

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

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RUTHELLE FRANK, et al.,

Plaintiffs,

v.

Case No. 11-CV-1128

GOVERNOR SCOTT WALKER, et al.,

Defendants.

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**SECOND DECLARATION OF CLAYTON P. KAWSKI**

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I, Clayton P. Kowski, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am one of defendants' attorneys in the above-captioned matter. I make this Second Declaration based on my own personal knowledge and based upon the sources described.

2. I make this Second Declaration in support of Defendants' Brief in Opposition to Plaintiffs' Motion for Class Certification.

3. Attached hereto as Exhibit A is a true and correct copy of an e-mail chain that includes an e-mail that plaintiffs' attorney, Neil Steiner of Dechert LLP, sent to me on Friday, April 27, 2012, at 8:50 a.m. Eastern.

4. Attached hereto as Exhibit B is a true and correct copy of an e-mail chain that includes an e-mail that I sent to plaintiffs' attorney, Jon Sherman of the ACLU Voting Rights Project, on Tuesday, April 24, 2012, at 5:14 p.m. Central.

5. The “data collected from the survey” Attorney Sherman references in Exhibit B did not include the data for responses to Professor Matt Barreto’s survey that were incomplete or not used in Professor Barreto’s expert report in this case.

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

Dated this 4th day of June 2012.

s/Clayton P. Kawski  
CLAYTON P. KAWSKI

*Frank v. Walker,*

Case No. 11-CV-1128 (E.D. Wis.)

**Second Declaration of Clayton P. Kowski**

**Exhibit A**

**Kawski, Clayton P.**

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**From:** Steiner, Neil [neil.steiner@dechert.com]  
**Sent:** Friday, April 27, 2012 8:50 AM  
**To:** Kawski, Clayton P.; Jon Sherman  
**Cc:** ldupuis@aclu-wi.org; krotker@aclu-wi.org; hjohnson@nlchp.org; Princ, Diane; Falls, Craig; Benedon, Carrie M.; Bellavia, Thomas C.; Lazar, Maria S.  
**Subject:** RE: Data from Survey

It's not required to be included in an expert witness report.

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**From:** Kawski, Clayton P. [mailto:kawskicp@doj.state.wi.us]  
**Sent:** Friday, April 27, 2012 9:49 AM  
**To:** Jon Sherman  
**Cc:** ldupuis@aclu-wi.org; krotker@aclu-wi.org; Steiner, Neil; hjohnson@nlchp.org; Princ, Diane; Falls, Craig; Benedon, Carrie M.; Bellavia, Thomas C.; Lazar, Maria S.  
**Subject:** RE: Data from Survey

Thanks, Jon.

Why wasn't this data included with Plaintiffs' Rule 26 disclosures?

Clay Kawski

**Clayton P. Kawski**  
Assistant Attorney General  
Wisconsin Department of Justice  
17 West Main Street  
P.O. Box 7857  
Madison, WI 53707-7857  
p. (608) 266-7477  
f. (608) 267-2223  
[kawskicp@doj.state.wi.us](mailto:kawskicp@doj.state.wi.us)

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**From:** Jon Sherman [mailto:jsherman@aclu.org]  
**Sent:** Thursday, April 26, 2012 4:52 PM  
**To:** Kawski, Clayton P.; Benedon, Carrie M.; Bellavia, Thomas C.  
**Cc:** ldupuis@aclu-wi.org; krotker@aclu-wi.org; neil.steiner@dechert.com; hjohnson@nlchp.org; Diane.Princ@dechert.com; craig.falls@dechert.com  
**Subject:** Data from Survey

<<Survey\_Research - Final Data Export.csv>>

Hi Clay,

As per your request at today's deposition of Prof. Barreto, please find the data collected from the survey attached. It's a .csv file. You shouldn't have any trouble opening, but please let me know if you do.

Best,

Jon

Jon Sherman

Staff Attorney

ACLU Southern Regional Office

Voting Rights Project

230 Peachtree Street

Atlanta, Georgia 30303-1227

Tel: 404-523-2721 ext. 232

Fax: 404-653-0331

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*Frank v. Walker,*

Case No. 11-CV-1128 (E.D. Wis.)

**Second Declaration of Clayton P. Kowski**

**Exhibit B**

**Kawski, Clayton P.**

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**From:** Kawski, Clayton P.  
**Sent:** Tuesday, April 24, 2012 5:14 PM  
**To:** 'Jon Sherman'  
**Cc:** Bellavia, Thomas C.; Benedon, Carrie M.; Lazar, Maria S.; Idupuis@aclu-wi.org; krotker@aclu-wi.org; hjohnson@nlchp.org; Princ, Diane; Falls, Craig; Steiner, Neil  
**Subject:** RE: Frank v. Walker, 11-CV-1128 (E.D. Wis.): expert witness disclosures  
**Attachments:** Dkt. 48 - Order.pdf

Thanks Jon. I guess I am still waiting on Plaintiffs to explain whether there is good cause that the Rule 26 disclosures were not timely served.

