

Multiple Documents

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**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.

PRETRIAL STATEMENT

Plaintiffs respectfully submit this Pretrial Statement, following consultation regarding its contents with counsel for Defendants.

A. Written Stipulation of Uncontested Facts

In the 2008 election, President Barack Obama defeated Senator John McCain in Wisconsin by a margin of approximately 14%. In the two prior presidential elections, Wisconsin had been won by less than one-half of a percentage point.

In the 2010 election, Republican Scott Walker won the gubernatorial race and Republicans took control of both houses of the Wisconsin State Legislature.

On May 25, 2011, the State of Wisconsin enacted 2011 Wis. Act 23. That legislation made the following changes to Wisconsin election law:

- It imposed a voter photo identification (“ID”) requirement.
- It reduced the window of time during which municipalities could offer in-person absentee voting from a period of as much as 30 days that ended on the day before Election Day to a period of 12 days that ended on the Friday before Election Day.
- It eliminated corroboration as a means of proving residence for the purpose of voter

registration.

- It mandated that any “dorm list” provided to a municipal clerk to be used in connection with college IDs to prove residence for the purpose of voter registration include a certification that the students on the dorm list are United States citizens.
- It increased the in-state residency requirement for voting for offices other than president and vice president from 10 to 28 days before an election and required individuals who move within Wisconsin later than 28 days before an election to vote at their previous ward or election district.
- It eliminated straight-ticket voting on official ballots.
- It eliminated the authority of the Government Accountability Board (“GAB”) to appoint special registration deputies (“SRDs”) with the authority to register voters on a statewide basis.

On November 16, 2011, the State of Wisconsin enacted 2011 Wis. Act 75, which prohibits municipal clerks from faxing or emailing absentee ballots to absentee voters other than statutory overseas and military voters.

On April 6, 2012, the State of Wisconsin enacted 2011 Wis. Act 227, which prohibits municipal clerks from returning an absentee ballot to an elector unless the ballot is spoiled, is damaged, has an improperly completed certificate, or has no certificate.

Also on April 6, 2012, the State of Wisconsin enacted 2011 Wis. Act 240, which eliminated the requirements that SRDs be appointed at public high schools; that, in certain circumstances, SRDs be appointed at or sent to private high schools and tribal schools; and that voter-registration applications from enrolled students and members of the high school staff be accepted at high schools.

In August 2012, the GAB directed that election officials shall accept electronic versions of documents that can be used to prove residence for the purpose of voter registration.

President Obama was re-elected in 2012, and he again won Wisconsin.

On December 12, 2013, the State of Wisconsin enacted 2013 Wis. Act 76. This

legislation had the effect of overturning a city ordinance in Madison that required landlords to provide voter-registration forms to new tenants.

On March 27, 2014, the State of Wisconsin enacted 2013 Wis. Act 146, which reduced the window during which municipalities could offer in-person absentee voting. This law eliminated the option of offering this form of voting on weekends and on weekdays before 8 a.m. or after 7 p.m.

On April 2, 2014, the State of Wisconsin enacted 2013 Wis. Act 177, which required that observation areas be placed between three and eight feet from the location in a polling place at which voters sign in and obtain their ballots and the location at which voters register to vote.

Also on April 2, 2014, the State of Wisconsin enacted 2013 Wis. Act 182, which requires all voters, other than statutory overseas and military voters, to provide documentary proof of residence when registering to vote. Before the passage of this legislation, the requirement that a voter provide documentary proof of residence when registering to vote applied only to those who registered after the third Wednesday preceding (i.e., 20 days before) an election.

On March 20, 2013, Senate Bill 91 was introduced in the Wisconsin State Senate. This bill would have permitted municipalities to open multiple in-person absentee voting locations. The bill failed to pass.

The parties stipulate to the accuracy and admissibility of the following information, except that Defendants reserve the right to object to the admissibility of this evidence on relevance grounds:

- In October 2012, Senator Mary Lazich said that clerks had told her several years before 2011 Wisconsin Act 23 was passed that they worried that “chain corroboration”—large groups of people vouching for each other—was “out of hand.” Senator Lazich said she did not remember which clerks had complained, where the practice had occurred, or if any voter fraud cases arose from it.

