

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

**BRIEF OF AMICI CURIAE, THE LEAGUE OF WOMEN VOTERS OF WISCONSIN,
THE CITY OF MADISON, AND MILWAUKEE MAYOR TOM BARRETT
IN SUPPORT OF THE PLAINTIFFS-APPELLEES-CROSS-APPELLANTS AND
AFFIRMANCE OF THE DISTRICT COURT'S ORDER**

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**CORPORATE DISCLOSURE STATEMENT
PURSUANT TO FED. R. APP. P. 29(c)(1)**

None of the amici are corporations that issue stock or have parent corporations that issue stock.

STATEMENT PURSUANT TO FED. R. APP. P. 29(c)(5)

No counsel for a party authored this brief, in whole or in part, and no party, party's counsel, or person other than amici curiae, their members, and their counsel made any monetary contribution to fund the preparation or submission of this brief.

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STATEMENT OF IDENTITY AND INTERESTS OF AMICI CURIAE

The League of Women Voters of Wisconsin (“the League”) was founded in 1920 by the suffragists who fought to win the right to vote for women. Since then it has continually publicly asserted that voting is a fundamental right for all citizens that must be guaranteed. The League has long publicly advocated that Wisconsin election laws should provide citizens with maximum opportunities for registration, voting at the polls and absentee voting. It has maintained that election administration should be adequately coordinated and funded to achieve both statewide standards uniformly applied and local municipal effectiveness. The League has previously participated as a party in other court cases affecting voting rights for Wisconsin residents.

Since the voter ID law was enacted, the League has worked to educate voters about the law’s requirements and court rulings that have affected implementation of the law, and to assist individual voters as they attempt to obtain voter ID in time for elections. In the course of this process, the League has witnessed the effects of voter ID requirements on Wisconsin voters, and the inability of the State of Wisconsin to develop a suitable petition process for individuals unable to present the underlying documentation ordinarily required to obtain a qualifying ID.

The City of Madison is a municipality in Dane County, Wisconsin, with a population of approximately 250,000 residents.¹ Through its clerk, the City of Madison has charge and supervision of elections and voter registration in the municipality. Wis.

¹ U.S. Census Bureau, Quick Facts, <http://www.census.gov/quickfacts/table/PST045215/5548000> (last visited October 6, 2016).

Stat. § 7.15(1). These duties include registering residents to vote, issuing notices and publications relating to elections and registration, training election workers, equipping polling places, and sending absentee ballots. Wis. Stat. §§ 6.26(1), 7.15. The City of Madison maintains a website to educate residents about elections and voting,² and takes other measures to inform citizens of their rights and otherwise “give effect to the will of the voters.” Wis. Stat. § 5.01. On September 26, 2016, the City initiated the early voting process, which allows electors to cast an absentee ballot in person, at designated locations, for the November 8, 2016, general election.

The City of Madison has substantial on-the-ground experience with voter registration and education, the effects of voter ID requirements imposed by the state legislature, and the effectiveness of the ID petition process developed for residents who cannot obtain voter ID.

Mayor Tom Barrett is the elected mayor of the City of Milwaukee and has served as Milwaukee’s mayor since 2004. As the chief elected official overseeing Wisconsin’s largest municipality, Mayor Barrett has an interest in ensuring that his constituents have access to the polls. Because the City of Milwaukee is responsible for the supervision of elections and voter registration in the municipality, Mayor Barrett also has an interest in ensuring the efficient and effective operation of voter registration and election processes in the City of Milwaukee.

² City of Madison, City Clerk’s Office, Elections and Voting, <http://www.cityofmadison.com/clerk/elections-voting> (last visited October 6, 2016).

I. INTRODUCTION

At issue in this appeal is whether the district court reasonably exercised its discretion in ordering the state of Wisconsin to offer voters who do not possess a qualifying ID under Wisconsin's Voter ID law, and who cannot obtain one with reasonable effort, the option of receiving a ballot by executing an affidavit to that effect. *Frank v. Walker*, No. 11-C-1128, 2016 WL 3948068, at *1 (E.D. Wis. July 19, 2016). This Court previously held that the State of Wisconsin cannot make it unreasonably difficult for a voter to obtain identification to comply with the state's voter ID law. *Frank v. Walker*, 819 F.3d 384 (7th Cir. 2016) (Frank II). In its decision to deny the plaintiffs' petition for initial hearing en banc, this Court accepted the State's assurances that any eligible voter who can reach a DMV office will be given an ID that may be used for voting, and that the DMV will not refuse to issue an ID because any particular document is missing. *Frank v. Walker*, --- F.3d ---, 2016 WL 4524468 at *2 (7th Cir. Aug. 29, 2016) (en banc).

