

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

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RUTHELLE FRANK, *et al.*,

Plaintiffs,

v.

Case No. 11-CV-1128

SCOTT WALKER, *et al.*,

Defendants.

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**DEFENDANTS' CIVIL LOCAL RULE 7(h) EXPEDITED  
NON-DISPOSITIVE MOTION TO STRIKE**

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Defendants hereby move the Court pursuant to Civil Local Rule 7(h) to strike Plaintiffs' submissions and brief filed in support of their motion for a preliminary injunction, leave to file supplemental pleading, and class certification. (Dkts. 278, 279.) As explained below, the Court should strike the following from the record: Dkts. 280-5 through 280-22, 280-28 through 280-75, and the portions of Plaintiffs' preliminary injunction brief that rely upon this late-disclosed, prejudicial evidence.

Plaintiffs are attempting to re-try *One Wisconsin Institute, Inc. v. Nichol*, No. 15-CV-324 (W.D. Wis.), another pending case challenging the voter photo ID law, which is awaiting a decision from U.S. District Judge James Peterson following a nine-day trial. Plaintiffs' preliminary injunction submissions lodge much evidence from *One Wisconsin* in this Court's docket. (See Dkts. 280:28 through 280:62.) Judge Peterson expects to determine the constitutionality of the voter photo ID law by the end of July 2016.

Plaintiffs here apparently want to buy an “insurance policy” by having this Court consider the *One Wisconsin* evidence, too, in the event that Judge Peterson does not enter relief that is satisfactory to them. Plaintiffs’ transparent attempt to have the same legal and factual issues tried by federal judges in different districts is forum shopping, runs a serious risk of inconsistent results, and portends mass confusion for voters.

Likewise, Plaintiffs seek to clog the record with 18 late-filed declarations, including many declarations that are not even referenced in their preliminary injunction papers. (Dkts. 280-5 through 280-22.) It is not clear how this new evidence is relevant to Plaintiffs’ class-action case. Plaintiffs submit declarations from local election officials and voters, but their brief and motion do not explain how these declarations support a preliminary injunction or class certification. The declarations should be struck, too.

Plaintiffs file a random assortment of e-mail chains from DMV, but their brief and motion do not explain how any of this evidence is relevant to their motion, how they obtained it, or what conclusions the Court should draw from it. (*See* Dkts. 280-63 through 280-74.)

Plaintiffs file a new expert report by a UW-Milwaukee professor, apparently expecting the Court to rely upon this evidence to enter a preliminary injunction. (Dkt. 280-75.) The report is not discussed in the preliminary injunction brief or motion, does not comply with Rule 26, and prejudices Defendants, who will not have time to hire an expert to rebut the new opinions contained in the report. Plaintiffs are again

sand bagging the defense, just as they did by filing a swath of declarations with their reply brief when this case returned to the Court on remand from appeal in 2015. (*See* Dkts. 238-1 through 238-8.) The Court should not allow such games.

Finally, Plaintiffs know that, win or lose, this case is headed back to the Seventh Circuit this summer. Their attempt to pad the record on appeal with unexplained and irrelevant material should be rejected.

WHEREFORE, the Court should grant the instant motion and strike the *One Wisconsin* evidence, the late-filed declarations, the e-mails, and the new expert report from the record. Additionally, any portions of Plaintiffs' preliminary injunction brief that reference these materials should be struck.

Dated this 29th day of June, 2016.

Respectfully submitted,

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