

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN**

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**RUTHELLE FRANK, et al.**  
**Plaintiffs,**

v.

**Case No. 2:11-cv-01128 (LA)**

**SCOTT WALKER, et al.,**  
**Defendants.**

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**PLAINTIFFS' CIVIL L. R. 16(c) PRETRIAL REPORT**

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Plaintiffs in the above-captioned matter, by their undersigned counsel, hereby submit this Pretrial Report pursuant to Civil L. R. 16(c).

**A. Short Summary of the Facts, Claims, and Defenses**

This action seeks declaratory and injunctive relief against Wisconsin state officials' enforcement of 2011 Wisconsin Act 23 (the "photo ID law"), the most far-reaching election law change in Wisconsin since the 1970s, which requires voters in Wisconsin to present a form of photo identification from a limited statutory list in order to vote. There is no provision allowing those who do not have or cannot obtain such a photo ID to use an affidavit of identity instead.

Obtaining one of the limited forms of photo ID deemed acceptable – even a purportedly "free" ID – is a complex, burdensome, and costly process for members of the Plaintiff classes. Doing so generally requires a birth certificate, yet obtaining a birth certificate often costs money – charging people for the right to vote – and requires eligible voters to navigate a labyrinthine bureaucratic process requiring multiple, time-consuming inquiries and the dedicated volunteer help of charities. Those who manage to obtain a birth certificate may find that their name does not match the name that is printed on the birth certificate, and that resolving this discrepancy

involves additional significant costs and bureaucratic barriers. Obtaining a photo ID also usually requires a Social Security card, but voters are often told that they cannot obtain a Social Security card without first producing photo ID. And assuming all the requisite documents are gathered, such voters – who seldom drive, since they lack Wisconsin driver’s licenses – must access a DMV office, some of which are open only a few hours a week, and many of which are not accessible by public transit. If they manage to get to the DMV, their ability to obtain an ID often depends on the *ad hoc* judgment calls of DMV staff, who have never been involved in voting administration before and often give conflicting and confusing guidance to voters.

Certain plaintiff classes face additional burdens. For instance, veterans cannot use the photo ID cards issued by the U.S. Department of Veterans Affairs to exercise the very fundamental right they risked their lives to protect; college students who have the right to vote in Wisconsin cannot obtain a “free” ID unless they surrender their out-of-state license; and technical college students remain in legal limbo under the law’s vagaries. Moreover, Wisconsin’s profoundly decentralized system of election administration, overlaid on these burdensome situations, leads to cases in which eligible voters, even those with purportedly acceptable ID, are likely to be denied the right to vote.

Yet Defendants have not put forward any compelling government interest that their stringent photo ID law actually addresses—such as a single prosecution for in-person voter impersonation fraud in all of Wisconsin history—that would justify these oppressive burdens. For all these reasons, the law as applied to these classes violates the Fourteenth and Twenty-Fourth Amendments to the United States Constitution.

In addition, because African-American and Latino voters are far less likely than whites to have one of the limited forms of accepted ID under the law and/or the required underlying

documents to obtain ID, the photo ID law's burdens will be felt disproportionately by racial minority voters. Because of these marked disparities, in conjunction with—and in large part caused by—pervasive and historical socioeconomic racial disparities in Wisconsin, the photo ID law will result in minority voters having less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. Notwithstanding the clear racially disproportionate impact visited by the photo ID law, Defendants have proffered only the most tenuous justifications for it. The photo ID law therefore violates Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, by denying and diluting the right to vote of African-American and Latino citizens.

Defendants concede that some voters may experience difficulties and costs to obtain ID, but assert that those burdens do not justify invalidation of the law.

**B. Statement of the Issues**

See Part A. above.

**C. Witnesses Expected to Testify**

Plaintiffs expect to rely on the testimony of the following witnesses:

Plaintiffs: Shirley Brown, Matthew Dearing, Carl Ellis, Ruthelle Frank (via deposition testimony), Eddie Lee Holloway, Jr., Samantha Meszaros, Barbara Oden, Anthony Sharp, DeWayne Smith, Domonique Whitehurst, and Nancy Lea Wilde (via deposition testimony).

Defendants or Defendants' Employees and Contractors: David Buerger, Kristina Boardman, Allison Coakley (via deposition testimony), Shane Falk (via deposition testimony), Patrick Fernan (via deposition testimony), Michael Haas, Ross Hein, Lynne Judd (via deposition testimony), Kevin Kennedy, Jeremy Krueger, Lorraine Lathen (via deposition testimony), Diane

Lowe, James Miller, Nathaniel Robinson,<sup>1</sup> and Janet Turja. Plaintiffs reserve the right to call Ms. Coakley, Mr. Falk, Mr. Fernan, Ms. Judd, and Ms. Lathen to testify at trial.

Third-Party Witnesses: Richard Bolar, Kenneth Brown, Chabalie Buchanan, David Canon (via telephonic testimony), Tamara Grigsby, Juanita Guardiola, Mauricio Guardiola, Nancy Marcus, Noel Mrowiec, Sim Newcomb, Ruth Ann Obermeyer (via deposition testimony), Miriam Simon, William Trokan, Genevieve Winslow, and Jeffrey Winslow.

Experts: Matt A. Barreto and Marc V. Levine.

All witnesses relied upon by the plaintiffs in *Bettye Jones, et al. v. Judge David G. Deininger, et al.*, Case No. 12-cv-185-LA.