The amici offer their unique insights, information, and data as to the State's ongoing and evolving efforts to ensure that voters are able to obtain identification to comply with the Voter ID law. See generally *Voices for Choices v. Illinois Bell Tel. Co.*, 339 F.3d 542, 545 (7th Cir. 2003) (amicus brief may assist court by presenting ideas, arguments, theories, insights, facts, or data that are not to be found in the parties' briefs). The amici believe information relating the experiences of Wisconsin voters, voter assistance advocates, and election officials can assist this Court in determining

whether the State is adequately ensuring that voters can obtain IDs with reasonable effort.

Amicus League of Women Voters (LWV) has gathered very recent information about the experiences of voter advocates and would-be voters at DMV offices across Wisconsin. This newly-gathered information reveals that the State's current implementation of the ID Petition Process places a difficult burden on the front-line customer service employees who staff DMV offices across the state. In addition to their ordinary duties of processing driver's licenses and motor vehicle registration, DMV customer service employees are now entrusted with duties that effectively make these employees the gatekeepers to voting. As revealed by the following exchange between a DMV employee and a volunteer on October 3, 2016, it is not going well:

MOLLY [voter advocate]: ... And, so, I mean if, I'm just nervous that this is going to take a while because of not finding the birth certificate. So how can we ensure, how can we make sure she gets this [in] time to vote? 'Cause that's in like a month.

EMPLOYEE: [big sigh] Like I said I have no idea how that all works.

MOLLY: Yeah.

EMPLOYEE: I would call that number if you have questions like that. I mean just call it, call it today just to find out.

MOLLY: Ok.

EMPLOYEE: What the process would be, 'cause I mean I'm not even sure we really even get any answers when it comes to stuff like that.

MOLLY: Oh, really?

EMPLOYEE: I mean we can only assume.

MOLLY: Did you guy not get, like for the election, like I feel like this is so important there should be extra special training. No?

EMPLOYEE: No.

MOLLY: That's crazy to me.

EMPLOYEE: We can only do what they tell us to do and we know that there's certain cases where, you know, we—you need an ID to vote.

MOLLY: Right.

EMPLOYEE: We understand that, you know, down here. And we're trying to provide that for you, but our hand are tied when they're telling us we need this specific things.

MOLLY: Right.

EMPLOYEE: There's nothing we can do.³

Wisconsin's ID Petition Process (IDPP), adopted and later reformed in response to decisions from both state and federal courts, continues to fall short in its execution. While the State's reformed IDPP has no doubt assisted some citizens in acquiring ID to vote, the experiences discussed in this brief show that the process for obtaining an ID continues to be unreasonably difficult for some voters. The amici believe an additional remedy is needed at polling places to ensure that qualified voters are not disenfranchised by Wisconsin's strict Voter ID law.

II. The State of Wisconsin's ID Petition Process is still failing many Wisconsin citizens.

In addition to its work to educate voters about the voter ID law and to assist voters in their efforts to obtain the proper ID, LWV also regularly gathers information from its members, election officials, voting advocates, volunteers, and voters on issues related to voting and the administration of elections.⁴ During the past several weeks, LWV coordinated with League member Molly McGrath and a volunteer, Susan

³ Dkt. 263, *One Wisconsin Institute, Inc. et al. v. Thomsen et al.*, case no. 3:15-cv-324 (W.D. Wis.). As discussed further below, amicus League of Women Voters collected information from LWV member Molly McGrath and a volunteer, Susan McGrath, regarding their experiences at DMV offices. LWV obtained declarations, audio recordings, and transcripts of audio recordings of the DMV visits from Molly and Susan. LWV provided the declarations, audio recordings, and transcripts of the audio recordings to counsel for the plaintiffs in *One Wisconsin Institute, Inc. et al. v. Thomsen et al.*, case no. 3:15-cv-324 (W.D. Wis.). The Plaintiffs have filed the declarations and transcripts on the district court docket in that case. See Dkts. 263, 264.

