

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

RUTHELLE FRANK, et al.,

Plaintiffs-Appellees,

v.

SCOTT WALKER, et al.,
Defendants-Appellants.

LEAGUE OF UNITED LATIN
AMERICAN CITIZENS OF
WISCONSIN, et al.,

Plaintiffs-Appellees,

v.

DAVID G. DENINGER, et al.,
Defendants-Appellants.

No. 14-2058 & 14-2059

On Appeal from the United
States District Court for the
Eastern District of Wisconsin

Case Nos. 11-cv-1128 & 12-cv-
185
(The Honorable Lynn S.
Adelman)

**MOTION OF THE ONE WISCONSIN INSTITUTE
FOR LEAVE TO FILE THE ATTACHED AMICUS BRIEF
IN SUPPORT OF PANEL REHEARING OR REHEARING EN BANC**

One Wisconsin Institute, Inc. (“Institute”), a corporation organized under section 501(c)(3) of the Internal Revenue Code, respectfully moves for leave to file the attached amicus brief in support of panel rehearing or rehearing en banc under Federal Rule of Appellate Procedure 29(a) and Seventh Circuit Rule 35. This case

raises important issues regarding the enforceability of Wisconsin's photo ID law. The Institute has conducted research and published information relating to access to Wisconsin Department of Motor Vehicles ("DMV") service centers.

On September 12, 2014, a three-judge panel of this Court lifted the trial court's injunction and allowed the state to implement Wisconsin's photo ID law. The panel did not appear to have the benefit of information relating to access to DMVs before rendering its decision. OWN believes that the attached amicus brief setting forth the inaccessibility issues with Wisconsin's DMVs would be of substantial assistance to this Court.

On September 16, 2014, Plaintiffs-Appellees filed a joint motion for a panel rehearing or rehearing en banc. OWN will file 30 copies of the attached amicus brief should the Court grant the motion.

Dated this 22nd day of September 2014.

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Nos.14-2058& 14-2059

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On Appeal from the
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**BRIEF FOR THE ONE WISCONSIN INSTITUTE
AS AMICUS CURIAE IN SUPPORT OF
PANEL REHEARING OR REHEARING EN BANC**

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CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 14-2058

Short Caption: Frank v. Walker

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.

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(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

One Wisconsin Institute, Inc.

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Rebecca Mason Law LLC

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

Attorney's Signature: s/ Rebecca K. Mason Date: 09/19/2014

Attorney's Printed Name: Rebecca K. Mason

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes [X] No []

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- Indiana Bureau of Motor Vehicles, *Branch Locations and Hours*, available at: www.in.gov/bmv/2337.htm. 6-7
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- Milwaukee Journal Sentinel, *Appeals panel reinstates Wisconsin's voter ID law, September 12, 2014*, available at: <http://www.jsonline.com/news/appeals-panel-questions-why-voter-id-shouldnt-be-in-place-nov-4-b99350157z1-274904111.html> (last visited September 22, 2014). 6
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Wisconsin Towns Association, *Towns Quick Facts*, available
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STATEMENT OF INTEREST

The One Wisconsin Institute (“Institute”) is a research and education corporation organized under section 501(c)(3) of the Internal Revenue Code. Using research, communications and organizing, the Institute has opposed unnecessary restrictions on the right to vote, and provided research-based fact-checking on the need for photo ID. Research, legal information and communications conducted by the Institute have been relied upon by organizations across the state and featured in local, state and national media.

During the time the Wisconsin State Legislature was debating 2011 Assembly Bill 7, which was enacted as Wisconsin’s photo ID law, the Institute conducted extensive research on the location and accessibility of the Wisconsin Department of Transportation, Division of Motor Vehicle (“DMV”) service centers. In light of the U.S. Supreme Court’s decision in *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 194-95 (2008), the Institute compared Wisconsin’s DMV accessibility to that of Indiana’s Bureau of Motor Vehicle service centers.

Wisconsin’s DMV service centers remain inaccessible for many Wisconsin citizens due to the limited and sporadic hours of operation and lack of transportation to reach many service centers. Inaccessibility of Wisconsin’s DMV

service centers is an important component of this Court's analysis: There are an inadequate number of DMV service centers in the state; the DMV service centers hours are limited, with only three offices in the entire state open on a weekend; and there is little to no public transportation to assist eligible electors in reaching many DMV service centers. As a result, the DMV service centers are ill-equipped to meet the voter access issues that will almost certainly arise if Wisconsin's photo ID law remains in effect.

