

**In the
United States Court of Appeals
For the Seventh Circuit**

RUTHELLE FRANK, et al.,
Plaintiffs-Appellees-Cross-Appellants,

v.

SCOTT WALKER, et al.,
Defendants-Appellants-Cross-Appellees.

On Appeal from the United States District Court for the
Eastern District of Wisconsin, No. 2:11-cv-01128-LA
The Honorable Lynn S. Adelman, Presiding

PLAINTIFFS' STATEMENT ON EXPEDITING THE APPEAL

Pursuant to this Court's August 2, 2016 Order, Plaintiffs submit the following statement regarding expedited briefing in this appeal, in which Defendants seek to upend the district court's preliminary injunction providing a "safety net" for voters who are unable to obtain an ID with reasonable effort. *Frank v. Walker*, 819 F.3d 384, 387 (7th Cir. 2016).

This Court should deny Defendants' motion to stay the district court's preliminary injunction to ensure that voters who cannot obtain ID with reasonable effort will be able to vote this year, and under those circumstances, the existing briefing schedule is appropriate for hearing these appeals before a three-judge

panel. That is because even an expedited appeal would be extremely unlikely to be resolved before municipal clerks begin mailing absentee ballots as early as August 31,¹ and those ballots will include instructions consistent with the district court's preliminary remedy so that absentee voters who cannot obtain ID with reasonable effort can vote by affidavit. *See* Dkt. 294 at 43. It would be highly inappropriate to suddenly restrict voter access for this year's election, after state and local elections officials have already started implementing and publicizing the district court's preliminary remedy,² in the unlikely event that Defendants prevail on appeal. Indeed, as this Court is well-aware, concerns about restricting voter access by re-imposing Wisconsin's strict voter ID requirement after absentee ballots had already been mailed to voters were likely decisive in the Supreme Court's decision to vacate this Court's stay during the 2014 election cycle. *See Frank v. Walker*, 135 S. Ct. 7 (2014) (vacating stay); *see also id.* (Alito, J., dissenting) (acknowledging that "[t]here is a colorable basis for the Court's decision due to the proximity of the

¹ *See* Wisconsin Government Accountability Board, *Calendar of Election and Campaign Events* at 15 (beginning on August 31, "Municipal clerks send absentee ballots to electors with valid requests on file for the General Election as soon as they are available"), *available at* <http://tinyurl.com/zzadx4k>.

² *See* Declarations of Neil Albrecht and Maribeth Witzel-Behl, municipal clerks of Wisconsin's two largest municipalities, dated Aug. 4, 2016 and attached as Exhibits A and B to Plaintiffs' Response in Opposition to Defendants' Emergency Motion to Stay the Preliminary Injunction Pending Appeal; Wisconsin Elections Commission, Memorandum dated July 20, 2016 (instructing clerks on implementation of affidavit remedy), *available at* <http://tinyurl.com/hpyeqjd>; Laurel White, Wisconsin Public Radio, *Elections Commission Navigates New Voter ID Requirements*, July 20, 2016 (noting that "[t]he state Elections Commission is working to implement polling place changes and new voter education requirements in light of a federal judge's ruling on Wisconsin's voter ID law," quoting Elections Commission spokesman stating that the Commission is "experienced in dealing with these sorts of court orders and complying with them, and changing media campaigns to reflect them."), *available at* <http://tinyurl.com/hqjo4k5>.

upcoming general election. It is particularly troubling that absentee ballots have been sent out without any notation that proof of photo identification must be submitted.”).

In the highly unlikely event that a stay of the preliminary injunction is granted, however, Plaintiffs would have no objection to an expedited appeal because at that point, an expedited appeal would be the *only* possible way to prevent the disenfranchisement of vulnerable voters who cannot obtain ID with reasonable effort by this November. Ensuring that more people will be permitted to exercise their fundamental right to vote is better done late than not at all. Under those circumstances, Plaintiffs would suggest the following expedited briefing schedule: Defendants’ opening brief should be submitted by August 19, 2016; Plaintiffs’ combined responsive brief and cross-appeal opening brief by September 2, 2016; Defendants’ combined reply brief and cross-appeal responsive brief by September 9, 2016; and Plaintiffs’ cross-appeal reply brief by September 16, 2016.

Dated: August 5, 2016

Respectfully submitted,

/s/ Sean J. Young

KARYN L. ROTKER
State Bar No. 1007719
LAURENCE J. DUPUIS
State Bar No. 1029261
American Civil Liberties Union of
Wisconsin Foundation
207 East Buffalo Street, Suite 325

SEAN J. YOUNG (*Counsel of Record*)
DALE E. HO
SOPHIA LIN LAKIN
American Civil Liberties Union
Foundation, Inc.
125 Broad Street, 18th Floor
New York, NY 10004

Milwaukee, WI 53202
(414) 272-4032
krotker@aclu-wi.org
ldupuis@aclu-wi.org

(212) 549-2693
syoung@aclu.org
dale.ho@aclu.org
slakin@aclu.org

NEIL A. STEINER
Dechert LLP
1095 Avenue of the Americas
New York, NY 10036
(212) 698-3822
neil.steiner@dechert.com

LAUGHLIN MCDONALD
American Civil Liberties Union
Foundation, Inc.
230 Peachtree Street, Suite 1440
Atlanta, GA 30303
(404) 523-2721
lmcdonald@aclu.org

CRAIG G. FALLS
Dechert LLP
1900 K Street NW
Washington, DC 20006
(202) 261-3373
craig.falls@dechert.com

TRISTIA BAUMAN
National Law Center on Homelessness
& Poverty
2000 M Street NW, Suite 210
Washington, DC 20036
(202) 638-2535
tbauman@nlchp.org

ANGELA M. LIU
Dechert LLP
35 West Wacker Drive, Suite 3400
Chicago, IL 60601
(312) 646-5816
angela.liu@dechert.com

Attorneys for Plaintiffs-Appellees-Cross-Appellants

CERTIFICATE OF SERVICE

I hereby certify that on August 5, 2016, Plaintiffs-Appellees-Cross-Appellants' Statement on Expediting the Appeal was filed with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: August 5, 2016

/s/ Sean J. Young

SEAN J. YOUNG (*Counsel of Record*)
American Civil Liberties Union Foundation, Inc.
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2693
syoun@aclu.org

Attorney for Plaintiffs-Appellees-Cross-Appellants