Yesterday we received an unsigned expert report via ECF. The report filed yesterday does not include certain information required by Rule 26(a)(2)(B), such as "the . . . data considered by the witness in forming [the opinions]," FRCP 26(a)(2)(B)(ii), and "a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition." FRCP 26(a)(2)(B)(v).

Today Plaintiffs served Rule 26 disclosures, which are not only untimely, but still fail to include the required information under Rule 26. You have now served a signed expert report that is missing information that is required by FRCP 26(a)(2)(B).

Please explain whether there is good cause that the Rule 26 disclosures were not timely served on April 23, 2012, as required by the attached order.

Thank you,

Clay Kawski

**Clayton P. Kawski**  
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P.O. Box 7857  
Madison, WI 53707-7857  
p. (608) 266-7477  
f. (608) 267-2223  
kawskicp@doj.state.wi.us

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**From:** Jon Sherman [mailto:jsherman@aclu.org]  
**Sent:** Tuesday, April 24, 2012 4:47 PM  
**To:** Steiner, Neil; Kawski, Clayton P.  
**Cc:** Bellavia, Thomas C.; Benedon, Carrie M.; Lazar, Maria S.; Idupuis@aclu-wi.org; krotker@aclu-wi.org; hjohnson@nlchp.org; Princ, Diane; Falls, Craig  
**Subject:** RE: Frank v. Walker, 11-CV-1128 (E.D. Wis.): expert witness disclosures

Hi Clay,  
Attached please find a copy of Prof. Barreto's report with his signature on page 33.  
Best,  
Jon

Jon Sherman  
Staff Attorney  
ACLU Southern Regional Office  
Voting Rights Project  
230 Peachtree Street  
Atlanta, Georgia 30303-1227  
Tel: 404-523-2721 ext. 232  
Fax: 404-653-0331

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**From:** Steiner, Neil [<mailto:neil.steiner@dechert.com>]  
**Sent:** Tuesday, April 24, 2012 3:03 PM  
**To:** Kawski, Clayton P.  
**Cc:** Bellavia, Thomas C.; Benedon, Carrie M.; Lazar, Maria S.; [ldupuis@aclu-wi.org](mailto:ldupuis@aclu-wi.org); [krotker@aclu-wi.org](mailto:krotker@aclu-wi.org); [hjohnson@nlchp.org](mailto:hjohnson@nlchp.org); Princ, Diane; Falls, Craig; Jon Sherman  
**Subject:** RE: Frank v. Walker, 11-CV-1128 (E.D. Wis.): expert witness disclosures

As I said in the first sentence of my prior email, we believe that all information required to be disclosed by Rule 26 was timely served yesterday.

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**From:** Kawski, Clayton P. [<mailto:kawskicp@doj.state.wi.us>]  
**Sent:** Tuesday, April 24, 2012 2:59 PM  
**To:** Steiner, Neil  
**Cc:** Bellavia, Thomas C.; Benedon, Carrie M.; Lazar, Maria S.; [ldupuis@aclu-wi.org](mailto:ldupuis@aclu-wi.org); [krotker@aclu-wi.org](mailto:krotker@aclu-wi.org); [hjohnson@nlchp.org](mailto:hjohnson@nlchp.org); Princ, Diane; Falls, Craig; Jon Sherman  
**Subject:** RE: Frank v. Walker, 11-CV-1128 (E.D. Wis.): expert witness disclosures

Hi Neil,

We intend to go forward with Prof. Barreto's videoconference deposition on Thursday at 9 a.m. Pacific. Please plan on it.

Again, I request that Plaintiffs' counsel please advise Defendants whether there was good cause that the Rule 26 disclosures were not timely served.

Thank you,

Clay Kawski

**Clayton P. Kawski**  
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Wisconsin Department of Justice  
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Madison, WI 53707-7857  
p. (608) 266-7477



f. (608) 267-2223  
[kawskicp@doj.state.wi.us](mailto:kawskicp@doj.state.wi.us)

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**From:** Steiner, Neil [<mailto:neil.steiner@dechert.com>]  
**Sent:** Tuesday, April 24, 2012 1:55 PM  
**To:** Kawski, Clayton P.; Jon Sherman  
**Cc:** Bellavia, Thomas C.; Benedon, Carrie M.; Lazar, Maria S.; [ldupuis@aclu-wi.org](mailto:ldupuis@aclu-wi.org); [krotker@aclu-wi.org](mailto:krotker@aclu-wi.org); [hjohnson@nlchp.org](mailto:hjohnson@nlchp.org); Princ, Diane; Falls, Craig  
**Subject:** RE: Frank v. Walker, 11-CV-1128 (E.D. Wis.): expert witness disclosures

Clay,

All of the disclosures required by Rule 26 were contained in Professor Barreto's expert witness report and were timely served yesterday. You acknowledge that you received that report yesterday. And you know that Professor Barreto is our expert witness, because we identified him last week (before we were required to do so) to arrange for his deposition by videoconference, for your convenience, this Thursday. If you are attempting to suggest that the disclosures in the report were untimely because it was not accompanied by a separate notice confirming that Professor Barreto was our expert witness, good luck making that argument before Judge Adelman.