#### **D. Background of Expert Witnesses**

Matt A. Barreto is an Associate Professor of Political Science, and director of the Washington Institute for the Study of Ethnicity, Race & Sexuality (WISER) at the University of Washington, Seattle (UW). He is also an affiliated faculty, and executive committee member of the Center for Statistics and the Social Sciences (CSSS) at UW. He completed a Ph.D. in Political Science, with an emphasis on racial and ethnic politics in the U.S., political behavior, and public opinion at the University of California, Irvine in 2005.

Marc V. Levine is a Professor of History, Economic Development, and Urban Studies at the University of Wisconsin-Milwaukee (UWM), where he has been on the faculty since 1984. He is also a Senior Fellow at the University's Center for Economic Development, where he was the founder and director from 1990-2007. He is also the past director of UWM's graduate programs in Urban Studies. His expertise lies generally in two areas: urban economic

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<sup>1</sup> Plaintiffs intend to call Mr. Robinson to testify at trial, but were recently advised by counsel for Defendants on October 17, 2013 (after having made the inquiry on September 10, 2013) that they are not yet able to accept service

development, with particular emphasis on labor market issues and the political economy of urban redevelopment; and on the politics and economics of ethnic and cultural diversity in cities.

**E. List of Exhibits Offered at Trial**

See attached Appendix. Plaintiffs may also rely upon documents relied upon by the plaintiffs in *Bettye Jones, et al. v. Judge David G. Deininger, et al.*, Case No. 12-cv-185-LA.

**F. Deposition Designations**

<b>Ruthelle Frank</b> – 4:9-13:13; 47:15-53:11
<b>Nancy Lea Wilde</b> – 4:3-28:1
<b>Ruth Ann Obermeyer</b> – 6:12-21; 7:13-9:18; 10:9-16; 10:17- 11:2; 11:3-10; 11:14-12:7; 12:10-13:16; 13:17-14:25; 15:1-4; 15:25-16:3; 24:23-25:1; 25:19-26:4
<b>Allison Coakley</b> – 6:18-7:18; 8:3-24; 13:15-14:24; 19:12-20:3; 23:10-22; 25:24-28:6; 28:13-30:12; 34:18-21; 42:24-43:11; 45:3-7; 45:12-20
<b>Shane Falk</b> – 5:20-6:13; 8:10-16; 9:11-18; 12:10-13:15; 14:1-15:8; 15:22-16:20; 18:3-14; 18:22-20:15; 21:8-20; 22:17-23:8; 23:15-22; 25:17-26:6; 26:16-27:13; 28:13-29:9; 34:12-35:6; 37:18-20; 39:24-41:10; 43:17-45:8; 46:1-22; 49:7-17; 55:12-25; 58:10-23; 59:8-60:2; 63:10-19; 65:13-17; 65:18-20; 68:18-24; 67:18-68:9; 69:8-70:22; 71:10-72:6; 72:23-73:2; 77:3-22; 78:20-12; 80:3-6; 83:13-84:18; 85:2-86:9; 88:17-89:2; 101:5-102:3; 106:7-14; 106:20-107:1; 109:12-20; 110:2-13; 110:20-9; 113:3-114:16; 119:4-10; 122:18-123:9
<b>Patrick Fernan</b> – 8:6-8; 8:11-18; 14:24-15:16; 17:12-18:6; 18:25-19:8; 23:7-11; 24:4-27:1; 30:2-9; 32:2-6; 34:12-25; 39:1-4; 42:18-25; 43:3-7; 50:9-20; 66:22-67:7; 71:19-72:9; 72:14-21; 84:15-17; 90:12-18; 94:11-13; 95:7-10; 95:25-96:8; 97:20-98:22; 99:3-7; 99:22-100:3; 102:5-13; 103:24-104:1; 105:20-106:3; 106:4-10; 109:19-25; 110:1-111:15; 115:22-116:6; 118:13-22; 120:17-25; 122:1-4; 130:18-131:10; 131:16-133:12; 136:3-140:10; 140:9-141:15; 146:7-18; 149:14-151:9; 152:24-153:8; 158:12-24; 159:14-161:6; 161:18-162:19; 165:2-10; 168:20-169:4; 174:17-177:5; 181:17-23; 182:12-14; 182:21-184:19; 194:23-195:4; 196:8-197:12; 200:3-5; 212:13-214:1; 232:14-23; 235:22-236:9
<b>Lynne Judd</b> – 6:18-7:6; 9:3-8; 8:19-25; 9:3-8; 10:2-11:1; 11:24-12:15; 13:12-25; 14:15-15:9; 26:22-28:15; 34:12-36:18; 37:11-38:1; 38:2-39:16; 41:4-42:20; 43:2-15; 43:16-44:16; 44:17-16:14; 48:15-49:23; 50:5-51:2; 52:20-53:7; 54:6-55:5; 56:2-5; 57:18-58:15; 58:24-59:13; 60:6-61:6; 63:6-64:4; 69:10-70:10; 71:21-73:25; 74:4-15; 76:5-77:1; 77:10-78:23; 80:25-81:25; 82:1-

of a subpoena for his appearance at trial. In the event that Plaintiffs are unable to secure his appearance at trial, we reserve the right to submit designations from his deposition at that time.

83:25; 84:1-5; 84:7-16; 86:16-87:10; 88:5-9; 92:12-93:20; 96:15-97:15; 102:3-104:14; 104:15-105:20; 106:6-107:15; 112:15-19

**Lorraine Lathen** – 6:9-7:21; 9:8-17; 13:19-16:25; 32:17-36:17; 39:18-40:6; 60:5-61:3; 77:11-78:4

**G. Estimate of Time Needed to Try Case**

Two weeks.

Dated this 18th day of October, 2013.

Respectfully submitted,

/s/ Sean J. Young

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