

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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**DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION AS TO ELEVEN NAMED PLAINTIFFS**

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Defendants Governor Scott Walker, Judge Thomas Barland, Judge Gerald C. Nichol, Judge Michael Brennan, Judge Thomas Cane, Judge David G. Deininger, Judge Timothy Vocke, Kevin J. Kennedy, Nathaniel E. Robinson, Mark Gottlieb, Lynne Judd, Kristina Boardman, Donald D. Reincke, Tracy Jo Howard, Sandra M. Brisco, Barney L. Hall, Donald J. Genin, Jill Louise Geoffroy, and Patricia A. Nelson (collectively, "Defendants"), by their undersigned counsel, hereby submit this Brief in Opposition to Plaintiffs' Motion for Preliminary Injunction as to Eleven Named Plaintiffs.

**INTRODUCTION**

Plaintiffs Shirley Brown, Sam Bulmer, Pamela Dukes, Carl Ellis, Ruthelle Frank, Mariannis Ginorio, Rickie Lamont Harmon, Eddie Lee Holloway, Jr., Barbara Oden, DeWayne Smith, and Nancy Lea Wilde (collectively, "Plaintiffs") have filed a motion for a preliminary

injunction enjoining the enforcement of the photo identification requirement for voting created by 2011 Wisconsin Act 23 (“Act 23”) as to them.

The injunctive relief that Plaintiffs have requested is not necessary because those Plaintiffs that are registered to vote or that can register to vote can obtain an absentee ballot to vote in the upcoming April 3, 2012, election. Plaintiffs have requested alternative forms of relief in their injunction motion, namely, an affidavit of identity to be used at the polling place or an absentee ballot as a substitute for a photo ID requirement. (Dkt. # 32 at p. 1.) Absentee ballots are currently available without photo identification.

The photo identification requirement created by Act 23 has been enjoined, both temporarily and permanently, by the Dane County Circuit Court. As long as the injunctions remain in place, the Wisconsin Government Accountability Board (“G.A.B.”) has made it clear that the requirement of photo identification to obtain an absentee ballot will not be enforced. *See, e.g., <http://BringIt.Wisconsin.Gov/>* (last visited March 20, 2012) (“The judge’s order is subject to appeal, but at the present time Wisconsin residents who are eligible to vote ***will not be required to show an acceptable photo ID to vote*** (either in person or by absentee ballot) at the upcoming Spring Election and Presidential Preference Primary on April 3, 2012.”). These Plaintiffs can, therefore, already vote absentee without the need for photo identification.

Even if the Court concludes that the relief Plaintiffs are requesting is necessary, Plaintiffs have not met their burden for a preliminary injunction as to Act 23. In support of their motion, Plaintiffs have shown only that certain rules in Wisconsin Administrative Code chapter TRANS 102 create a peculiar burden to obtain a Wisconsin driver’s license or state photo identification card for a discrete and vanishingly small number of people. The “bureaucracy navigation test,” (Dkt. #33 at p. 2), that Plaintiffs assert exists is based upon DMV’s pre-existing procedures for

procuring driver's licenses and state photo identification cards, not upon any requirement for voting created by Act 23. With the exception of the non-inclusion of Veteran Identification Cards ("VICs") in the list of Act 23 IDs, Plaintiffs' arguments in support of their motion focus on the requirements for obtaining Wisconsin driver's licenses and state photo identification cards, not on presenting photo identification for voting.

Accepting Plaintiffs' arguments would not require the Court to enjoin any part of Act 23 itself, but only certain provisions of TRANS 102 as-applied to Plaintiffs. Plaintiffs have not requested an appropriately limited form of relief that would apply to the Division of Motor Vehicles administrative rules that allegedly burden their right to vote, but instead attack the photo identification requirement created by Act 23 as-applied. The Court need not enjoin Act 23 as-applied to directly address Plaintiffs' unique circumstances and their difficulties in obtaining photo identification for purposes of voting.

It is undeniable that Plaintiffs face unique, peculiar, individualized, and distinct burdens to obtain a Wisconsin driver's license or state photo identification card. These forms of photo identification, and others, are acceptable forms of identification for voting. If the Court does not conclude that the relief Plaintiffs have requested is unnecessary, it must nonetheless deny their motion for preliminary injunction. Plaintiffs have not demonstrated that Act 23 *itself* imposes "excessively burdensome requirements" on their right to vote, particularly when balanced against the State's important interests. *Crawford v. Marion County Election Board*, 553 U.S. 181, 202 (2008) (opinion of Stevens, J.) (citation omitted).

## BACKGROUND

### I. BACKGROUND ON ACT 23.

Prior to Act 23, an eligible Wisconsin elector voting at a polling place or by absentee ballot was not required to present identification, other than proof of residence in certain circumstances. Under Act 23, an elector will be required to present proof of identification to vote at a polling place or by absentee ballot.

Proof of identification is defined as identification that contains the name and a photograph of the individual to whom the identification was issued, which name must conform to the name on the individual's voter registration form. Wis. Stat. § 5.02(16c); 2011 Wis. Act. 23, § 1. Acceptable photo identification can take any of the following forms:

- A driver's license issued by the Wisconsin Department of Transportation ("DOT") under Wis. Stat. ch. 343 that is unexpired or has an expiration date after November 2, 2011.
- An identification card issued by DOT under Wis. Stat. § 343.50 that is unexpired or has an expiration date after November 2, 2011.
- An identification card issued by a U.S. uniformed service that is unexpired or has an expiration date after November 2, 2011.
- A U.S. passport that is unexpired or has an expiration date after November 2, 2011.
- A certificate of U.S. naturalization that was issued not earlier than two years before the date of the election at which it is presented.
- An unexpired driving receipt issued by DOT under Wis. Stat. § 343.11.
- An unexpired identification card receipt issued by DOT under Wis. Stat. § 343.50.
- An identification card issued by a federally recognized Indian tribe in Wisconsin.

- An unexpired identification card issued by an accredited university or college in Wisconsin that contains the date of issuance and signature of the individual to whom it is issued and that contains an expiration date indicating that the card expires no later than two years after the date of issuance, if the individual establishes that he or she is enrolled as a student at the university or college on the date that the card is presented.