- In October 2012, Senator Mary Lazich said she was disappointed by the G.A.B.'s ruling permitting electronic records to be used for proof of residence in connection with voter registration. She said modern electronic devices would confuse poll workers, especially elderly ones in rural areas. "That's going to be a nightmare for them," Senator Lazich said. She added, "If they are looking at a smartphone and want to be sure that it's a statement from their bank, or if it's some other website, how do they know? Do I pick it up and hold it in my hand so that I can see it? What if I drop it and break it? I think it's a huge problem."
- Following the 2012 election, Senator Alberta Darling, asked if photo ID would have made a difference in the outcome of the election, said, "Absolutely. Yes, I think so. We're looking at all sorts of different precincts and all sorts of same-day registrations and I know people will go, 'Oh, we don't have fraud and abuse in our election.' But why—why can't we have voter ID when the majority of our people in Wisconsin want it, we passed it, the governor signed it? Why should one judge in Dane County be able to hold it up?"
- In 2014, Senate Majority Leader Scott Fitzgerald said, "They turn to us for the answer, like, 'Why is this going on? You know, why is—why are there people voting in Milwaukee on a Saturday afternoon when I couldn't go to the Town of Clyman and vote right now? There's nobody there. It's—the town hall is closed and the lights are off.'"

The parties stipulate that PX068, PX069, PX073, PX075, and PX078 are admissible at trial, except that Defendants reserve the right to object to the admissibility of these exhibits on relevance grounds.

Defendants do not object on authenticity or hearsay grounds to the introduction into evidence of PX428.

The parties stipulate that PX214 was in the possession of and produced in discovery by the Office of Speaker Robin Vos.

The parties stipulate that PX220, PX228, PX229, PX230 were in the possession of and produced in discovery by the Office of Senator Mary Lazich.

In light of the stipulations as to the above-described statements by Senators Lazich, Darling, and Fitzgerald and the above-described documents, and subject to the understanding that the parties will be able to reach reasonable and appropriate stipulations as to the authenticity

of documents produced by legislators' offices in connection with this case, Plaintiffs agree not to subpoena Congressman Glenn Grothman, Senators Lazich, Darling, or Fitzgerald, or Speaker Vos to testify at the trial of this case.

B. Probable Length of Trial

The parties anticipate that the trial will last for approximately nine days.

C. The Names of All Prospective Witnesses

A copy of the Plaintiffs' Witness List is attached hereto as Exhibit 1. A copy of the Defendants' Witness List is attached hereto as Exhibit 2.

D. Written Stipulation Regarding Experts' Qualifications

Neither party is challenging the qualifications of the experts of the opposing party. Defendants, in their motions in limine, have challenged the admissibility of certain expert evidence on other grounds. Information regarding the qualifications of the experts in this case was previously filed at Dkt. 71-1 (Mayer CV); Dkt. 72-1 (Burden CV); Dkt. 73 at 2, 4 (description of Ghitza's expertise); Dkt. 74 at 38-50 (Minnite CV); Dkt. 75-1 (Lichtman CV); Dkt. 86-1 (Hood CV); and Dkt. 87-1 (McCarty CV).

E. Exhibits

The parties are in the process of discussing exhibits. They intend to ask at the Final Pretrial Conference how the Court would like to handle objections to exhibits. The parties intend to bring copies of their exhibit lists to the Final Pretrial Conference.

F. Statement of Contested Issues of Law

As set forth in the Second Amended Complaint, the Answer, and the parties' filings regarding the motions to dismiss and for summary judgment, the parties dispute whether a number of provisions of Wisconsin election law violate the Constitution and/or Section 2 of the

Voting Rights Act.

G. Deposition Designations

Portions of the depositions of the following entities and individuals will be offered in evidence at trial: (1) the Wisconsin Division of Motor Vehicles (represented by designee Kristina Boardman); (2) James Miller; (3) Susan Schilz; (4) Leah Fix; (5) Becky Beck; (6) David Okonski; (7) the Government Accountability Board (represented by designee Kevin Kennedy); (8) Kevin Kennedy; (9) Michael Haas; (10) Diane Lowe; and (11) Ardis Cerny.

Dated this 11th day of May, 2016.