I am scheduled to fly to Seattle at 7:30 tomorrow morning for the Thursday deposition. Please advise by 3:00 Central today whether you intend to go forward with his deposition as scheduled, or whether I should cancel my travel plans. If you cancel, you should also understand that we may not be able to make Professor Barreto available for deposition on a different day prior to the deadline for filing of your opposition brief.

Neil

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**From:** Kawski, Clayton P. [<mailto:kawskicp@doj.state.wi.us>]  
**Sent:** Tuesday, April 24, 2012 1:57 PM  
**To:** Jon Sherman  
**Cc:** Bellavia, Thomas C.; Benedon, Carrie M.; Lazar, Maria S.; [ldupuis@aclu-wi.org](mailto:ldupuis@aclu-wi.org); [krotker@aclu-wi.org](mailto:krotker@aclu-wi.org); Steiner, Neil; [hjohnson@nlchp.org](mailto:hjohnson@nlchp.org); Princ, Diane; Falls, Craig  
**Subject:** RE: Frank v. Walker, 11-CV-1128 (E.D. Wis.): expert witness disclosures

Hi Jon,

I saw Prof. Barreto's report attached to the Rotker Declaration that was filed yesterday, but Defendants' counsel did not receive Plaintiffs' Rule 26 disclosures per the Court's order yesterday.

Please advise us whether there is good cause that the Rule 26 disclosures were not timely served.

Thank you,

Clay Kawski

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Assistant Attorney General

Wisconsin Department of Justice  
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[kawskicp@doj.state.wi.us](mailto:kawskicp@doj.state.wi.us)

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**From:** Jon Sherman [<mailto:jsherman@aclu.org>]  
**Sent:** Tuesday, April 24, 2012 12:39 PM  
**To:** Kawski, Clayton P.; [ldupuis@aclu-wi.org](mailto:ldupuis@aclu-wi.org); [krotker@aclu-wi.org](mailto:krotker@aclu-wi.org); [neil.steiner@dechert.com](mailto:neil.steiner@dechert.com); [hjohnson@nlchp.org](mailto:hjohnson@nlchp.org); [Diane.Princ@dechert.com](mailto:Diane.Princ@dechert.com); [craig.falls@dechert.com](mailto:craig.falls@dechert.com)  
**Cc:** Bellavia, Thomas C.; Benedon, Carrie M.; Lazar, Maria S.  
**Subject:** RE: Frank v. Walker, 11-CV-1128 (E.D. Wis.): expert witness disclosures

Hi Clay,

The expert report was attached as Attachment J to Karyn Rotker's declaration (Doc. 62 & Doc. 62-10). This was filed in conjunction with the Motion for Preliminary Injunction. Prof. Matt Barreto's report complies with Rule 26, but if you want a signed copy, rather than just having him verify it when he testifies on Thursday, we will send you the report with a signature page today. Attached please find Plaintiffs' Rule 26(a)(2) disclosures.

Best,

Jon

Jon Sherman  
Staff Attorney  
ACLU Southern Regional Office  
Voting Rights Project  
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Atlanta, Georgia 30303-1227  
Tel: 404-523-2721 ext. 232  
Fax: 404-653-0331

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**From:** Kawski, Clayton P. [<mailto:kawskicp@doj.state.wi.us>]  
**Sent:** Tuesday, April 24, 2012 12:53 PM  
**To:** [ldupuis@aclu-wi.org](mailto:ldupuis@aclu-wi.org); [krotker@aclu-wi.org](mailto:krotker@aclu-wi.org); Jon Sherman  
**Cc:** Bellavia, Thomas C.; Benedon, Carrie M.; Lazar, Maria S.  
**Subject:** Frank v. Walker, 11-CV-1128 (E.D. Wis.): expert witness disclosures

Dear Counsel:

Unless we missed them, yesterday Defendants' counsel did not receive Plaintiffs' Rule 26 expert witness disclosures pursuant to the Court's April 12, 2012, order.

Please advise us whether there is good cause that the disclosures were not timely served, or whether we have missed the disclosures that were served yesterday.

Thank you,

Clay Kawski

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