Wis. Stat. § 5.02(6m); 2011 Wis. Act 23, § 1.

Act 23 requires, with certain exceptions,<sup>1</sup> that an elector who seeks to vote in person at a polling place must present one of the acceptable forms of photo identification to an election official, who must verify that the name on the identification conforms to the name on the poll list and that any photograph on the identification reasonably resembles the elector. Wis. Stat. § 6.79(2)(a); 2011 Wis. Act 23, § 45.<sup>2</sup> If an elector appears in-person to vote at a polling place

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<sup>1</sup>The photo identification requirements do not apply to: a military or overseas elector voting by absentee ballot; an elector who has a confidential listing as a result of domestic abuse, sexual assault, or stalking; an elector who has been required to surrender his or her driver's license due to a citation or notice of intent to revoke or suspend the license and who presents an original copy of the citation or notice in lieu of the license; an absentee voter who has previously supplied acceptable photo identification and whose name and address have not subsequently changed; and certain absentee voters who are indefinitely confined due to age, physical illness or infirmity, or who reside in a nursing home, a qualified retirement home or certain other specified types of residential facility and who comply with specified alternative methods of voter verification. Wis. Stat. § 6.87(4)(a)-(b), 2011 Wis. Act 23, §§ 67-71.

<sup>2</sup>Similar requirements apply to absentee voters. An elector who applies for an absentee ballot in person at a municipal clerk's office must present one of the acceptable forms of photo identification to the clerk, who must verify that the name on the identification corresponds to the name on the elector's ballot application and that any photograph on the identification reasonably resembles the elector. Wis. Stat. § 6.86(1)(ar); 2011 Wis. Act 23, § 56. If an elector applies for an absentee ballot by mail, the elector must enclose a copy of an acceptable form of photo identification with his or her ballot application and the clerk, before issuing the ballot, must verify that the name on the identification conforms to the name on the ballot application. Wis. Stat. § 6.87(1); 2011 Wis. Act 23, § 63. If an elector applies for an absentee ballot electronically and does not enclose a copy of an acceptable form of photo identification with his or her ballot application, the elector must enclose a copy of an acceptable photo identification when the elector submits the absentee ballot. Wis. Stat. § 6.87(4)(b)1.; 2011 Wis. Act 23, § 66.

and does not have one of the acceptable forms of photo identification, the elector must be offered the opportunity to vote by provisional ballot pursuant to Wis. Stat. § 6.97. Wis. Stat. § 6.79(2)(d) and (3)(b); 2011 Wis. Act 23, §§ 47-50. Such a provisional ballot will thereafter be counted if the elector presents acceptable photo identification at the polling place before the polls close or at the office of the municipal clerk or board of election commissioners no later than 4 p.m. on the Friday after the election. Wis. Stat. § 6.97(3)(b); 2011 Wis. Act 23, § 90. If an in-person voter presents a photo identification bearing a name that does not conform to the voter's name on the poll list or a photograph that does not reasonably resemble the voter, then the person may not be permitted to vote. Wis. Stat. § 6.79(3)(b); 2011 Wis. Act 23, §§ 48-50.

To accommodate eligible electors who do not yet possess any of the acceptable forms of photo identification and to ensure that no elector is charged a fee for voting, Act 23 requires the DOT to issue an identification card to such an elector free of charge, if the elector satisfies all other requirements for obtaining such a card, is a U.S. citizen who will be at least 18 years of age on the date of the next election, and requests that the card be provided without charge for purposes of voting. Wis. Stat. § 343.50(a)3.; 2011 Wis. Act 23, § 138.

Finally, Act 23 requires GAB to take a variety of steps related to preparing for and implementing the administration of the new photo identification requirements. First, GAB must revise its instructions for voters at the polling place to reflect the photo identification requirements. Wis. Stat. § 5.35(6)(a)4a.; 2011 Wis. Act 23, § 4. Second, GAB must revise absentee voting instructions and informational materials, absentee ballot application forms, and absentee certificate envelopes to reflect the photo identification requirements. Wis. Stat. §§ 6.869, 6.87, and 6.875; 2011 Wis. Act 23, §§ 62, 64, and 73-82. Third, GAB must revise the written notice to be distributed to provisional voters to reflect the photo identification

requirements. Wis. Stat. § 7.08(8); 2011 Wis. Act. 23, § 93. Fourth, Act 23 requires GAB to engage in outreach to identify, contact, and provide assistance to groups of electors who may need assistance in obtaining or renewing acceptable photo identification. Wis. Stat. § 7.08(12); 2011 Wis. Act 23, § 95. Finally, Act 23 requires GAB to conduct a public information campaign in conjunction with the primary election of February 21, 2012, for the purpose of informing prospective voters about the new photo identification requirements. 2011 Wis. Act 23, § 144.

## II. STATUS OF THE PHOTO IDENTIFICATION REQUIREMENT FOR VOTING CREATED BY 2011 WISCONSIN ACT 23.

As noted, the photo identification requirement for voting created by Act 23 has been temporarily and permanently enjoined by the Dane County Circuit court. *See Milwaukee Branch of the NAACP, et al. v. Scott Walker, et al.*, Case No. 11-CV-5492 (Dane Co. Cir. Ct.) (Flanagan, J.), *hereinafter* “NAACP,” (March 6, 2012, Order Granting Temporary Injunction), filed herewith as Exhibit B to the Declaration of Clayton P. Kowski; *League of Women Voters of Wisconsin Education Network, Inc., et al. v. Scott Walker, et al.*, Case No. 11-CV-4669 (Dane Co. Cir. Ct.) (Niess, J.), *hereinafter* “League,” (March 12, 2012, Decision and Order Granting Summary Declaratory Judgment and Permanent Injunction), filed herewith as Exhibit C to the Declaration of Clayton P. Kowski.

In light of these injunction orders, GAB has suspended all implementation of the photo identification requirement for voting, along with suspending all public educational and informational campaigns associated with photo ID. (Kowski Decl., Ex. A.)

The State defendants in *NAACP* and *League* are seeking appellate review in the Wisconsin Court of Appeals, and, ultimately, the Wisconsin Supreme Court. In conjunction with their pursuit of appellate review, the State defendants in *NAACP* and *League* filed motions for

relief pending appeal in Dane County Circuit Court from the respective injunctions. The motions were denied. (Kawski Decl., Exs, D, E.)

