constance McHugh, Jan. 5, 2016, ¶ 25.)

47. If an absentee ballot is rejected because of an error, that voter would have to come in to the municipal clerk's office because there would not be time to mail the ballot, get it fixed, and then mail the ballot back. (Declaration of Susan Westerbeke, Jan. 5, 2016, ¶ 31.)

48. A voter can complete the voter registration form electronically on the website <http://myvote.wi.gov>, print the completed form, and then mail it to the appropriate municipal clerk's office, which the website provides when the individual enters his or her address. (Declaration of Michael Haas, Jan. 7, 2016, ¶ 5.)

49. In August 2012, the Government Accountability Board authorized the use of electronic versions of the documents accepted as proof of residence. (Declaration of Michael Haas, Jan. 7, 2016, ¶ 6 & Ex. J.)

50. The elimination of statewide special registration deputies was a change that local election officials requested. (Declaration of Diane Hermann-Brown, Jan. 8, 2016, ¶ 24; Declaration of Tim McCumber, Jan. 6, 2016, ¶ 16; Declaration of Constance McHugh, Jan. 5, 2016, ¶ 26.)

51. Statewide special registration deputies would make mistakes and often showed inconsistency with voter registration forms. (Declaration of Diane Hermann-Brown, Jan. 8, 2016, ¶ 25; Declaration of Constance McHugh, Jan. 5, 2016, ¶ 19.)

52. Statewide special registration deputies could be difficult for local election officials to track down to try to fix errors. (Declaration of Tim McCumber, Jan. 6, 2016, ¶ 17.)

53. Some voters became upset when they thought they had been registered by a statewide special registration deputy, when in fact they were not registered. (Declaration of Susan Westerbeke, Jan. 5, 2016, ¶ 24.)

54. Returning to local control over the accuracy and consistency of the voter registration process improves accountability and is supported by local election officials. (Declaration of Diane Hermann-Brown, Jan. 8, 2016, ¶ 27.)

55. The old system of having special registration deputies at high schools created extra work without much benefit. (Declaration of Susan Westerbeke, Jan. 5, 2016, ¶ 20.)

56. Elderly election observers might have difficulty hearing or seeing if they are six feet away from voter registration tables, which could result in more interruptions and questions from the observers for election officials, the chief election inspector, or the municipal clerk. (Declaration of Susan Westerbeke, Jan. 5, 2016, ¶ 27.)

57. Not all polling places have the space to move election observers further away from voters. (Declaration of Susan Westerbeke, Jan. 5, 2016, ¶ 28.)

58. Some voters find straight-ticket voting confusing. (Declaration of Susan Westerbeke, Jan. 5, 2016, ¶ 29.)

59. Eliminating the straight-ticket option decreases the possibility of voters marking the straight-ticket box on the ballot and then proceeding to vote for candidates on the remainder of the ballot anyway. (Declaration of Susan Westerbeke, Jan. 5, 2016, ¶ 29.)

60. Most voters take up a new residence by the first of the month. (Declaration of Diane Hermann-Brown, Jan. 8, 2016, ¶ 32.)

Dated this 11th day of January, 2016.

Respectfully submitted,

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