

Case No. 16-3003 [Consolidated with 16-3052]

**In the United States Court of Appeals  
FOR THE SEVENTH CIRCUIT**

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RUTHELLE FRANK, ET AL.,  
PLAINTIFFS-APPELLEES-CROSS-APPELLANTS,

*v.*

SCOTT WALKER, ET AL.,  
DEFENDANTS-APPELLANTS-CROSS-APPELLEES.

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Appeal From The United States District Court  
For The Eastern District Of Wisconsin, No. 2:11-cv-1128,  
The Honorable Lynn Adelman, Presiding

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**DEFENDANTS-APPELLANTS-CROSS-APPELLEES'  
STATEMENT REGARDING EXPEDITED APPEAL**

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Presently before this Court is Defendants-Appellants-Cross-Appellees' ["Defendants"] Emergency Motion To Stay The Preliminary Injunction Pending Appeal. In that Motion, Defendants asked for a stay decision as soon as possible after the completion of the August 9, 2016, primary election, in order to avoid voter confusion.

Defendants believe that the optimal course for adjudicating this appeal would be to grant Defendants' motion for a stay, and then to proceed with the briefing schedule that this Court issued on July 29, 2016. This would permit the November 8, 2016, election to take place without the district court's unlawful subjective affidavit procedure, while affording this Court an opportunity to consider briefing and oral argument on these important issues without undue haste.

If, however, this Court declines to grant a complete stay of the district court's order, expedited consideration would be necessary to avoid irreparable harm to the State and the public. The following expedited schedule could result in a decision roughly a month before the November 8, 2016, general election:

Defendants' opening brief and short appendix in the main appeal docketed at 16-3003: August 19.

Plaintiffs' combined responsive brief in 16-3003, and opening brief and appendix in the cross-appeal docketed at 16-3052: September 2.

Defendants' reply in 16-3003 and responsive brief in the cross-appeal in 16-3052: September 16.

Plaintiffs' reply, if any, in the cross-appeal at 16-3052: September 23.<sup>1</sup>

To avoid voter confusion under this schedule, a limited stay of the district court's order would still be necessary. The district court's order requires Defendants to publicize the subjective affidavit option, which publicity presumably must begin soon after the August 9, 2016, primary election. R.294:42–43. A stay of this obligation to publicize the subjective affidavit option would be needed to avoid voter confusion.

Finally, Defendants note that pending before this Court is the State's appeal in *One Wisconsin Institute, Inc. v. Nichol*, No. 16-3091, which is closely related to this

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<sup>1</sup> Lead counsel for Defendants is currently scheduled to participate in oral argument before the Supreme Court of Wisconsin on September 6 and October 26, and before the U.S. Court of Appeals for the D.C. Circuit, sitting en banc, on September 28 and/or September 29 (many parties have requested that the D.C. Circuit, sitting en banc, hold two days of oral arguments given the complexity of the case). Defendants respectfully ask that this Court take these preexisting obligations into account in setting the date of any oral argument in the present case.

appeal. In that case, the District Court for the Western District of Wisconsin held unlawful *eight* election law reforms—including the ID petition process (“IDPP”) at issue in the present case—in a complicated, 119-page opinion. *One Wisconsin*, W.D. Wis. Case No. 15-cv-324, Dkt. 234:115–19. The State has sought a stay from the district court in *One Wisconsin*, but if such a stay is not granted, the State intends to seek an emergency stay from this Court on Friday, August 12 (a week from today). Notably, this Court has set a briefing schedule in *One Wisconsin*, No. 16-3091, that completes briefing by November 28, 2016, Dkt. 4, *One Wisconsin*, No. 16-3091, whereas briefing in *Frank*, No. 16-3003, presently completes by November 14, 2016, Dkt. 15, *Frank*, No. 16-3003.

Highly relevant to the proper disposition of the present case, *Frank*, No. 16-3003, the district court in *One Wisconsin* ordered a *permanent non-affidavit remedy* that the court believed necessary to address perceived problems with the IDPP; these are the very same concerns that motivated the (different) district court in the present case. *See* Defs’ Mot. for Stay 5. Defendants agree that the *One Wisconsin* remedy would address the concerns that arose under the pre-2016 IDPP, but submit that this remedy merely duplicates the protections that Wisconsin already voluntarily added to its law on May 12, 2016. Defs’ Mot. for Stay 5–6. There is thus an extremely close interaction between the proper disposition of Defendants’ appeal in *Frank*, No. 16-3003, and the proper disposition of the State’s appeal in *One Wisconsin*, No. 16-3091. The necessarily intertwined relationship between these two ap-

peals may well impact how this Court structures merits briefing in these cases, assuming this Court wishes now to order expedition in one or both cases.

Dated: August 5, 2016.

Respectfully Submitted,

BRAD D. SCHIMEL  
Wisconsin Attorney General

s/ Misha Tseytlin  
MISHA TSEYTLIN  
Solicitor General  
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DANIEL P. LENNINGTON  
Deputy Solicitor General

**CERTIFICATE OF SERVICE**

I hereby certify that on this 5th day of August, 2016, I filed the foregoing Statement with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all registered CM/ECF users.

Dated: August 5, 2016

s/Misha Tseytlin  
MISHA TSEYTLIN