### **LEGAL STANDARD FOR PRELIMINARY INJUNCTION**

“A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008) (citations omitted).

As shown below, Plaintiffs have not established these requirements.

### **ARGUMENT**

#### **I. THE RELIEF PLAINTIFFS HAVE REQUESTED IS CURRENTLY UNNECESSARY BECAUSE THE PHOTO IDENTIFICATION REQUIREMENT FOR VOTING CREATED BY 2011 WISCONSIN ACT 23 HAS BEEN ENJOINED.**

The relief Plaintiffs have requested is currently unnecessary because the photo identification requirement for voting created by Act 23 has been temporarily and permanently enjoined in state circuit court. Plaintiffs that are already registered voters or that can register to vote can obtain an absentee ballot for voting without photo identification.

For example, those Plaintiffs that are already registered to vote<sup>3</sup> or can register to vote should be able to vote in the upcoming April 3, 2012, Spring Election and Presidential Preference Primary by obtaining an absentee ballot. The first day a person could request and vote an absentee ballot in-person in a municipal clerk’s office was March 19, 2012. Wis. Stat. §

6.86(1)(b). The deadline for a regular elector to request an absentee ballot by mail for the April 3, 2012, Spring Election and Presidential Preference is March 29, 2012. Wis. Stat. § 6.86(1)(b). The local election official is required to mail out the requested ballot within one day of the request. Wis. Stat. § 7.15(1)(cm). The deadline for a regular elector to vote and postmark their ballot for return to the clerk's office is Election Day, April 3, 2012. The voted ballot must be received by the clerk's office by 4:00 p.m. on April 6, 2012, to be counted. *See* Wis. Stat. §§ 6.87(6), 7.515(3). (Kawski Decl., Ex. A.)

Registered Plaintiffs filing their absentee ballot applications could also request absentee ballots for all upcoming elections in 2012. Wis. Stat. § 6.86(2m). Thus, the risk that Plaintiffs would lose their right to vote via absentee ballot in subsequent elections because of a lack of Act 23 ID if the state circuit court injunctions are lifted would be mitigated.

As long as the injunctions entered in state circuit court remain in place, the relief Plaintiffs have requested is unnecessary. They will not be harmed absent an injunction; there already is an injunction in place. Accordingly, their motion for preliminary injunction must be denied.

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<sup>3</sup> The following Plaintiffs have stated in their declarations that they are registered to vote: Ruthelle Frank, (Dkt. #33-5); DeWayne Smith, (Dkt. #33-10); Nancy Lea Wilde, (Dkt. #33-11); and Shirley Brown, (Dkt. #35).

II. PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION MUST BE DENIED BECAUSE PLAINTIFFS HAVE NOT DEMONSTRATED THAT THE PHOTO IDENTIFICATION REQUIREMENT FOR VOTING CREATED BY 2011 WISCONSIN ACT 23 EXCESSIVELY BURDENS THEIR RIGHT TO VOTE.

A. Plaintiffs' are not likely to succeed on the merits of claims 1 and 2 because the photo identification requirement created by Act 23 does not impose severe burdens on Plaintiffs' right to vote and advances compelling State interests.

1. Plaintiffs' alleged burdens.

Plaintiffs' primary issue with Act 23 is the alleged burden each individual plaintiff faces in obtaining a form of photo identification that is acceptable for voting. As Plaintiffs highlighted in their brief, (*see* Dkt. #33 at pp. 5-12), those alleged burdens stem from the Division of Motor Vehicles' ("DMV's") TRANS 102 administrative rules regarding obtaining certain forms of photo identification, namely a Wisconsin driver's license or a state photo identification card.

Birth certificates present problems for several Plaintiffs. A birth certificate is the most common document that a person might use to prove their citizenship to DMV to obtain a driver's license or state photo identification card. *See* Wis. Admin. Code § TRANS 102.15(3m). Most, if not all, of Plaintiffs' difficulties in obtaining a Wisconsin driver's license or state photo identification card stem from the fact that Plaintiffs lack certified copies of their birth certificates, are unwilling to get certified copies of their birth certificates, have certain errors on the certified birth certificates they possess, or believe that the alleged burdens associated with obtaining their certified birth certificates are too great.

Another common problem for Plaintiffs is the lack of a Social Security card, another document that might be used to prove one's identity for purposes of obtaining a driver's license or state photo identification card from DMV. *See* Wis. Admin. Code § TRANS 102.15(4).

Plaintiffs' specific alleged burdens are discussed below.

a. Ruthelle Frank.

Plaintiff Ruthelle Frank lacks any form of Act 23 ID, has attempted to obtain a state photo identification card from DMV for purposes of voting, and could obtain a certified copy of her birth certificate at a cost of \$20. (Dkt. #33-5.) However, Mrs. Frank does not want to obtain a birth certificate because she has no additional need for the birth certificate outside of using it to obtain a state photo identification card from DMV. She does not want to pay the \$20 for the certified birth certificate copy and believes that a misspelling on her birth certificate would jeopardize her ability to get a state photo identification card. The misspelling on her birth certificate appears in her maiden name, which is correctly spelled "Wedepohl." (*Id.*, ¶ 10.) Counsel has obtained an uncertified copy of Mrs. Frank's birth certificate from the Wisconsin Office of Vital Records, and Mrs. Frank's maiden last name is indeed misspelled as "Wedepol." (Kawski Decl., ¶¶ 3-4.) Wisconsin law prevents the copying of an uncertified birth certificate; therefore, the uncertified copy cannot be filed in conjunction with this brief. *See* Wis. Stat. § 69.21.

