NO. 14-803

IN THE
SUPREME COURT OF THE UNITED STATES

RUTHELLE FRANK, *et al,*
Petitioners,
v.
SCOTT WALKER, *et al.,*
Respondents,
-and-

LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC) OF WISCONSIN, *et al.,*
Petitioners,
v.
THOMAS BARLAND, *et al.,*
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF AMICUS CURIAE OF THE LEAGUE OF WOMEN VOTERS OF THE UNITED STATES, THE LEAGUE OF WOMEN VOTERS OF WISCONSIN AND THE LEAGUE OF WOMEN VOTERS OF TEXAS IN SUPPORT OF PETITIONERS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTIONAL PROVISIONS

STATUTES

OTHER AUTHORITIES

INTEREST OF *AMICI CURIAE*[1]

The League of Women Voters of the United States is a nonpartisan, community-based organization that encourages the informed and active participation of citizens in government and influences public policy through education and advocacy. Founded in 1920 as an outgrowth of the struggle to win voting rights for women, the League is organized in more than 850 communities and in every State, with more than 150,000 members and supporters nationwide.

For 95 years, the League's primary mission has been to assist voters in exercising their right to vote. The League is well known for its nonpartisan voter guides, which provide unbiased candidate information to voters. Its online voter education website, Vote411, now provides one-stop information on candidates, registration and voting requirements, and polling place locations for voters in every state and many localities. As part of its mission, the League operates one of the longest-running and largest nonpartisan voter registration efforts in the nation.

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[1] The parties received timely notice of *amici*'s intent to file this brief and have consented to its filing. Pursuant to Supreme Court Rule 37.6, counsel for *amici* represent that they authored this brief in its entirety and that none of the parties or their counsel, nor any other person or entity other than *amici* or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

In addition, the League has been a leader in seeking to remove the unnecessary barriers that too many Americans face in registering to vote and casting a ballot. To that end, the League has been on the front lines in state legislatures and courts across the country working to block restrictive photo ID requirements that too often interfere with the voting rights of women, youth, persons with disabilities, and racial and ethnic minorities.

In states where voter photo identification ID laws have passed and been implemented, the League has actively sought out individuals who had difficulty getting the required ID for voting purposes to provide assistance. In 2014 the League distributed tens of thousands of educational materials to affected communities in key states.

The League of Women Voters of Wisconsin, with 17 local Leagues and 1,800 members and supporters in the state, has opposed restrictive photo ID requirements for voting since the first bill proposing ID requirements was introduced in the Wisconsin Legislature in 2003. The League vigorously opposed the bill, which became 2011 Wisconsin Act 23, communicated its opposition to legislators at public hearings and otherwise, and encouraged its members to contact their legislators in opposition.

Once Act 23 was enacted, the League worked at the state and local levels to educate voters about the new requirement through public educational forums and other means. The League also assisted

individual voters who did not possess an acceptable ID or who were uncertain whether they did. One local League sought and received a $5,000 grant to help individuals who needed money to order a birth certificate or to pay for transportation to the Department of Motor Vehicles to obtain a state ID card for voting, as well as for bus advertising to get the word out to the public.

All of these efforts diverted valuable volunteer and paid human resources, as well as significant funding, from the League's usual pre-election activities, including voter registration, candidate forums and other voter education.

The League of Women Voters of Texas, with 25 local Leagues and 3900 members and supporters in the state, has worked for decades to support and encourage participation by the voters of Texas. When the U.S. Supreme Court allowed the state's restrictive voter ID legislation to take effect only days before the beginning of early voting for the 2014 general election, the League's voter education work was made more difficult. Voters were confused and the League needed to explain the requirements of the law and assist potential voters, in addition to other nonpartisan voter education work.

SUMMARY OF ARGUMENT

The Court should grant the petition for certiorari because this case raises important issues that will effect voters not only in Wisconsin but in other states that have passed or may consider passing strict voter-ID laws. It is particularly important that this Court resolve questions about the application of both the Constitution and the Voting Rights Act to these restrictive laws because of the significant number of states in which new burdens have been imposed or may in the future be imposed on the right to vote.

If possible, the Court should consider holding the petition in this case pending a petition for certiorari from a Fifth Circuit decision on the similar challenge to Texas's voter-ID law, known as Senate Bill 14, and should consider the two cases together.

ARGUMENT

I. This Petition Presents Significant Questions of National Importance that Require the Court's Resolution

This petition presents questions of enormous importance to voters in Wisconsin and in other states around the nation. The number of states enacting strict photo identification requirements similar to Wisconsin's Act 23 (Act 23) has increased in recent years. Between 2011 and 2013, "[s]tates without ID requirements continued to adopt them, and states that had less-strict requirements adopted

stricter ones." National Conference of State Legislatures, *History of Voter ID* (Oct. 16, 2014), *available at* http://www.ncsl.org/research/elections-and-campaigns/voter-id-history.aspx#Chart. New restrictive laws are likely to go into effect in North Carolina and possibly other states before the 2016 election. *See* Wendy R. Weiser & Erik Opsal, *The State of Voting in 2014*, Brennan Center for Justice (June 17, 2014), *available at* http://www.brennancenter.org/analysis/state-voting-2014. Like Act 23, the laws being passed in other states will almost certainly disproportionately impact voters who are African American and Latino, imposing substantial burdens on their voting rights. And, as in Wisconsin, the rationale offered for restrictive voter-ID laws around the country is a pretextual concern about in-person voter impersonation that has no evidentiary support.

