



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

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May 18, 2015

VIA ECF

Hon. Lynn Adelman  
U.S. District Court for the  
Eastern District of Wisconsin

Re: *Frank v. Walker*, No. 11-CV-1128

Dear Judge Adelman:

I write to provide a supplement to Defendants' Brief in Opposition to Plaintiffs' Motion for a Permanent Injunction, Class Certification, and Judgment, Dkt. 228. On May 12, 2015, Governor Walker approved the emergency rules creating Wis. Admin. Code ch. GAB 10, authorizing the use of technical college ID cards for purposes of voting. A copy of the Governor's approval is attached to this letter, along with the approved emergency rules.

On May 12, 2015, the Wisconsin Government Accountability Board submitted the approved emergency rules to the *Wisconsin State Journal* for publication on Friday, May 15, 2015. On May 13, 2015, the GAB submitted a certified copy of the emergency rules to the Legislative Reference Bureau for publication in the next Administrative Register. The emergency rules took effect upon publication in the *Wisconsin State Journal* and submission to the LRB.

Sincerely,

/s/ Clayton P. Kawski  
Clayton P. Kawski  
Assistant Attorney General

CPK:tbm

Encl.



**SCOTT WALKER**  
**OFFICE OF THE GOVERNOR**  
**STATE OF WISCONSIN**

P.O. Box 7863  
MADISON, WI 53707

May 12, 2015

Kevin Kennedy  
Director and General Counsel  
Wisconsin Government Accountability Board  
212 E. Washington Ave., 3<sup>rd</sup> Floor  
P.O. Box 7984  
Madison, WI 53707-7984

**RE: Emergency Rule creating GAB Ch. 10 relating to the use of technical college system student identification cards for voting**

Dear Director Kennedy,

I hereby approve the proposed emergency rule creating GAB Ch. 10 of the Wisconsin Administrative Code submitted on May 7, 2015 pursuant to Wisconsin Statutes § 227.24(1)(e)1g. You may proceed with publication in accordance with Wisconsin Statutes § 227.24(1)(c).

Sincerely,

Scott Walker  
Governor

**GOVERNMENT ACCOUNTABILITY BOARD  
EMERGENCY RULE**

The statement of scope for these rules, SS 038-15, was approved by the Governor on April 3, 2015, published in Register No. 712A2 on April 13, 2015, and approved by the Government Accountability Board on April 29, 2015.

This emergency rule was approved by the Governor on May 12, 2015.

**ORDER**

The Government Accountability Board adopts the following emergency rule *to create* GAB, ch. 10, *relating to* the use of technical college system student identification cards for voting.

**FINDING OF EMERGENCY**

The Government Accountability Board finds that an emergency exists and that these rules are necessary for the immediate preservation of the public peace and welfare.

The Government Accountability Board finds that such emergency rules are necessary to clarify how voters must comply with the photo identification requirements in WIS. STAT. §§5.02(6m) and 6.79(2) for the May 19, and June 9, 2015, special elections and any other special or regularly scheduled elections that may occur shortly thereafter.

**ANALYSIS BY THE GOVERNMENT ACCOUNTABILITY BOARD**

**Statutes interpreted:**

WIS. STAT. §§5.02(6m), 5.02(16c), 6.15(2)(bm), 6.79(2) and 39.30(1)(d).

**Statutory authority:**

WIS. STAT. §§5.05(1), 5.05(6a), 227.10(1) and 227.26(2).

**Explanation of agency authority:**

WIS. STAT. §5.05(1) provides that the Government Accountability Board (“G.A.B.” or “Board”) has “the responsibility for the administration of chs. 5 to 12, other laws relating to elections and election campaigns, subch. III of ch. 13, and subch. III of ch. 19.” The G.A.B. may “[p]romulgate rules under ch. 227 applicable to all jurisdictions for the purpose of interpreting or implementing the laws regulating the conduct of elections . . . or ensuring their proper administration.” WIS. STAT. §5.05(1)(f).

The photo identification requirement is found in chapters 5 and 6 of the Wisconsin Statutes. *See* 2011 Wisconsin Act 23. The G.A.B. has the statutory authority to promulgate emergency rules to ensure the proper administration of elections.

On November 15, 2011, the Joint Committee for Review of Administrative Rules (“JCRAR”) ordered the G.A.B., pursuant to WIS. STAT. §§227.10(1) and 227.26(2), to promulgate an emergency rule to allow for the use of technical college system student identification cards to meet the photo identification requirements of 2011 Wisconsin Act 23, which was enacted on May 25, 2011. The G.A.B. could not comply with JCRAR’s order until the U.S. Supreme Court denied certiorari on the judicial challenges to the photo identification requirements. The G.A.B. may now comply with JCRAR’s order.

**Related statute or rule:**

WIS. STAT. §§5.02(6m), 5.02(16c), 6.15(2)(bm), 6.79(2)

**Plain language analysis:**

2011 Wisconsin Act 23 created the requirement that electors present an acceptable form of photo identification as a condition of obtaining a ballot. 2011 Wisconsin Act 23 also created the list of documents that qualify as identification for purposes of voting. These rules clarify that an identification card issued by an institution in the Wisconsin Technical College System is an acceptable form of photo identification for voting if the card is unexpired or remains unexpired for no more than 2 years, and contains the date of issuance and the student’s signature and photo. These conditions are identical to the requirements for acceptable photo identification cards issued by other accredited educational institutions.