If Mrs. Frank obtained a certified copy of her birth certificate, even with the misspelling "Wedepol" on it, she would be able to use it to obtain a state photo identification card from DMV. (Declaration of James G. Miller, filed herewith, ¶¶ 4-8.) Mrs. Frank has the following documentation: a Social Security card, a marriage certificate, two forms of proof of residence, bank records, and a baptismal certificate. (Dkt. #33-5.) With a certified copy of her birth certificate and the documents she already possesses, Mrs. Frank has all of the necessary documents to obtain, for purposes of voting, a free Wisconsin state identification card from DMV under Wis. Stat. ch. 343 and Wis. Admin. Code ch. TRANS 102. (Miller Decl., ¶ 8.)

b. Rickie Lamont Harmon

Plaintiff Rickie Lamont Harmon lacks any form of Act 23 ID, yet he has the required documents necessary to obtain from DMV a free state photo identification card for purposes of voting. In a sworn response to interrogatories, Mr. Harmon stated that he has “not made any efforts as yet to obtain any of [the] forms of identification [listed in Wis. Stat. § 5.02(6m)].” (Kawski Decl., Ex. K at p. 4.) Mr. Harmon possesses a VIC and resides at a homeless shelter for veterans, VETS Place Central at 3330 West Wells Street, Milwaukee, WI 53208. (Dkt. #33-7.) Presumably, Mr. Harmon would like to use his VIC to vote, as opposed to obtaining a form of Act 23 ID for voting.

Mr. Harmon possesses a certified copy of his State of Illinois birth certificate, his military discharge papers, a Social Security card, and documents showing his proof of residency. (Kawski Decl., Ex. K at pp 4-6.) Mr. Harmon possesses all necessary documents to obtain, for purposes of voting, a free Wisconsin state identification card from DMV under Wis. Stat. ch. 343 and Wis. Admin. Code ch. TRANS 102. (Miller Decl., ¶¶ 9-11.)

c. Sam Bulmer

Plaintiff Sam Bulmer is a homeless veteran that lacks any form of Act 23 ID. (Dkt. #33-2.) However, he has not made any efforts to obtain a Wisconsin state identification card for purposes of voting. In a sworn response to interrogatories, Mr. Bulmer stated: “I have asked around to find out where the local DMV offices are, but I have not made any efforts yet to obtain a Wisconsin state ID card. I understand that filling out the application would be futile without a certified copy of my birth certificate from the State of Kansas.” (Kawski Decl., Ex. F at p. 4.)

d. Pamela Dukes

Plaintiff Pamela Dukes lacks any form of Act 23 ID and does not possess a certified copy of her birth certificate or a Social Security card. (Dkt. #33-3.); (Kawski Decl., Ex. G at p. 4.) She has not tried to obtain a Wisconsin state photo identification card from DMV. In sworn responses to interrogatories, Ms. Dukes stated: “I do not have a birth certificate and I have been told I need a birth certificate to get a Wisconsin state ID card. I have not tried to get the Wisconsin state ID card because I don’t have a birth certificate.” (*Id.*) Ms. Dukes, who was born in Illinois, also testified that “the Illinois birth certificate costs money and I have limited income and a lot of bills and expenses, so I have not paid the money to request it.” (*Id.* at p. 6.)

Ms. Dukes also lacks a Social Security card, but she receives Social Security disability benefits. (*Id.* at p. 6); (Dkt. #33-3). Ms. Dukes testified regarding her efforts to obtain a Social Security card: “I went down to the Social Security office a few months ago to try and get a card, and they told me I needed some papers from my doctor to get a card. I have not been able to do this yet.” (Kawski Decl., Ex. G at p. 6.)

e. Barbara Oden

Plaintiff Barbara Oden lacks any form of Act 23 ID and has tried to obtain a Wisconsin state photo identification card. (Dkt. #33-9). Ms. Oden has a certified copy of her birth certificate. (Kawski Decl., Ex. M at p. 5.) However, she lacks any form of proof of identity required by DMV to obtain a state photo identification card. (*Id.*) Ms. Oden was told by DMV that she needs to get a copy of her Social Security card to obtain a state photo identification card. (*Id.*) She was not able to obtain a Social Security card from the Social Security Administration. (Dkt. #33-9 at p. 2.)

f. DeWayne Smith

Plaintiff DeWayne Smith lacks any form of Act 23 ID and has tried to obtain a Wisconsin state photo identification card from DMV. (Dkt. #33-10.) He has a certified copy of his birth certificate. (Kawski Decl., Ex. N at p. 5.) He has attempted to obtain a state photo ID card on multiple occasions, but has been unable to because he lacks a Social Security card. (*Id.* at p. 4.) He lost his Social Security card and has been unable to get a replacement. (*Id.* at pp. 6-7.)

g. Shirley Brown

Plaintiff Shirley Brown lacks any form of Act 23 ID and has tried to obtain a Wisconsin state photo identification card from DMV. (Dkt. #35.) She lacks a certified copy of her birth certificate and was born in Louisiana. (Kawski Decl., Ex. P at pp. 7-8.) In January 2012, Ms. Brown's son sent an application for a certified copy of her birth certificate to the Louisiana Center for Records and Statistics. (*Id.* at p. 8.) The State of Louisiana sent Ms. Brown's son a copy of a birth certificate for Ms. Brown's sister instead of a birth certificate for Ms. Brown. (*Id.*)

h. Carl Ellis

Plaintiff Carl Ellis is a homeless veteran and lacks any form of Act 23 ID. (Dkt. #33-4.) He has no birth certificate and asserts that he cannot afford to purchase a certified copy of his Illinois birth certificate for \$15. (*Id.*)

However, Mr. Ellis has tried to obtain a certified copy of his Illinois birth certificate. He testified:

[M]ore than one year ago, when I was living in Stevens Point, Wisconsin, I went to a church to get help with getting a birth certificate. It is my understanding that the church submitted an application for a birth certificate and a check to pay for it on my behalf. I understood it was to be mailed to me at 1100 College Avenue in Stevens Point, where I

was living at the time, but I never receive it. I spoke with someone at the church later, and they said they did not receive it either.

(Kawski Decl., Ex. H at p. 7.)

i. Mariannis Ginorio

Plaintiff Mariannis Ginorio lacks any form of Act 23 ID, and she possesses an “old” Puerto Rican birth certificate. (Dkt. #33-6.) Ms. Ginorio asserts that she was told by DMV that her old Puerto Rican birth certificate would not be accepted because it was issued before 2010. (Kawski Decl., Ex. J at p. 4.) Ms. Ginorio has a Social Security card. (*Id.* at p. 5.) She asserts that she does not have any of the forms of identification listed on the Puerto Rican birth certificate application and would have to pay to get a new birth certificate. (*Id.* at p. 6.)

j. Nancy Lea Wilde

Plaintiff Nancy Lea Wilde lacks any form of Act 23 ID. (Dkt. #33-11.) She has been told by the Marathon County, Wisconsin, Register of Deeds office and the Wisconsin Vital Records Office that there is no record of her birth on file. (*Id.*) Mrs. Wilde has a hospital certificate of her birth and a baptismal certificate. (*Id.*) She testified that she was told by DMV that she could obtain a “certification from the Wisconsin Vital Records office in Madison, Wisconsin that there is no record of [her] birth on file and that [she] could use the hospital certificate and baptismal certificate instead to obtain [her] state ID card.” (*Id.*)

k. Eddie Lee Holloway, Jr.