⁴ Other examples of LWV's data-gathering and reporting on voting are the post-election reports it regularly compiles. Several of its reports were submitted to the district court in *One Wisconsin Institute, Inc. et al. v. Thomsen et al.*, case no. 3:15-cv-324 (W.D. Wis.). See Dkt. 101-1 - 101-4.

McGrath, to collect information about how the IDPP is being carried out at DMV offices across the state.

In addition to being a LWV member, Molly also works for VoteRiders, a nonprofit organization devoted to making sure that no eligible citizen is denied his or her right to vote for lack of ID. Molly frequently assists citizens who need transportation and other assistance to obtain an ID to vote. Molly has accompanied numerous voters to DMV offices to obtain IDs. During some of her visits to DMV offices in Madison in September and October, 2016, Molly audio recorded the exchanges between the DMV employees and citizens. She shared the information she collected with amicus LWV.⁵

In September, 2016, Susan McGrath visited ten DMV offices in different cities throughout central and western Wisconsin and requested information about the process of obtaining an ID for voting purposes. Susan also audio recorded her exchanges with DMV employees. She shared the information she collected with amicus LWV.⁶

Maribeth Witzel-Behl is the City Clerk for the amicus City of Madison. Her office is responsible for voter registration and administering elections. Wis. Stat. §§ 6.26(1), 7.15. Ms. Witzel-Behl has had the opportunity to observe the impact of the voter ID law on voters in Madison who seek to vote in the upcoming general election

⁵ The information collected by Molly McGrath and furnished to amicus LWV can be found in Dkt. 263, *One Wisconsin Institute, Inc. et al. v. Thomsen et al.*, case no. 3:15-cv-324 (W.D. Wis.) (Declaration of Molly McGrath and exhibits).

⁶ The information collected by Susan McGrath and furnished to amicus LWV can be found in Dkt. 264, *One Wisconsin Institute, Inc. et al. v. Thomsen et al.*, case no. 3:15-cv-324 (W.D. Wis.) (declaration of Susan McGrath and exhibits).

and is familiar with the obstacles that some voters face in seeking to exercise the right to vote.

The amici present the following information showing how the IDPP is currently being executed at DMV offices and the perspectives of local elections officials and voter advocates as to the obstacles faced by some voters in complying with the Voter ID law.

A. Many Wisconsin citizens desiring to vote in the upcoming November 8, 2016 election still lack knowledge on how to comply with the Voter ID law requirements.

The information gathered by amici indicates that the State's efforts to inform citizens about the voter ID requirements or the availability of the IDPP are not reaching the target audiences of citizens who lack such identification. Additionally, the State's radio and television advertisements do not inform citizens that they should be able to obtain an ID, valid for voting, with one trip to a DMV office.⁷ While the state's publicity efforts will continue through the November election, a lack of awareness about the Voter ID law requirements is currently affecting early voting by in-person absentee ballot and by mailed absentee ballot.

Maribeth Witzel-Behl, the city clerk for amicus City of Madison, indicates that her office has been unable to issue absentee ballots to 263 citizens who requested the ballots by mail for the November 8, 2016 general election, because the requests did not fulfill the requirements of the voter ID law (for example, the voter failed to enclose a copy of an ID or enclosed a copy of a non-qualifying ID). Likewise, she reports that

⁷ See Dkt 248 at 8-9, *One Wisconsin Institute, Inc. et al. v. Thomsen et al.*, case no. 3:15-cv-324 (W.D. Wis.) (Defendants' Report of Efforts to Inform the General Public that IDs for Voting Are Available to Those Who Enter the IDPP) (Hereafter "Status Report").

some citizens attempting to participate in in-person absentee voting in the City of Madison, which is currently underway, have been unable to do so because they did not present a qualifying ID.⁸