**Summary of, and comparison with, existing or proposed federal regulation:**

The 2002 federal Help America Vote Act (HAVA), 52 USC §15301 et seq., contains a provision requiring states to receive identification from individuals who register to vote for the first time, by mail. HAVA §303 (b)(2)(A)(i)(I). The HAVA requirement relates to voter registration. The State photo identification requirement relates to receiving a ballot. The federal requirement simply refers to “current and valid photo identification.” The federal requirement does not describe specific types of acceptable photo identification.

**Comparison with rules in adjacent states:**

Illinois: Illinois does not require voters to present photo identification to receive a ballot if the voter is already registered to vote.

Iowa: Iowa does not require voters to present photo identification to receive a ballot if the voter is already registered to vote.

Michigan: Michigan requires voters to present photo identification to receive a ballot and vote, but voters may also sign an affidavit attesting that the voter is not in possession of photo

identification. Michigan permits voters to use student identification from either a high school or an accredited institution of higher education to present at the polls to receive a ballot. Michigan's community college system is accredited, and students in those colleges may use their college photo identification cards for voting purposes.

Minnesota: Minnesota does not require voters to present photo identification to receive a ballot if the voter is already registered to vote.

### **Summary of factual data and analytical methodologies:**

At its meeting on November 9, 2011, the Board determined that a Wisconsin Technical College System institution is accredited under WIS. STAT. §39.30 (1)(d), and therefore, an elector may use an identification card issued by such an institution for voting purposes if the card also meets the requirements of WIS. STAT. §5.02(6m). The Board made this determination with advice from G.A.B. staff regarding the accepted rules of statutory interpretation, starting with the plain language of the statute. WIS. STAT. §39.30 (1)(d) defines an "accredited" institution as an "institution accredited by a nationally recognized accrediting agency . . . or, if not so accredited, is a nonprofit institution of higher education whose credits are accepted on transfer by not less than 3 institutions which are so accredited, on the same basis as if transferred from an institution so accredited." The Board also considered information regarding the legislative history of 2011 Wisconsin Act 23. The Board did not consider potential public policy reasons when determining whether applicable statutes permitted the use of Wisconsin Technical College System student identification cards for voting purposes.

### **Analysis and support documents used to determine effect on small business or in preparation of economic impact analysis:**

The Board anticipates that this rule will have minimal or no economic or fiscal impact on specific business, business sectors, public utility rate payers, or the State's economy as a whole because the rule does not impose any requirements, fiscal or otherwise, on businesses or with regard to public utility rates.

### **Fiscal estimate:**

The Board finds that this rule will have minimal or no fiscal impact. The rule does not impose any requirements on Wisconsin Technical College System institutions that may issue identification cards to students. The rule only clarifies that Wisconsin Technical College System students may use their identification cards for voting purposes if those cards meet the photo identification requirements in WIS. STAT. §5.02(6m).

### **Effect on small business:**

The Board finds that the rule will have no economic impact on small businesses, as that term is defined in WIS. STAT. §227.114(1).

**Agency contact person:**

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**Place where comments are to be submitted and deadline for submission:**

Written comments may be submitted at the public hearings, by regular mail, fax, or email to the contact named above. Hearing dates and the comment submission time are to be determined.

Written comments may also be submitted to the Board using the Wisconsin Administrative Rules website at <http://adminrules.wisconsin.gov>.

TEXT OF RULE

SECTION 1: GAB 10.01 is created to read:

GAB 10.01 **Definitions.** In this chapter:

(1) “Student identification card” means a document or card that:

- (a) Is unexpired;
- (b) Contains the date of issuance;
- (c) Contains the signature of the student to whom it is issued;
- (d) Contains a photograph that reasonably resembles the student to whom it is issued;
- (e) Contains an expiration date indicating that the card expires no later than 2 years after the date of issuance; and
- (f) Is issued to a student who establishes that the student is enrolled at the college that issued the card on the date that the card is presented.

(2) “Technical college” means a college that is a member of and governed by the Wisconsin Technical College System.

SECTION 2: GAB 10.02 is created to read:

GAB 10.02. **Wisconsin Technical College System student identification cards for voting.** A student identification card issued by a technical college is an acceptable form of identification under s. 5.02(6m)(f), Wis. Stat., and may be presented by an elector obtaining a ballot pursuant to ss. 6.15(2)(bm), 6.15(3), 6.18, 6.79(2), 6.82, 6.86(1), 6.86(2), 6.87, 6.875(6), and 6.97, Wis. Stat.

SECTION 3: Effective date.

In accordance with s. 227.24, emergency rules GAB §§10.01 and 10.02 shall take effect upon publication in the *Wisconsin State Journal* and shall remain in effect for a period of 150 days thereafter unless otherwise amended or repealed or unless the Government Accountability Board promulgates an identical permanent rule.

Dated: May 12, 2015.

A handwritten signature in black ink that reads "Kevin J. Kennedy". The signature is written in a cursive, flowing style.

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KEVIN J. KENNEDY  
Director and General Counsel  
Government Accountability Board