Plaintiff Eddie Lee Holloway, Jr. lacks any form of Act 23 ID. (Dkt. #33-8.) His name is misspelled as “Eddie Junior Holloway” on his Illinois birth certificate. (*Id.*) Mr. Holloway’s Social Security card has the name “Eddie L Holloway Jr.” on it, and his expired Illinois photo ID card has “Eddie L Holloway Jr” on it. (*Id.*) He asserts that when he visited DMV in Milwaukee

County to get his free Wisconsin state photo identification card he was told that DMV would not issue him a card because the name on his birth certificate is not exactly the same as the name on his Social Security card or his Illinois photo ID card. (*Id.*) Mr. Holloway testified that the Illinois vital records office told him that he “would need a legal proceeding to fix [his] birth certificate.” (Kawski Decl., Ex. L at p. 5.) Mr. Holloway was not told how much that proceeding would cost. (*Id.*)

2. The State’s interests.

The State has numerous important interests at stake. These interests must be weighed against the burdens to Plaintiffs of obtaining Act 23 ID.

The United States Supreme Court “has made clear that a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction,” but this right “is not absolute.” *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972). “[T]he States have the power to impose voter qualifications and to regulate access to the franchise in other ways.” *Id.* When the Court considers a challenge under the Fourteenth Amendment, it thus applies “more than one test, depending upon the interest affected or the classification involved.” *Id.* at 335.

Accordingly, the Supreme Court has rejected a “litmus-paper test” for “[c]onstitutional challenges to specific provisions of a State’s election laws” and instead has applied a “flexible standard.” *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983); *Burdick v. Takushi*, 504 U.S. 428, 434 (1992); *Crawford*, 553 U.S. at 190 n. 8. Under this standard, “a court must identify and evaluate the interests put forward by the State as justifications for the burden imposed by its rule, and then make the ‘hard judgment’ that our adversary system demands.” *Crawford*, 553 U.S. at 190. A regulation that imposes a “severe” burden must be “narrowly drawn to advance a state

interest of compelling importance,” *Burdick*, 504 U.S. at 434 (internal quotation marks omitted), but “reasonable, nondiscriminatory restrictions” that impose a minimal burden may be warranted by “the State’s important regulatory interests.” *Anderson*, 460 U.S. at 788. “However slight the burden may appear, . . . it must be justified by relevant and legitimate state interests sufficiently weighty to justify the limitation.” *Crawford*, 553 U.S. at 190 (internal quotation marks omitted).

In *Crawford*, the Court plainly recognized the legitimacy and importance of the State’s interests in deterring and detecting voter fraud, promoting orderly election administration and accurate recordkeeping, and safeguarding public confidence in the integrity of the election process. *Crawford*, 553 U.S. at 191-97. The Court did not require the State to present evidence to justify those interests, but rather said:

There is no question about the legitimacy or importance of the State’s interest in counting only the votes of eligible voters. Moreover, the interest in orderly administration and accurate recordkeeping provides a sufficient justification for carefully identifying all voters participating in the election process. While the most effective method of preventing election fraud may well be debatable, the propriety of doing so is perfectly clear.

*Id.* at 196. Likewise, the Court readily acknowledged the independent importance of the State’s interest in promoting public confidence in the integrity of the electoral process. *Id.* at 197. Other post-*Crawford* decisions in voting ID cases have recognized the same State interests with equal readiness. See, e.g., *Democratic Party of Georgia, Inc. v. Perdue*, 707 S.E.2d 67, 75 (Ga. 2011); *League of Women Voters of Indiana v. Rokita*, 929 N.E.2d 758, 767-69 (Ind. 2010); *Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1353-54 (11th Cir. 2009).

Plaintiffs nonetheless suggest that the State’s interest in preventing fraud is not legitimate enough to justify photo identification requirements because there is no evidence of recent instances of voter impersonation fraud in Wisconsin. (Dkt. #33 at pp. 19-20.) That argument fails for a couple of reasons. First, the argument has been specifically rejected in *Crawford* and

*Common Cause/Georgia*. See *Crawford*, 553 U.S. at 191-97; *Common Cause/Georgia*, 554 F.3d at 1353-54. In particular, the Seventh Circuit decision in *Crawford* pointed out that, in the absence of effective voter identification procedures, voter impersonation fraud is very difficult to detect. *Crawford v. Marion County Election Board*, 472 F.3d 949, 953-54 (7th Cir. 2007), *aff'd* 553 U.S. 181 (2008). The absence of prosecutions for that type of fraud, therefore, does not compel the conclusion that such fraud does not occur. On the contrary, the alleged infrequency of prosecutions for voter impersonation fraud is equally consistent with either of two possibilities: (a) that such fraud does not occur; and (b) that such fraud occurs but goes undetected. In the absence of additional probative evidence, the infrequency of such prosecutions, without more, is insufficient to confirm that such fraud does not exist.

Moreover, even if voter impersonation fraud could be affirmatively shown to be rare in Wisconsin at the present time, history nonetheless shows such fraud to be a real and significant danger. The United States Supreme Court has expressly recognized that danger and has held that states have a legitimate and important interest in addressing it by imposing reasonable photo identification requirements that will prevent such fraud. *Crawford*, 553 U.S. at 195 (noting that “flagrant examples of such fraud in other parts of the country have been documented throughout this Nation’s history by respected historians and journalists.”). Constitutional principles do not require a state to wait until a particular type of voter fraud has become a serious problem before it takes reasonable affirmative steps to prevent such fraud.