Molly McGrath reports that in her “interactions with numerous citizens seeking an ID that meets the state’s voter ID requirements, none has ever mentioned seeing any advertisement or media coverage regarding the Voter ID requirement or the process for obtaining an ID to vote.” Molly has “asked other volunteers, members of the League of Women Voters, family members, and friends if they have seen or heard any advertisements or public service announcements concerning the state’s Voter ID law or the process for obtaining an ID to vote.” She found that “[n]one had, except one person who stated that she heard a radio advertisement one time and saw an advertisement at a nearly empty movie theater.”⁹

The State’s status update clarifies that the near-empty movie theater was undoubtedly not in Milwaukee County – the state’s most populous county, which includes the state’s largest city and a significant percentage of African Americans, Latinos, and low-income citizens.¹⁰ Despite running advertisements at 52 different theaters, the State did not place a single ad in a Milwaukee County movie theater.¹¹

⁸ Ms. Witzel-Behl executed a declaration containing the observations recounted in this brief. The declaration is on file with amicus City of Madison.

⁹ The quotations in this paragraph are from the Declaration of Molly McGrath.

¹⁰ See <http://www.doa.state.wi.us/Divisions/Intergovernmental-Relations/Demographic-Services-Center/US-Census-Bureau-News-and-Demographic-Products-for-Wisconsin/>

¹¹ Dkt. 260-10, *One Wisconsin Institute, Inc. et al. v. Thomsen et al.*, case no. 3:15-cv-324 (W.D. Wis.) (Hass Decl., Ex. A9 at 10).

The State’s decision to spend the majority of its \$250,000 budget on online messaging further underscores that the state was not targeting the individuals most likely to not currently possess a state-issued ID or those most likely to be assisted by the IDPP process, including elderly and low income citizens.¹² The State’s contention that its use of Twitter and Facebook is a means of sharing information with the “whole world” exaggerates the reach of the Wisconsin Elections Commission’s and Department of Transportation’s Facebook and Twitter activity. The Wisconsin Elections Commission’s Twitter account has only 259 followers, and since September 2016, few voter ID tweets have been retweeted more than once or twice.¹³ The amici believe any tweets or posts – no matter how frequent posted – are likely reaching the same small number of followers, and are unlikely to be reaching the “younger voters and voters without access to traditional media” as claimed in the status report.

B. Many Wisconsin citizens still do not obtain temporary or permanent ID after visiting a DMV office, despite the State’s efforts to streamline the procedure.

Molly McGrath’s recent experiences in assisting citizens who are trying to obtain qualifying ID to vote show that some citizens who visit a DMV leave without an ID and without receiving any assurance that they will receive an ID or other credential to vote before Election Day. Within the past few weeks, Molly has assisted several prospective electors who lack qualifying ID by providing transportation to Wisconsin DMV offices.

¹² Status Report at 10, 13-16.

¹³ See https://twitter.com/WI_Elections, visited October 6, 2016. Although WI DOT has more followers, tweets related to voter ID were infrequently retweeted. See <https://twitter.com/WisconsinDOT>, visited October 6, 2016.

Three left without any ID or any assurance that an ID would be mailed to them before the November 8, 2016, general election, let alone within the next six working days.

Their stories follow.

On September 22, 2016, Molly accompanied Mr. Zack Moore to a DMV office in Madison, Wisconsin. Mr. Moore had his social security card and a paycheck stub for proof of residence, but no birth certificate. He was born in Illinois and does not have a copy of his birth certificate in his possession. When the DMV customer service employee interacting with Mr. Moore inquired about the location of his birth certificate and whether he could retrieve it, Mr. Moore stated his belief that a copy of his birth certificate is in Illinois and that his sister, who lives in Illinois, might be able to mail it to him. The DMV employee advised him that he should obtain his birth certificate from Illinois and return to the DMV later to obtain an ID. The employee stated that the ID petition process would take 6-8 weeks to complete. Mr. Moore was told if he utilized the petition process, "you won't get anything today, and it's contingent upon Illinois responding." Mr. Moore left that day with no temporary or permanent ID to vote, and he received no assurance any ID would be mailed to him prior to the November 8, 2016, general election. As of this writing, he still does not have a qualifying ID or other credential that will allow him to vote.¹⁴

On September 23, 2016, Molly accompanied Mr. Claudelle Boyd to a different DMV office in Madison, Wisconsin. Mr. Boyd also sought an ID so that he could vote. At the DMV, he presented his birth certificate, an Illinois State ID card, a social security

