

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

RUTHELLE FRANK, et al., on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

SCOTT WALKER, in his official capacity as  
Governor of the State of Wisconsin, et al.,

Defendants.

Civil Action No. 2:11-cv-01128 (LA)

**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' CIVIL L.R. 7(h)  
EXPEDITED NON-DISPOSITIVE MOTION TO STRIKE**

Without citing any caselaw or rule, Defendants have submitted a freewheeling motion to strike nearly every piece of evidence that Plaintiffs have proffered in support of their motion for a preliminary injunction—and even portions of the *brief itself*. Defendants’ claim of “prejudice” is both nonsensical and disingenuous: nonsensical because most of the evidence is from Defendants’ own production, and disingenuous because Defendants themselves dropped a last-minute, conclusory, and self-serving declaration from Kristina Boardman extolling the latest DMV procedures *du jour* in support of their opposition brief. *See* Dkt. #287. Yet unlike Defendants’ eleventh-hour declaration, which is a product of Defendants’ own gamesmanship, the declarations submitted by Plaintiffs reflect the lives of real people who have *recently* been disenfranchised or unreasonably burdened by Defendants’ unconstitutional practices. Defendants’ baseless motion to strike should be denied.

**Dkt. #280-28 to 280-62.** First, Defendants argue that these materials should be struck because they have been used in the case, *One Wisconsin Institute, Inc. v. Nichol*, No. 15-CV-324 (W.D. Wis.) (“*OWI*”). Dkt. #290 (“Defs.’ Br.”) at 1-2. But there is nothing unusual about using recent, sworn statements in other cases as evidentiary proffers. *Cf., e.g.*, FRE 613, 801(d), 806. Defendants essentially rehash their failed argument that this Court should stay this matter because of *OWI*, Dkt. #275, but as Plaintiffs have already explained, Dkt. #276, this matter was first filed *four years* before *OWI*, so it is difficult to understand how Plaintiffs are supposedly “forum shopping” or attempting to “retry [*OWI*].” If anything, Defendants are the ones who appear to be forum shopping by trying to halt this first-filed case.

**Dkt. #280-5 to 280-22, 280-63 to 280-74.** Next, Defendants move to strike these materials because Plaintiffs supposedly do not explain how these materials support their motion for a preliminary injunction. Defs.’ Br. at 2. This argument is perplexing. As outlined in the

accompanying attorney declaration attached as Exhibit 1, every single one of these materials were cited in Plaintiffs' brief.

**Dkt. #280-75.** Last, Defendants argue that this preliminary report should be struck because it is supposedly not mentioned in the brief. Defs.' Br. at 2-3. But it is. *See* Exhibit 1. Defendants argue that this report is prejudicial, but it simply provides additional support for the well-known proposition that many persons of color, especially African-American seniors, were born in states in the segregated South and thus are less likely to have birth certificates. Dkt. #195 at 32 n.17 ("Missing birth certificates are also a common problem for older African American voters who were born at home in the South because midwives did not issue birth certificates."). Defendants can, of course, seek to respond to it in a trial on the merits.

### CONCLUSION

For the reasons set forth herein, this Court should deny Defendants' Motion to Strike.

Dated this 6th day of July 2016,

Respectfully submitted,

/s/ Sean J. Young

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