Second, it is not true that photo identification requirements *only* protect against the type of fraud in which a would-be voter tries to impersonate another individual on the registration roll. Photo identification requirements also provide protections against unlawful voting under invalid voter registrations. For example, photo identification requirements will make it easier to identify

and prevent unlawful voting by a registered voter who has subsequently been convicted of a felony or by a person who is not a United States citizen, but who has established residency in Wisconsin and has managed to register to vote in the past. Similarly, photo identification requirements will help to deter and prevent: (1) unlawful voting by registered Wisconsin voters who no longer maintain residency in this state but have not yet been removed from the registration rolls; and (2) unlawful double voting by individuals who register to vote in more than one state.

Therefore, even if it could be proved that it is currently uncommon for one registered voter to impersonate another registered voter at the polls, the State would still have a legitimate and important interest in addressing the significant risk of these other forms of unlawful voting by requiring voters to provide proof of identification when they vote.

The State has a legitimate and important interest in promoting public confidence in elections. *Crawford*, 553 U.S. at 197. The Supreme Court noted:

public confidence in the integrity of the electoral process has independent significance, because it encourages citizen participation in the democratic process. As the Carter–Baker Report observed, the “electoral system cannot inspire public confidence if no safeguards exist to deter or detect fraud or to confirm the identity of voters.”

*Id.* (quoting National Commission on Federal Election Reform, *To Assure Pride and Confidence in the Electoral Process*, at 1618 (2002)). In our democratic system of governance, promoting public confidence in elections is an important good in its own right, without regard to whether the current level of voter confidence can be correlated with voter turnout statistics. Where there is evidence of an erosion of public confidence in the integrity of elections, the State is entitled to act to arrest that erosion and is not required to postpone remedial action until voters have become so demoralized that they have permanently given up on the voting process. Moreover, even if public confidence in electoral integrity could never be shown to result in a measurable increase in

turnout, the State would still have a legitimate and important interest in promoting such confidence for the purpose of generally encouraging a healthy respect for our democratic institutions.

Considering the State's important interests in seeing that the photo identification requirement created by Act 23 is enforced, and balancing those interests against the alleged burdens that Plaintiffs face, the Court must "make the 'hard judgment' that our adversary system demands." *Crawford*, 553 U.S. at 190. However, in sum, Plaintiffs have not shown that Act 23 *itself* imposes "excessively burdensome requirements" on their right to vote, particularly when balanced against the State's important interests. *Id.* at 202 (citation omitted). Their unique and discrete difficulties in obtaining certain forms of Act 23 ID stem from their inability to obtain particular documents required by TRANS 102, not from something inherent to the photo identification requirement created by Act 23. Thus, they are not likely to succeed on the merits of their due process and equal protection claims.

- B. Plaintiffs are not likely to succeed on the merits of their claim that the Wisconsin Legislature's decision not to include VICs as a permitted form of photo identification for voting is unconstitutional.

Plaintiffs are not likely to succeed on the merits of their claim that the Wisconsin Legislature's decision not to include VICs as a permitted form of photo identification for voting is unconstitutional. Plaintiffs argue that there is no rational basis for this policy decision by the Legislature. (*See* Dkt. #33 at p. 25.) Plaintiffs are incorrect.

In *McGowan v. Maryland*, 366 U.S. 420 (1961) the United States Supreme Court described the rational basis test:

[T]he Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The constitutional

safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.

*Id.* at 425-26. A court will not strike down a state policy merely because it “may be unwise, improvident, or out of harmony with a particular school of thought.” *Eby-Brown Co., LLC v. Wis. Dep’t of Agric., Trade & Consumer Prot.*, 295 F.3d 749, 754 (7th Cir. 2002). Rather, the rational basis inquiry requires the Court to consider only whether any state of facts reasonably may be conceived to justify the classification, and it is enough that a purpose may conceivably or may reasonably have been the purpose and policy of the relevant governmental decisionmaker even if the decisionmaker never articulated that rationale. *Racine Charter One, Inc. v. Racine Unified Sch. Dist.*, 424 F.3d 677, 685 (7th Cir. 2005) (citations and internal quotations omitted).

There is a rational basis for the Legislature to exclude VICs. Unlike some of the other forms of acceptable Act 23 ID for purposes of voting, VICs do not include an expiration or issuance date. (*See* Dkt. #34-9); (Kawski Decl., Ex. Q (depicting the front and back of an example VIC).) Without an expiration or issuance date, it is not possible to judge when the VIC was created or issued to determine whether the photograph on it is current as to provide an accurate, current visual depiction of the cardholder. Without a relatively current photograph to identify an individual cardholder, VICs do not serve as a good proxy to confirm a voter's identity at the polls.

Of course, the Legislature could have nonetheless included VICs in Act 23. However, the Legislature has wide latitude in determining the problems it wishes to address and the manner in which it desires to address them. The Supreme Court could not be clearer than it was in *Williamson v. Lee Optical of Oklahoma*:

Evils in the same field may be of different dimensions and proportions, requiring different remedies. Or so the legislature may think. Or the reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. The legislature may select one phase of one field and apply a remedy there, neglecting the others. The prohibition of the Equal Protection Clause goes no further than the invidious discrimination. We cannot say that that point has been reached here.

348 U.S. 483, 489 (1955) (internal citations omitted).

Plaintiffs have made it clear that in-person voter fraud is not a problem they would have chosen to address had they been in position to substitute their judgment for that of the Legislature, and, in fact, had they chosen to address this problem at all, they would not have resolved it by requiring the presentation of photo identification at the polls. This is a policy determination that the Legislature is empowered to make, and Plaintiffs' strong desire for a different result does not translate into a constitutional violation. *See Indiana Democratic Party v. Rokita*, 458 F.Supp.2d 775, 829 (S.D. Ind. 2006). Thus, the Legislature's choice to exclude VICs passes rational basis scrutiny, and Plaintiffs are not likely to succeed on the merits of this claim.

- C. Plaintiffs are not likely to succeed on the merits of their claim that Act 23's photo identification requirement constitutes a poll tax.

Plaintiffs assert that "the photo ID law . . . charges voters a fee to exercise a constitutional right." (Dkt. #33 at p. 1.) Plaintiffs' statement is inaccurate. Act 23 establishes no fees for voters.