¹⁴ Declaration of Molly McGrath, ¶¶ 6-11 & Ex. A.

card, mail showing proof of residence, and other documents. However, Mr. Boyd’s first name is misspelled on his birth certificate as “Clardelle.” He was also previously issued a Wisconsin ID that contains the wrong name of “Clardelle.” The DMV customer service employee refused to issue Mr. Boyd a new Wisconsin ID with his correct name. When Ms. McGrath asked the DMV employee how Mr. Boyd could get an ID to vote, he suggested that Mr. Boyd use the existing Wisconsin ID, which lists an incorrect name. She pointed out that using the incorrect ID would require Mr. Boyd to vote under an incorrect name, a likely violation of Wisconsin law. *See Wis. Stat. §§ 6.33, 12.13.* The DMV employee stated he was unfamiliar with voting laws. He then suggested to Mr. Boyd that he obtain a passport listing his correct name, or obtain a corrected birth certificate, and then return to the DMV for an ID. He told Mr. Boyd that the DMV could not initiate the IDPP process because Mr. Boyd has a birth certificate—just one that does not work for obtaining a correct Wisconsin ID.¹⁵

On October 3, 2016, Molly McGrath gave Ms. Juanita Carr a ride to a DMV office in Madison, Wisconsin, so that she could obtain an ID to vote. Ms. Carr does not have a birth certificate. She was born at home with a midwife in Mississippi, and the existence and location of her birth certificate are uncertain. The DMV customer service employees advised Ms. Carr that she would receive a letter in the mail stating that the ID petition process had been initiated within the next three or four days. The employee told Ms. Carr that an ID would be mailed to her “probably...within the next week.” The

¹⁵ Declaration of Molly McGrath, ¶¶ 12-19 & Ex. A.

employee indicated that the ID would be issued after Wisconsin officials verified Ms. Carr's identity with Mississippi officials. The employee stated that he did not know if Ms. Carr would receive another credential to vote in the meantime and suggested that she call a phone number for more information. At the end of the interaction, Ms. McGrath asked, "so can you promise [Ms. Carr] right now that she'll be able to vote?" The DMV employee responded, "I can't say that."¹⁶

The measures Wisconsin has taken, and the State's promise to issue at least a temporary voting credential using whatever documents a voter brings to the DMV, have not uniformly resulted in the timely issuance of IDs or other credentials that will allow citizens to vote in the fast-approaching election.

C. Customer service workers at the state's DMV offices are unfamiliar with the ID Petition Process, are discouraging citizens from utilizing the IDPP, and are providing incorrect information about the length of time needed to obtain temporary or permanent ID under the IDPP.

The State's "fallback" option for would-be voters, the IDPP, has proven an unreliable means for ensuring that citizens can obtain an ID without undue difficulty. First, the information recently gathered by the LWV shows that the IDPP is not consistently offered to voters who visit a DMV. Sometimes a voter's advocate must prompt the DMV worker to ensure that a citizen is even informed about the process. For example, Mr. Moore was not informed about the petition process by the first DMV employee assisting him, who seemed unfamiliar with the existence of the program:

DMV Employee: Illinois. Alright you'll need a couple things. Birth certificate or passport, and you need proof of Wisconsin residency which

¹⁶ Declaration of Molly McGrath, ¶ 23 & Ex. B.

would be a utility bill, a bank statement, a lease statement, things like that. You have to have those two things before you can get a Wisconsin ID.

Man: Well, I got a pay check stub with my address on it, and my Social Security Card.

DMV Employee: It has to be a birth certificate or passport.

Man: So, my birth certificate is in Illinois.

DMV Employee: You're going to have to get it. We can't issue one without it.

Molly: Is there not the petition process available?

DMV Employee: No, it, um . . .

Eventually, after prompting by Molly, another DMV employee was summoned who knew that an ID petition process was available.¹⁷

Mr. Boyd was not offered the IDPP, either, instead being told that he needed to get a passport or a corrected birth certificate and make a second trip to the DMV. Again, the DMV employees had to be prompted to even consider the IDPP as an option, although the employees ultimately concluded that Mr. Boyd was ineligible for the IDPP because he had a birth certificate, albeit an incorrect one.¹⁸ Of course, a well-informed voter advocate cannot be present when every prospective voter visits a DMV to obtain a ID to vote. The uneven execution of the IDPP at DMV offices raises a significant risk that some citizens are not offered the ID petition process who should be.