Uncertainty over the constitutionality of these laws generated significant confusion during the November 2014 elections. *See* Tierney Sneed, *Voting Law Battles Rock Lead-Up to Elections*, U.S. News (Oct. 17, 2014), http://www.usnews.com/news/articles/2014/10/17/voting-law-challenges-in-wisconsin-arkansas-texas-and-elsewhere-roil-election-lead-up. Indeed, this Court considered emergency appeals in both the Wisconsin and Texas ID cases during the weeks leading up to the 2014 elections and reached a different conclusion in each case, leaving Texas voters unprotected while permitting Wisconsin voters to vote without the substantial burden imposed by Act 23. See *Veasey v. Perry*, 135 S. Ct. 9 (2014); *Frank v. Walker*, 135 S.

Ct. 7 (2014). It is urgently important that the Court address these significant unsettled questions.

The Seventh Circuit incorrectly treated this Court's decision in *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008), as settling the question whether a strict identification requirement might impermissibly burden the right to vote in violation of the Fourteenth Amendment. *Crawford*'s holding as to the constitutionality of Indiana's voter-ID law turned entirely on the remarkable thinness of the record in that case. 553 U.S. at 189. The substantial record from Wisconsin presents a significantly different picture, both as to the clear evidence of the serious burdens imposed on voters and as to the weakness of the State's asserted justifications for the law. On this fully developed record, particularly if considered together with the extensive record developed in the district court in *Veasey v. Perry*, No. 13-CV-00193, 2014 WL 5090258 (S.D. Tex. Oct. 9, 2014), the Court will be able to assess the true burdens and limited benefits of strict ID laws like Act 23.

II. If Possible, the Court Should Hold the Petition So that This Case Can Be Heard Together with a Challenge to a Similar Texas Law

For all the reasons stated above, plenary review is needed in this case. In addition, if at all possible, the Court should consider holding this petition in abeyance so that this case can be considered together with the challenge to Texas

Senate Bill 14 (SB 14), a similarly restrictive voter-ID law that was recently struck down by the Southern District of Texas. *Veasey v. Perry*, No. 13-CV-00193, 2014 WL 5090258 (S.D. Tex. Oct. 9, 2014). That decision has been appealed to the Fifth Circuit, which is scheduled to hear arguments on the case this spring. If, as seems very likely—if not inevitable—the losing parties in the Fifth Circuit seek review in this Court, the two cases together will give the Court the opportunity to address the range of legal concerns posed by these restrictive voting laws.

While the cases share many similarities, at least two significant differences may make it worthwhile for the Court to consider both together once both cases are ripe for review. In both Wisconsin and Texas, the district courts concluded that the challenged voter-ID laws violated both the Fourteenth Amendment and Section 2 of the Voting rights Act (VRA), 52 U.S.C. § 10301. *Veasey*, 2014 WL 5090258 at *1; *Frank v. Walker*, 17 F.Supp.3d 837, 843 (E.D.Wis. 2014). However, the district judge in Texas also held that Texas's SB 14 violated the Twenty-fourth Amendment by effectively imposing a poll tax on voters in that state. *Veasey*, 2014 WL 5090258 at *1. Further, the courts differed significantly in their analysis of Section 2. If this Court takes these cases together, it will have the opportunity to resolve the full range of constitutional questions and to address the scope of Section 2.

The factual and analytical differences between the two cases with regard to the scope and meaning

of the Voting Rights Act are particularly important. In Wisconsin, plaintiffs did not plead or present evidence of discriminatory intent in the enactment of Act 23, but they did demonstrate that the law burdened black and Hispanic voters disproportionately. In reversing the district court's findings that the law violated the Voting Rights Act by imposing this disparate burden, the Seventh Circuit effectively held that Section 2 is not violated by laws whose effect falls more harshly on black and Hispanic voters unless there is evidence of intent to discriminate. The Court should address this erroneous interpretation of the plain language of Section 2, which prohibits the imposition of a voting practice that "*results* in a denial or abridgment of the right of any citizen of the United States to vote on account of race or color." 52 U.S.C. § 10301(a) (emphasis added).

In *Veasey*, by contrast, the district court found not only that SB 14 had a disparate impact on minority voters, but also that the evidence showed that the Texas Legislature's passage of the law was "racially motivated." 2014 WL 5090258 at *21. The State of Texas has asked the Fifth Circuit, in its review of this decision, to address both the legal standard for finding intentional discrimination under Section 2 and the application of the disparate effects provision of the law to the record in Texas. *See* Br. for Appellants at 10, *Veasey v. Abbott*, No. 14-41127 (5th Cir. Jan. 29, 2015).

It is essential that the Court address the scope of Section 2 given the weight that Section 2 now

carries. This is particularly true in places, like Texas, that were subject to preclearance requirements before this Court's decision in *Shelby County v. Holder*, 133 S. Ct. 2612 (2013). The extensively developed factual records from both Texas and Wisconsin will give the Court a clear opportunity to do so.

CONCLUSION

For the foregoing reasons, *amici* urge the Court to grant the petition for certiorari in the instant case. In addition, if at all possible, the Court should hold the case in anticipation of a petition for certiorari from the challenge to the Texas law and consider these cases together when such a petition is filed.

Respectfully submitted,

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