If what Plaintiffs mean to say is that a discrete number of qualified electors who do not possess a birth certificate might procure a certified copy of one at some cost and then use that certified copy to obtain a free state photo identification card from DMV for purposes of voting,

Plaintiffs' statement is accurate. The relevant legal question is whether the cost related to procuring a birth certificate for that vanishingly small group of affected individuals amounts to an unconstitutional poll tax under controlling law. The answer is: No.

Plaintiffs assert that the photo identification requirement for voting created by Act 23 constitutes a poll tax in violation of the Twenty-fourth Amendment to the United States Constitution and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. (Dkt. #33 at pp. 26-30.) Plaintiffs are incorrect.

The Twenty-fourth Amendment prohibits the charging of a tax in order to vote. It provides that:

The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States for or any State by reason of failure to pay any poll tax or other tax.

U.S. Const. amend. XXIV.

The Seventh Circuit has already held, in evaluating Indiana's photo identification law, that a requirement of photo identification for purposes of voting is not an unconstitutional poll tax. *See Crawford v. Marion County Election Bd.*, 472 F.3d 949, 952 (7th Cir. 2007), *aff'd*, 553 U.S. 181 (2008). That court explained: "The Indiana law is not like a poll tax, where on one side is the right to vote and on the other side the state's interest in defraying the cost of elections or in limiting the franchise to people who really care about voting or in excluding poor people or in discouraging people who are black. The purpose of the Indiana law is to reduce voting fraud, and voting fraud impairs the right of legitimate voters to vote by diluting their votes-dilution being recognized to be an impairment of the right to vote." *Id.* (citing *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006); *Reynolds v. Sims*, 377 U.S. 533, 555 (1964); *Siegel v. LePore*, 234 F.3d 1163, 1199 (11th Cir. 2000)).

However, Plaintiffs do not argue that requiring voters to show identification at the polls is itself a poll tax. Rather, Plaintiffs argue that, because some voters do not possess the identification required, those voters will be required to spend money to obtain the requisite documentation to obtain a form of Act 23 ID, and that this payment is equivalent to a tax on the right to vote. (*See* Dkt. #33 at pp. 28-29).

Plaintiffs' analysis is incorrect. Although obtaining identification required under Act 23 may come at some cost to certain Plaintiffs, it is neither a poll tax itself (*i.e.*, it is not a fee imposed on voters as a prerequisite for voting), nor is it a burden imposed on voters who refuse to pay a poll tax. There simply is no poll tax created by Act 23.

This conclusion is consistent with *Harman v. Fornessius*, 380 U.S. 528 (1965), the only Supreme Court case considering the Twenty-fourth Amendment's ban on poll taxes. In *Harman*, the Supreme Court considered a state statute that required voters to either pay a \$1.50 poll tax on an annual basis or go through "a plainly cumbersome procedure," *id.* at 541, for filing an annual certificate of residence. *Id.* at 530-32. There was no dispute that the \$1.50 fee was a poll tax barred by the Twenty-fourth Amendment. *See id.* at 540. Accordingly, the only question before the Court was whether the state "may constitutionally confront the federal voter with a requirement that he either pay the customary poll taxes as required for state elections or file a certificate of residence." *Id.* at 538.

The Court enunciated the rule that a state may not impose "a material requirement solely upon those who refuse to surrender their constitutional right to vote in federal elections without paying a poll tax." *Id.* at 542. Applying this rule, the Court determined that the state's certificate of residence requirement was a material burden: among other things, the procedure for filing the certificate was unclear, the requirement that the certificate be filed six months before the election

“perpetuat[ed] one of the disenfranchising characteristics of the poll tax which the Twenty-fourth Amendment was designed to eliminate,” and the state had other alternatives to establish that voters were residents, including “registration, use of criminal sanction[s], purging of registration lists, [and] challenges and oaths.” *Id.* at 541-43. Accordingly, the Court concluded that “[w]e are thus constrained to hold that the requirement imposed upon the voter who refuses to pay the poll tax constitutes an abridgment of his right to vote by reason of failure to pay the poll tax.” *Id.* at 542.

The photo identification requirement for voting created by Act 23 is not analogous to the requirement in *Harman*. Act 23’s requirement that voters identify themselves at the polling place by showing one of several forms of photo identification is not a poll tax. Voters have only to verify their eligibility by showing identification at the polls, which does not constitute a tax. Nor does Act 23’s photo identification requirement place a material burden on voters “solely because of their refusal to waive the constitutional immunity” to a poll tax. *Harman*, 380 U.S. at 542. Voters are not given the choice between paying a poll tax or obtaining identification; all voters are required to present identification at the polling place. *Cf. Harman*, 380 U.S. at 541-42. Thus, Act 23’s photo identification requirement does not constitute an unconstitutional poll tax in violation of the Twenty-fourth Amendment.

Nor is Act 23’s requirement that voters show identification at the polling place a poll tax under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966), is the leading Supreme Court case considering whether a state law is a poll tax under the Equal Protection Clause and the case upon which Plaintiffs primarily rely. (Dkt. #33 at pp. 27-28.)

In *Harper*, the Supreme Court held that a state law levying an annual \$1.50 poll tax on individuals exercising their right to vote in the state was unconstitutional under the Equal Protection Clause. 383 U.S. at 665-66 & n. 1. The Court held that “the interest of the State, when it comes to voting, is limited to the power to fix qualifications,” *id.* at 668, and that the imposition of poll taxes fell outside this power because “[w]ealth, like race, creed, or color, is not germane to one’s ability to participate intelligently in the electoral process[.]” *Id.* Because the state’s poll tax made affluence of the voter an electoral standard, and such a standard is irrelevant to permissible voter qualifications, the Court concluded that the tax was invidiously discriminatory and a per se violation of the Equal Protection Clause. *Id.* at 666-67.

Act 23’s photo identification requirement falls outside of *Harper*’s rule that “restrictions on the right to vote are invidious if they are unrelated to voter qualifications.” *Crawford*, 553 U.S. at 189-90. The requirement that individuals show documents proving their identity is not an invidious classification based on impermissible standards of wealth or affluence, even if some individuals have to pay for them. On the contrary, requiring individuals to show identification falls squarely within the State’s power to administer elections. Photo identification addresses the most basic voter criterion: That individuals seeking to cast a ballot are who they purport to be and are in fact eligible to vote.