¹⁷ Declaration of Molly McGrath, ¶ 8 & Ex. A (filed as Dkt. ##263 and 263-1 in *One Wisconsin Institute, Inc. v. Thomsen*, W.D.Wis. Case No. 3:15-cv-00324-jdp).

¹⁸ *Id.* ¶¶ 18-19.

Second, even when the IDPP is offered, DMV employees have provided incorrect information about it or even discouraged citizens from utilizing the process. The voters described by Molly McGrath all received misinformation about the IDPP. Molly McGrath observed DMV employees failing to initiate the IDPP after confirming the citizen lacked a birth certificate or passport, DMV employees who were uncertain as to how to carry out the IDPP, and DMV employees who did not advise the citizen that he or she would promptly receive a credential for voting.¹⁹

Mr. Moore was discouraged from initiating the IDPP because of DMV employees' beliefs that the IDPP would be more cumbersome and time-consuming than if he were to retrieve his birth certificate from Illinois and return to the DMV. Said one employee, "We can start the petition process, but it's contingent upon Illinois responding. . . So, we don't know how long that would take with Illinois. So, if you have the birth certificate and it's just a matter of it mailing, I would do that honestly." A supervisor repeated this advice: "If you know where your birth certificate is, it's definitely faster to get it. You know, *even if you have to drive down there and get it* and come back."²⁰ The DMV employee offered this advice despite being presented with information that plainly showed that Mr. Moore does not possess a driver's license.

Another citizen, Ms. Noreen Glover, was given inconsistent information by workers in the same DMV office about whether the IDPP was available for a person who has a birth certificate and about the DMV's ability to accept photocopied

¹⁹ *Id.* ¶ 5.

²⁰ Declaration of Molly McGrath, ¶ 8 & Ex. A.

documents.²¹ While Ms. Glover was fortunate enough to be issued an ID on the spot, the DMV customer service employee assisting her strongly implied that he was bending the rules, stating “typically no” when asked if photocopied documents are acceptable. This exchange suggests that even the regular ID process is subject to the broad discretion of the particular DMV employee assisting the citizen. The right of Wisconsin citizens to vote should not be subject to the discretion of DMV customer service staff.

Susan McGrath, visited ten DMV offices across the state in September 2016. She made inquiries about the process for obtaining ID in the following scenario: a citizen moved to Wisconsin several months ago, is residing with relatives, and does not have a copy of her out-of-state birth certificate, or a state-issued driver’s license or ID. Many DMV employees gave Susan erroneous information about the IDPP, even after they called in supervisors to assist with the questions. Among other misinformation, she was told:

- That the DMV would not provide a temporary ID or other credential that a voter could use to vote while the IDPP proceeded;²²
- That receipt of an acceptable ID is not guaranteed by election day, even with the use of the IDPP;²³
- That it’s better and quicker for a citizen to obtain an out-of-state birth certificate even though the citizen would have to pay for it.²⁴

²¹ Declaration of Molly McGrath, ¶¶ 21-22.

²² Declaration of Susan McGrath & Ex. E (filed as Dkt. ##264 and 264-5 in *One Wisconsin Institute, Inc. v. Thomsen*, W.D.Wis. Case No. 3:15-cv-00324-jdp).

²³ *Id.* Ex. C, H (filed as Dkt. # 264-3, -8).

²⁴ *Id.* Ex. A (filed as Dkt. ##264 and 264-5).

The fact that DMV employees are urging that citizens obtain out-of-state birth certificates, at their own cost, instead of utilizing the IDPP is particularly troubling. Wisconsin's Voter ID law survived a facial constitutional challenge in state court only by virtue of the Wisconsin Supreme Court's "saving construction" of DOT's administrative rules, which required the DOT to make IDs available at no cost to citizens who are unable to furnish the underlying documents required for a state ID without paying a fee to a government agency to obtain them. *Milwaukee Branch of NAACP v. Walker*, 2014 WI 98, ¶ 70, 357 Wis. 2d 469, 503, 851 N.W.2d 262, 279.