Respectfully submitted,

PERKINS COIE LLP

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Attorneys for Plaintiffs

Exhibit 1

**EXHIBIT A
PLAINTIFFS' WITNESS LIST**

EXPECT TO CALL

EXPERT WITNESSES

Dr. Barry Burden

Dr. Allan Lichtman

Dr. Kenneth Mayer

Dr. Lorraine Minnite

LAY WITNESSES

Neil Albrecht

Todd Allbaugh

David Aponte

Kristina Boardman

Rev. Willie Brisco

Adrienne Cappas¹

Matt Dannenberg

Nicole Desautels

Rev. Joseph Ellwanger

Renee M. Gagner

Jessica Garrels²

Carmen Gosey

¹ [REDACTED], Madison, WI 53711.

² Plaintiffs intend to present Ms. Garrels' testimony via video of a trial deposition.

Rep. Glenn Grothman

Anita Johnson

Andrea Kaminski

Ben Krause

Bonny Lopez

Kendall Mager

Kathleen Malone³

Nannette Mayze

Jim Miller

Stephen Pacewicz

Laura Patten

Donna Richards

Scot Ross or Analiese Eicher⁴

Carrie Scherpelz

Susan Schilz

Cassandra Silas

Linea Sundstrom

Leroy Switlick⁵

Jennifer S. Tasse

Betty Torgerson⁶

³ [REDACTED], Middleton, WI 53562.

⁴ Analiese Eicher should be contacted through counsel. Her contact information is that previously provided in Plaintiffs' Rule 26 disclosures for One Wisconsin Institute, Inc.

⁵ [REDACTED] Milwaukee, WI 53215.

⁶ [REDACTED], Madison, WI 53704.

Scott T. Trindl

Genevieve Winslow⁷

Jeffrey Winslow⁸

Maribeth Witzel-Behl

MAY CALL

EXPERT WITNESSES

Dr. Yair Ghitza

LAY WITNESSES

Carolyn Castore

Sidney Hines⁹

Kevin Kennedy

Sen. Mary Lazich

Diane Lowe

Cody R. Nelson

Sen. Dale Schultz

Rep. Robin Vos

David Walker

⁷ [REDACTED] Milwaukee, WI 53215.

⁸ [REDACTED] Milwaukee, WI 53215.

⁹ [REDACTED] Milwaukee, WI 53210; phone number [REDACTED].

Exhibit 2

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.

DEFENDANTS' PRETRIAL DISCLOSURES: WITNESS LISTS

Pursuant to Federal Rule of Civil Procedure 26(a)(3), the Preliminary Pretrial Conference Order, Dkt. 29, and the parties' stipulations to exchange witness lists and some deposition designations by April 27, 2016, Defendants hereby make the following disclosures.

I. WITNESSES

A. Witnesses Defendants Expect to Present

1. Becky Beck
2. Kristina Boardman
3. Allison Coakley
4. Fred Eckhardt
5. Leah Fix

6. Michael Haas
7. Diane Hermann-Brown
8. M.V. Hood III
9. Nolan McCarty
10. Tim McCumber
11. Constance McHugh
12. Kathleen Novack
13. Susan Westerbeke

B. Witnesses Defendants May Call if the Need Arises

1. Matthew Jacobs
2. Kevin J. Kennedy
3. Corey Kleist
4. Bruce Landgraf
5. Jim Logan
6. James Miller
7. David Okonski
8. Ann Perry
9. Susan Schilz
10. Meagan Wolfe
11. Defendants reserve the right to call any and all expert witnesses and fact witnesses listed by any parties of this action.

12. Defendants reserve the right to call any and all witnesses arising out of discovery not completed to date.
13. Defendants reserve the right to call impeachment and rebuttal witnesses, as necessary.
14. Defendants reserve the right to amend or supplement this witness list at any time in the future.

C. Deposition Designations

Defendants do not expect to designate deposition transcripts or present witness testimony by deposition. Defendants reserve the right to use deposition transcripts for any purpose permitted by the Federal Rules of Civil Procedure.

Dated this 27th day of April, 2016.

BRAD D. SCHIMEL
Wisconsin Attorney General

JODY J. SCHMELZER
Assistant Attorney General
State Bar #1027796

/s/ Clayton P. Kawski
CLAYTON P. KAWSKI
Assistant Attorney General
State Bar #1066228

S. MICHAEL MURPHY
Assistant Attorney General
State Bar #1078149

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General Information

Court	United States District Court for the Western District of Wisconsin; United States District Court for the Western District of Wisconsin
Federal Nature of Suit	Civil Rights - Voting[441]
Docket Number	3:15-cv-00324