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VIA ECF

Hon. Lynn S. Adelman
District Judge
United States District Court for the
Eastern District of Wisconsin
517 E. Wisconsin Ave., Rm. 364
Milwaukee, Wisconsin 53202-4511

Re: *LULAC of Wisconsin, et al. v. Deininger, et al.*, Case No. 12-CV-185

Dear Judge Adelman:

The *LULAC* plaintiffs agree with all of the points made in the August 6, 2014 letter from Mr. Dupuis to the Court on behalf of the *Frank* plaintiffs. (Case No. 11-CV-1128, Dkt. 211.) We join the *Frank* plaintiffs in asking this Court to deny defendants' motion for a stay of the Court's permanent injunction pending appeal. We take no position with respect to the timing of this Court's disposition of that motion.

We write separately to respond to the State's claims that the Wisconsin Supreme Court's recent voter ID decisions somehow undermine this Court's April 29, 2014 decision and permanent injunction. *See* Dkts. 127-28. To the contrary, the new state court decisions confirm that Act 23, as construed and enforced by the State over the past three years, has imposed a "*severe burden*" on the right to vote. *Milwaukee Branch NAACP v. Walker*, 2014 WI 98, ¶¶ 7 & n. 5, 60 (Jul. 31, 2014) (emphasis added); *see also id.* ¶¶ 4-7, 50-65, 78-80. Specifically, the Wisconsin Supreme Court held that the Wisconsin Constitution prohibits requiring voters to pay for any official documents that must be obtained in order to receive a voter ID. The Wisconsin Supreme Court repeatedly referred to such a practice as a "de facto poll tax." *Id.* ¶¶ 50, 54-55, 57. It is undisputed, and amply demonstrated in this Court's findings, that the State has followed such a practice since 2011.

The Wisconsin Supreme Court adopted a "saving construction," not of Act 23 itself, but of Wis. Admin. Code Trans. § 102.15(3)(b), the source of the "extraordinary proof" petition process discussed in this Court's April 29th decision. The state court held that DMV supervisors must henceforth exercise their "discretion" during the "extraordinary proof" petition process so that voters can seek exemptions from having to pay for birth certificates or other government records needed to obtain a voter ID. 2014 WI 98, ¶¶ 66-70.

The Wisconsin Supreme Court's decisions do not address whether these "severe burdens" imposed by the State in implementing Act 23 since 2011 have fallen disproportionately on voters of color, and thus do not impact one of the foundations for this Court's determination that Act 23 violates Section 2 of the Voting Rights Act—that the many burdens, hurdles, and obstacles imposed under Act 23 have fallen with significantly disproportionate impacts on Black and Latino voters. The state court's decisions are, in all these respects, entirely consistent with (and corroborative of) this Court's decision and permanent injunction.

This Court's April 29th decision identified a broad range of problems that led it to conclude that Act 23 violates Section 2, of which having to pay money for a birth certificate was only one of many. The state court majority opinions do not address most of these other problems. Moreover, we are highly skeptical that the state court's decisions will result in a voter ID regime that avoids the racially disproportionate cost burdens catalogued in this Court's findings. Nor do the state court's decisions require any changes to resolve the numerous problems identified by this Court with the administration of the secretive and highly politicized "extraordinary proof" petition process. *See, e.g.*, Op. at 32-33 n.17, 34-37 & n.20. Indeed, the state court's "saving construction" that vests even *more* "discretion" in the hands of DMV supervisors to decide who gets the ID needed to vote only exacerbates one of the core problems with this law that led this Court to conclude it denies and abridges the rights of voters of color in violation of Section 2.

The Wisconsin's Supreme Court's decision will require substantial changes in how the State administers Act 23, including revisions to agency regulations and policies, training of state personnel and poll workers, and a new GAB campaign to reeducate voters that they don't need to pay for vital records after all, contrary to what the State has told them for the past three years. Defendants have not yet announced any specific changes or plans for responding to and implementing the new state court decisions. Thus, neither the parties nor this Court can know how the State's yet-to-be-announced-or-implemented responses may (or may not) bear on this Court's factual determination that Act 23 violates Section 2 under the "totality of circumstances" analysis, nor know whether they present any basis for modifying the permanent injunction.

For all of the reasons set forth in our opposition to defendants' original stay motion earlier this summer, questions like these must be addressed to this Court in the first instance, *after* the State has come forward with whatever proposed changes it believes are appropriate and this Court has been able to evaluate them based on a complete record. *See* Dkt. 138 at 10-12.

Respectfully,

/s/ Charles G., Curtis, Jr.
Charles G. Curtis, Jr.
One of the counsel for the *LULAC* plaintiffs

cc: All Counsel of Record (via ECF)