

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

RUTHELLE FRANK, ET AL.,

Plaintiffs,

v.

Case No. 11-C-1128

SCOTT WALKER, ET AL.,

Defendants.

DECLARATION OF MICHAEL HAAS

I, Michael Haas, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am currently the Elections Division Administrator at the Wisconsin Government Accountability Board (GAB).¹ I make this declaration based upon my personal knowledge and in support of Defendants' memorandum in opposition to Plaintiffs' motion for a preliminary injunction.

2. I have been employed by GAB since October of 2008. I was appointed to my current position in January 2013, before which I was a staff

¹ On June 30, 2016, GAB will cease to exist and will be replaced by the Elections and Ethics Commissions. Following the transition, I will serve as the Administrator of the Elections Commission. For purposes of this declaration, all references to the responsibilities and authority of GAB will apply to the Elections Commission after June 30.

counsel with GAB. As Elections Division Administrator, I manage agency staff responsible for administering and enforcing Wisconsin's election laws. In both positions during my employment with GAB, I have been involved in many issues and initiatives related to voter qualifications, voter registration, the voting process, and agency efforts to inform and educate election officials and the public.

3. It is my understanding that the Plaintiffs' motion for a preliminary injunction asks this Court to create an exception to the requirement that voters present a valid ID to vote. The Plaintiffs' proposed exception would allow voters to submit an affidavit at the polls, or with their absentee ballot, stating that they are unable to comply with the voter ID requirements due to a "reasonable impediment."

4. The affidavit exception that Plaintiffs request could pose election administration problems for the fall elections, some logistical and some legal and policy-based.

5. For example, without a substantial body of administrative rules setting forth the required policies and procedures governing the proposed affidavit exception process, it would be extremely difficult to implement such a requirement successfully on a statewide basis.

6. Unless this Court were to "promulgate" an entire chapter of administrative rules relating to the administration of affidavits for voting,

the responsibility for promulgating such rules would rest with the GAB under Wis. Stat. § 5.05(1)(f).

7. Without such rules, the affidavit exception could introduce extreme confusion into the elections process: Although GAB could provide implementation guidance on the affidavit exception to election administrators without administrative rules in place, any such guidance would not have the force of law, leaving election administrators without any binding standards. Moreover, given the timeframe, reaching all election administrators and informing them about how to handle various aspects of the affidavit procedure could be challenging; and voters could be faced with potentially conflicting information about the applicability of the voter ID law given the actual language of the law and any GAB guidance issued.

8. Even assuming that any rules about the affidavit exception could be promulgated relatively quickly as emergency administrative rules, GAB could not reasonably expect to craft rules that could be in place for any part of the August 9, 2016, partisan primary election.

9. As a practical matter, the August election has already begun, since municipal clerks were able to begin sending out absentee ballots for that election beginning on June 10, 2016.

10. All absentee ballots for the August 9 election must be sent out to those individuals with valid requests on file by June 23.

11. Even putting aside the question of promulgating rules necessary to effectively implement an affidavit exception, there would be substantial difficulty informing and training local clerks and election inspectors in a timely manner about how to administer the new procedures relating to affidavits.

12. It would be practically impossible to properly inform and train the 1,854 municipal clerks and their staffs about an affidavit exception in time for the August election, and it would be a significant strain on GAB resources to complete such a task in time for the November election.

13. Moreover, I do not know of existing legal authority that would permit GAB to require clerks to make an affidavit available at the polls.

14. It is my understanding that no municipal clerks have been named as defendants in this lawsuit.

15. In addition to the question relating to clerks, it is questionable whether GAB has legal authority to promulgate a rule that would excuse a voter from presenting a valid ID to vote, beyond those exceptions already provided by Wisconsin law. Wisconsin Stat. § 227.10(2) states that “[n]o agency may promulgate a rule which conflicts with state law.”

16. Because the Wisconsin statutes governing voter identification do not provide any exception that would allow voters to submit an affidavit

based on a “reasonable impediment” to obtaining an ID for voting, any rules to that effect would directly contravene Wisconsin law.

17. Wisconsin administrative agencies like GAB cannot promulgate rules that exceed the authority the Legislature has vested in the agency.

18. It is my understanding that Wisconsin voters who face difficulties obtaining an ID are now able to submit a sworn application to the Wisconsin Department of Transportation, after which the ID applicant receives a photo receipt that is valid for voting in Wisconsin.

19. Because these photo receipts have always been an acceptable form of ID for voting, there is virtually no administrative difficulty for local election officials relating to the Division of Motor Vehicles’ (DMV) increased issuance of photo receipts.

