

UNITED STATES DISTRICT COURT  
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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**DECLARATION OF KEVIN J. KENNEDY**

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I, Kevin J. Kennedy, pursuant to 28 U.S.C. § 1746, hereby declare:

1. I make this declaration based upon my personal knowledge.

2. I am the Director and General Counsel of the Wisconsin Government Accountability Board (“G.A.B.” or the “Board”). I have been Director and General Counsel of the G.A.B. since November 5, 2007. Prior to that, I was the Executive Director of the Wisconsin State Elections Board and held that position starting on August 17, 1983. I have served and continue to serve as Wisconsin’s chief election official.

3. I am aware of G.A.B.’s efforts to promulgate administrative rules with respect to the use of Wisconsin Technical College System student identification cards for voting in elections in Wisconsin.

4. On November 9, 2011, the Board determined that an unexpired Wisconsin Technical College System student identification card met the statutory definition of “identification” set forth in Wis. Stat. §5.02(6m)(f). That section provides:

(6m) “Identification” means any of the following documents issued to an individual:

...

(f) An unexpired identification card issued by a university or college in this state that is accredited, as defined in s. 39.30(1)(d), that contains the date of issuance and signature of the individual to whom it is issued and that contains an expiration date indicating that the card expires no later than 2 years after the date of issuance if the individual establishes that he or she is enrolled as a student at the university or college on the date that the card is presented.

5. G.A.B. analyzed the plain language of the relevant statutes and determined that a Wisconsin Technical College System institution is accredited as that term is defined under Wis. Stat. § 39.30(1)(d).

6. On November 15, 2011, the Wisconsin State Legislature’s Joint Committee for Review of Administrative Rules (“JCRAR”) ordered G.A.B. to promulgate an emergency rule, pursuant to Wis. Stat. § 227.26(2)(b), to allow for the use of Wisconsin Technical College System student identification cards to meet the photo identification requirements of 2011 Wisconsin Act 23 (“Act 23”), the voter ID law.

7. In November 2011, G.A.B. began the process of promulgating emergency rules relating to the use of Wisconsin Technical College Systems ID cards for purposes of voting.

8. On July 17, 2012, the voter ID law was permanently enjoined by the Dane County Circuit Court in *Milwaukee Branch of the NAACP v. Walker*, Case No. 11-CV-5492. That decision was appealed to District II of the Wisconsin Court of Appeals, but the permanent injunction remained in place until the Wisconsin Supreme Court issued a decision on July 31, 2014, in *Milwaukee Branch of the NAACP v. Walker*, 851 N.W.2d 262 (Wis. 2014), lifting the permanent injunction in that case and a related state court case, *League of Women Voters of Wisconsin Education Network, Inc. v. Walker*, Case No. 11-CV-4669 (Dane Co. Cir. Ct.).

9. G.A.B. suspended its administrative rules promulgation process regarding Wisconsin Technical College System student ID cards when the state courts enjoined the implementation of Act 23.

10. On March 23, 2015, the United States Supreme Court denied a petition for a writ of certiorari in the above-captioned case.

11. Following that decision, G.A.B. re-started its process of promulgating emergency and permanent administrative rules specifying that Wisconsin Technical College System student ID cards may be used as an acceptable form of identification for voting under Act 23.

12. The photo identification requirement of Act 23 was not implemented for the April 7, 2015, elections. The next elections in Wisconsin are special elections in two Wisconsin school districts set to take place on May 19, 2015. There are no other elections currently scheduled until June 2 or 9, 2015 (Village of Somers first village election after incorporation as a village), June 16, 2015 (another school district referendum), and then not until February 16, 2016, for the spring primary election. It is expected that there may be a special election for a state senator this summer.

13. On March 31, 2015, on behalf of G.A.B., I submitted a statement of scope for proposed emergency and permanent rules to the Governor's Office of Regulatory Compliance, as is required by Executive Order #50. A true and correct copy of the statement of scope, dated March 31, 2015, is attached hereto as **Exhibit A**. With this submission, G.A.B. informed the Governor that it is seeking to implement these emergency rules before the May 19, 2015, special elections referenced above. G.A.B. requested that the Governor consider the statement for approval as soon as possible so that G.A.B. may continue to work to implement the emergency rules in time for the May 19, 2015, elections.

14. On April 3, 2015, the Governor approved G.A.B.'s scope statement. A true and correct copy of the Governor's approval letter, dated April 3, 2015, is attached hereto as **Exhibit B**. In conjunction with his

approval of the scope statement, the Governor permitted GAB to submit the statement to the Legislative Reference Bureau (“LRB”) for publication in the Wisconsin Administrative Register.

15. On April 3, 2015, G.A.B. submitted the Governor-approved scope statement to the LRB for publication by April 13, 2015. A true and correct copy of the April 3, 2015, letter from GAB to LRB is attached hereto as **Exhibit C**.

16. On April 3, 2015, information about the approved scope statement was posted on the State of Wisconsin’s Administrative Rules website, <https://health.wisconsin.gov/admrules/public/Rmo?nRmoId=18804>.

17. On April 10, 2015, the Board met and decided that it would review the scope statement for approval at its April 29, 2015, meeting.

18. On April 13, 2015, the LRB published the approved scope statement in the Wisconsin Administrative Register. 712A2 Wis. Admin. Reg. (April 13, 2015), *available at* [https://docs.legis.wisconsin.gov/code/register/2015/712A2/register/ss/ss\\_038\\_15/ss\\_038\\_15](https://docs.legis.wisconsin.gov/code/register/2015/712A2/register/ss/ss_038_15/ss_038_15).

19. On April 29, 2015, the Board will review the scope statement for approval. Upon the Board’s approval, G.A.B. staff may begin working on drafting the rules relating to the use of Wisconsin Technical College System

ID cards for voting. The Board delegated the authority to approve the draft language of the rules to Board Chair, Judge Nichol.

20. Upon the Board's approval of the draft language of the rules, the G.A.B. will then submit a final draft of the emergency rules to the Governor for approval. If the Governor approves the rules, G.A.B. must submit the approved rules to the official state newspaper, the *Wisconsin State Journal*, for publication. G.A.B. must also submit a certified copy of the rules to LRB to publish in the next Administrative Register. The rules will take effect upon publication and submission to LRB.

21. It is anticipated that the emergency rules relating to the use of Wisconsin Technical College System ID cards will be in effect before the May 19, 2015, elections.

22. The emergency rules, when promulgated, will remain in effect for 150 days. During that time, under the direction of the Board, G.A.B. will prepare an economic impact analysis and other documents required in the permanent rulemaking process to promulgate permanent rules that will permit the use of Wisconsin Technical College System ID cards for voting.

23. Permanent rules relating to the use of Wisconsin Technical College System ID cards are expected to be in effect before the expiration of the emergency rules (150 days after promulgation, or approximately October 1, 2015).

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 22nd day of April, 2015.

/s/ Kevin J. Kennedy  
Kevin J. Kennedy