These stories illustrate the difficulties DMV employees are having in carrying out the complex job of administering the IDPP and ensuring that citizens have access to the polls. Many DMV employees lamented staff capacity and the constantly-shifting rules: "They're changing things so quick with us it's hard to keep up." It is hard to blame them.

D. Wisconsin's administration of the IDPP is failing to ensure that a citizen can obtain an ID in a single visit to a DMV office.

As recounted above, the practical reality in Wisconsin is that the IDPP is not being administered in a manner that allows citizens to obtain a credential to vote in a single visit to a DMV.

Simply getting to a DMV office during service hours one time, let alone multiple times, can be a formidable challenge for citizens who lack a qualifying ID. Unlike polling places, which are located in in cities, towns and villages of all sizes throughout Wisconsin, DMV service centers are sparsely distributed in the less-populous, rural

parts of the state. These rural areas also lack public transportation. Most counties have just one DMV service center, and in the vast majority of Wisconsin's counties, the DMV is open just two days a week.²⁵ Virtually none of the DMV service centers offer evening hours or weekend hours.²⁶ The DMV service centers in Milwaukee County are open until 4:45 p.m. at the latest.²⁷

Voters who seek to utilize the IDPP, given that they do not possess driver's licenses, must rely either on public transportation, if available, or on rides from family members, friends, or volunteers to get to a DMV office.²⁸ Further, both the citizen seeking an ID and the person providing transportation must be able to arrange for a trip to the DMV during a typical work day, likely requiring time off from work for one or both of them. Thus, again the evidence that DMV customer service employees are urging citizens *not* to utilize the IDPP, but instead to obtain the missing identification documents and return to the DMV office a second time, is disturbing.

III. Providing an affidavit procedure at the polls would complement the ID Petition Process, which is clearly not fail safe, and ensure that no qualified Wisconsin voter is disenfranchised by Wisconsin's strict Voter ID law.

Given the distribution of numerous small DMV offices across the state, ordinary turnover in DMV customer service employees, the apparent complexity of administering the IDPP process, and the incompatibility of assigning duties critical to

²⁵ See, e.g., <http://wisconsin.gov/Pages/online-srvcs/find-dmv/default.aspx#map>, visited October 6, 2016 (DMV centers open two days in Bayfield, Ashland, Iron, Vilas, Florence, Forest, Marinette, Oconto, Grant, Lafayette, Green, Jefferson, Crawford, and numerous other counties).

²⁶ See *id.*

²⁷ See *id.*

²⁸ See, e.g., Declaration of Molly McGrath, ¶¶ 21-22 (filed as Dkt. #263 in *One Wisconsin Institute, Inc. v. Thomsen*, W.D. Wis. Case No. 3:15-cv-00324-jdp).

protecting the right to vote to customer service employees whose primary tasks are issuing driver's licenses and motor vehicle registrations, it appears very unlikely that the IDPP will ever be a completely reliable means of protecting voters from disenfranchisement. The need for an alternative process -- a remedy available *at the polls* for voters who have been unable to obtain a qualifying ID before Election Day -- is palpable. Without it, it is a near certainty that qualified Wisconsin electors will be disenfranchised.

Dated this 7th day of October, 2016.

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CERTIFICATE OF COMPLIANCE WITH F.R.A.P. RULE 32(a)(7)

The undersigned, counsel of record for the Amici Curiae, furnish the following in compliance with F.R.A.P. Rule 32(a)(7).

We hereby certify that this brief conforms to the rules contained in for a brief produced with a proportionally spaced font. The length of this brief is 5,016 words.

Dated this 7th day of October, 2016.

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

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

CERTIFICATE OF SERVICE

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I hereby certify that on October 7, 2016, I electronically filed a Motion for Leave to File Brief and Brief as an Amici Curiae in Support of Plaintiffs-Appellees-Cross-Appellants and Affirmance of the District Court's Order on behalf of amici League of Women Voters of Wisconsin, City of Madison, and Tom Barrett, Mayor of the City of Milwaukee, with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the 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.

Respectfully submitted this 7th day of October, 2016.

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