20. The procedures in place governing photo receipts pose far less of an administrative burden on GAB and raise far fewer legal and policy concerns than the affidavit exception proposed by Plaintiffs.

21. It is my understanding that the Plaintiffs also ask this Court to order that GAB “be required to mail individualized notice of the voter ID law and affidavit option to any registered voter *who does not appear as having accepted photo ID in the DMV database.*” (Dkt. 279:23 (emphasis added).)

22. This request ignores the fact that, for voting purposes, Wisconsin law allows *seven* other forms of ID that are not issued by the DMV and which would not appear in any DMV database.

23. Information about whether an individual possesses a DMV-issued ID is therefore not determinative of whether the individual possesses an ID that is valid for voting in Wisconsin.

24. There is no centralized list of Wisconsin voters who lack *all forms* of ID acceptable for voting.

25. For GAB to determine the universe of registered voters who lack a DMV-issued ID and then send out the proposed mailing would impose financial and time burdens on GAB, and would require the completion of a matching process with the DMV database, to which GAB does not have direct access.

26. And, conducting a matching process between the DMV's database of product holders and the GAB's database of registered voters would very likely result in false negatives—registered voters who show up as not having an ID when they in fact do possess a valid DMV product.

27. One fairly common reason why such a no-match might occur is that many voters were added to the statewide voter registration system without having to provide a driver license number. If such a voter never moved or reregistered, she never would have been required to provide her

driver license information, even though she very well might possess a valid DMV product.

28. Sending voters who *do possess* a valid ID information about an *exception* to the voter ID law creates a significant and unjustified risk of confusion about the applicability of the voter ID law, and would be an inefficient use of scarce resources.

29. The risk of confusion would be particularly acute where a single advertisement or mailing includes potentially conflicting messages such as “ID is required for voting” and “an affidavit might excuse you from the ID requirement.”

30. Significant resources have been expended in the effort to inform voters about the ID requirement, as well as working with various advocacy groups to assist voters in obtaining ID to vote.

31. For example, the Legislature recently approved a \$250,000 supplemental budget request submitted by GAB to support public information efforts regarding the voter ID requirement.

32. These funds will be allocated in part to buy airtime to broadcast information about the applicability of the voter ID law and how voters can obtain a valid ID for voting.

33. The airtime purchases will likely be completed very soon and certainly well ahead of the November election, for the dual reasons that

voters will have more time to obtain valid IDs for voting, and that airtime will become prohibitively expensive closer to the election.

34. The advertising design work has already been completed for the voter ID information campaign, and the funding request did not allocate funds for modifications to the already completed ad designs.

35. Because the \$250,000 in supplemental funding will soon be entirely allocated, any funding for outreach about an affidavit exception would have to come from some other source.

36. Additionally, the risk of voter confusion from mixed messages about the applicability of the ID requirement and the affidavit exception suggests that a more effective approach would be to separate the two information campaigns.

37. Currently, GAB does not have any plans to conduct a separate public information campaign or direct mailing about the affidavit exception, and has no funds allocated for that purpose.

38. Even putting aside the lack of funding for such an information campaign, Wisconsin law requires that any significant agency expenditures such as direct mailings go through a competitive bidding process.

39. The bidding process typically requires between six weeks and two months to complete.

40. Thus, even assuming this Court were to order the relief that Plaintiffs request, including a direct mailing effort to specified voters; and even assuming that GAB had funding for such an effort, any mailings could not conceivably be sent out before mid-August without running afoul of Wisconsin's competitive bidding laws.

41. It would therefore be virtually impossible to implement the relief that Plaintiffs seek before the August election.

42. Putting aside the legal and other administrative concerns discussed previously, implementing the Plaintiffs' sought-after relief before the November election might be possible, but doing so would pose significant administrative difficulties, and would require elections administrators to divert scant resources from existing needs, not the least of which is continuing to inform the public about the applicability of the voter ID law.

43. I have reviewed the WisVote database, which includes voting histories for all registered voters in Wisconsin, and have found that the records for the following plaintiffs in this case contain notations indicating that they voted in at least one election in which the voter ID law was in effect:

- Ruthelle Frank
- Melvin Robertson
- Nancy Lea Wilde

- Edward Hogan
- Max Kligman
- Barbara Oden

44. After the election in November 2016, the next statewide election will be held on February 21, 2017.

Pursuant to 28 U.S.C. § 1746. I declare under penalty of perjury that the foregoing is true and correct.

Dated this 27th day of June, 2016.

/s/Michael Haas
MICHAEL HAAS