Plaintiffs nonetheless assert that “Wisconsin is imposing an unconstitutional poll tax in the form of the costs of obtaining primary documents.” (Dkt. #33 at p. 29.) This argument is not consistent with *Crawford*. *Crawford* involved an Indiana state requirement that a citizen voting in person or at the office of the circuit court clerk before election day present a photo identification card issued by the government. *Crawford*, 553 U.S. at 185. The state would provide a free photo identification to “qualified voters able to establish their residence and

identity.” *Id.* at 186. A number of plaintiffs challenged this requirement on the ground that the “new law substantially burdens the right to vote in violation of the Fourteenth Amendment.” *Id.* at 187.

Wisconsin, like Indiana, provides free photo identification cards to individuals who need them for voting. Also like Indiana, Wisconsin electors may incur a fee in securing the underlying documentation needed to obtain the free identification card. The Supreme Court’s decision in *Crawford* suggests that this situation is not problematic.

Although the Supreme Court was unable to agree on the rationale for upholding Indiana’s photo identification requirement, neither the lead opinion nor the concurrence held that *Harper*’s per se rule applied to Indiana’s photo identification requirement. *See Crawford*, 553 U.S. at 203. The lead opinion explained that *Harper*’s “litmus test” made “even rational restrictions on the right to vote . . . invidious if they are unrelated to voter qualifications.” *Id.* at 190. But, according to the lead opinion, later election cases had moved away from *Harper* to apply a balancing test to state-imposed burdens on the voting process. *Id.* Under these later cases, a court “must identify and evaluate the interests put forward by the State as justifications for the burden imposed by its rule, and then make the ‘hard judgment’ that our adversary system demands.” *Id.* The lead opinion then proceeded to apply this balancing test to the Indiana photo identification requirement. *Id.*

*Crawford* did not purport to overrule *Harper*, however, which remains as an example of an electoral standard for which a state would never have sufficiently weighty interests to justify the requirement that a fee be paid in order to vote. *Id.* Additionally, although the *Crawford* Court noted that charging a tax or a fee in order to obtain a photo identification card for voting would be problematic under *Harper*, the Court specifically recognized that some of the

*underlying* documentation necessary for obtaining the free photo identification card carries a cost. *Id.* at 198 n. 17. Because *Crawford* did not extend *Harper*'s per se rule to other burdens imposed on voters, but left it applicable only to poll tax requirements, *Crawford* does not support Plaintiffs' argument that Act 23's photo identification requirement is invalid under *Harper*.

In sum, because any payment associated with obtaining the primary documents required to procure Act 23 photo identification is related to the State's legitimate interest in assessing the eligibility and qualifications of voters, the photo identification requirement is not an invidious restriction under *Harper*, and the burden is not sufficiently weighty to be unconstitutional as applied to Plaintiffs under *Crawford*. Act 23's photo identification requirement for voting does not violate either the Twenty-fourth Amendment or the Equal Protection Clause as applied to Plaintiffs, and Plaintiffs are not likely to succeed on the merits of this claim.

D. Plaintiffs cannot demonstrate that they are likely to suffer irreparable harm.

As discussed above, the relief that Plaintiffs have requested is unnecessary. There is no irreparable harm to their right to vote when they can currently obtain an absentee ballot to vote without the need for photo identification. Plaintiffs have not asserted that this alternative procedure for voting offends their constitutional rights.

If the Court concludes that Plaintiffs' request for relief is still necessary, Defendants agree that a likelihood of irreparable harm is presumed in these circumstances. (*See* Dkt. #33 at p. 13 (citing cases).)

- E. Plaintiffs have not demonstrated that the balance of equities tips in their favor or that an injunction is in the public interest.

Plaintiffs have not met the third and fourth factors for a preliminary injunction, namely, “that the balance of equities tips in [their] favor, and that an injunction is in the public interest.” *Winter*, 555 U.S. at 20 (2008) (citations omitted).

Plaintiffs inappropriately discount the State’s and public’s legitimate and weighty interests in seeing that laws that are validly enacted by the Legislature are applied evenhandedly and uniformly to all voters. A law of uniform applicability like Act 23’s photo identification requirement must be applied uniformly to *all* eligible voters choosing to vote at the polls. Special treatment is not contemplated by the law. Surely, the public has an interest in seeing that laws enacted by their elected representatives are applied across the board, as intended. This includes applying the law to Plaintiffs.

III. THE ALTERNATIVE RELIEF THAT PLAINTIFFS HAVE REQUESTED WOULD REQUIRE THE COURT TO CRAFT VOTING PROCEDURES THAT THE LEGISLATURE DID NOT INTEND.

As an alternative to enjoining Act 23, Plaintiffs have requested that the Court craft an affidavit of identity procedure to permit them to vote without photo identification. (Dkt. #32 at p. 1.) The Court should not enter such relief, which would require the Court itself to make policy that it is the province of the Wisconsin Legislature to determine. Plaintiffs have not suggested what information the affidavit would contain, nor have they suggested how this procedure would be administered at the polls on election day. Their suggested alternative relief would require the Court to engage in creating a new requirement for voting out of whole cloth.

Plaintiffs have also proposed that Mr. Bulmer, Mr. Ellis, and Mr. Harmon should be permitted by the Court to vote using their VICs. (*Id.*) Such alternative relief would require the

Court to create and enforce a policy that the Wisconsin Legislature did not intend. The Legislature did not include VICs in Act 23 as a form of identification sufficient for purposes of voting. The Court would essentially be re-writing Act 23 if it allowed these Plaintiffs to use VICs to vote.

### **CONCLUSION**

The relief Plaintiffs have requested is currently unnecessary because the photo identification requirement for voting created by Act 23 has been temporarily and permanently enjoined in state circuit court. If they are registered voters or can register to vote, Plaintiffs can obtain an absentee ballot for voting without photo identification, thus, there is no harm. Their motion for preliminary injunction must be denied.

Even if the Court concludes that Plaintiffs might still be harmed absent injunctive relief, the Court must deny Plaintiffs' motion for preliminary injunction. Plaintiffs have not demonstrated that the photo identification requirement for voting created by Act 23 severely burdens their right to vote.

Dated this 20th day of March 2012.

Respectfully submitted,

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