Counsel for One Wisconsin Institute authored this brief in whole.

ARGUMENT

This Court's September 12, 2014, Order lifted the trial court's injunction after concluding the Wisconsin photo ID law is "materially identical to Indiana's photo ID statute." Although the Wisconsin and Indiana statutory language may be similar, the practical realities of Wisconsin voters' access to the state's Department of Motor Vehicles ("DMV") – the agency with exclusive responsibility for issuing the most prevalent forms of qualifying photo ID – invalidate this conclusion. The three-judge panel overlooked the lack of DMV access and the resulting harm to the franchise for potentially tens of thousands of eligible electors in Wisconsin.

The September 12 Order also makes a finding that the State of Wisconsin has reduced the likelihood of irreparable injury because the Wisconsin Supreme Court "revised the procedures to make it easier for persons who have difficulty

affording any fees to obtain the birth certificates or other documentation needed under the law.” The financial cost of any fees related to obtaining a photo ID, however, is only part of the equation. As the trial court noted, many Wisconsin voters do not have access to the state’s DMVs, resulting in a significant barrier to ballot access despite any fee waiver. *See Frank v. Walker*, No. 11–CV–01128, 12–CV–00185, 2014 WL 1775432, at *29-30 (E.D. Wis. Apr. 29, 2014).

The systemic DMV inaccessibility was exacerbated on Thursday, September 18, 2014, when the state DMV suffered a computer outage that prevented all state DMVs from issuing any photo ID card for nearly two hours.¹ That agency has also admitted that it has no additional funding to address the increased demand that will result from the implementation of the photo ID law.² With the implementation of Wisconsin’s photo ID law so close to the November election, each and every hour the DMVs are in operation is essential to limit the number Wisconsin citizens who will be disenfranchised. If the photo ID law remains in effect for the November election, there can be no room for technological – or other – glitches.

¹ Milwaukee Journal Sentinel, *DMV Computers Go Down For More Than An Hour*, <http://www.jsonline.com/news/statepolitics/dmv-computers-go-down-for-nearly-two-hours--b99354544z1-275660471.html>, September 18, 2014 (last visited on September 22, 2014).

² Racine Journal Times, *State has no budget for voter ID, agencies say*, September 21, 2014 available at: http://journaltimes.com/news/local/state-and-regional/state-has-no-budget-for-voter-id-agencies-say/article_e36e566f-fd37-5937-8681-3d664770ac5e.html (last visited on September 22, 2014).

I. Wisconsin's DMV Service Centers Are Excessively Limited In Number and Hours of Operation.

At trial, witnesses testified about various difficulties they faced in their efforts to obtain qualifying state-issued photo identification. *Frank*, 2014 WL 1775432, at *32-33, fn 17. The trial court judge found these witnesses credible and determined that Wisconsin's DMVs have accessibility issues. *Id.* at *29-30.

Many of the difficulties recognized by the trial judge are inescapable due to DMV inaccessibility. Wisconsin has an inadequate number of DMV service centers: only 92 DMV service centers operate in the entire state.³ This limited number of centers is significant because many Wisconsin voters are without access to transportation. Approximately 257,000, or 6.2 percent of voting-age Wisconsin citizens, live in a household without any access to a vehicle.⁴ Of those without access to a vehicle, more than 18 percent -- nearly 50,000 individuals -- live more than 10 miles from a DMV service center.⁵

³ See Wisconsin Department of Transportation, *DMV Service Centers*, available at <http://www.dot.wisconsin.gov/about/locate/dmv/> (last visited September 18, 2014). See also *Frank v. Walker*, No. 11-CV-01128, 12-CV-00185, 2014 WL 1775432, at *30 (E.D. Wis. Apr. 29, 2014).

⁴ Gaskins, Keesha and Sundeep Iyer, *The Challenge of Obtaining Voter Identification*, Brennan Center for Justice at the New York University School of Law, at 4, July 17, 2012, available at: http://www.brennancenter.org/content/resource/the_challenge_of_obtaining_voter_identification (last visited September 17, 2014).

⁵ *Id.*

Moreover, Wisconsin's DMV services centers operate on a very limited basis. Only three DMV service centers in the entire state are open on a Saturday – one in Madison, two in Milwaukee, and none of these are in a central city or downtown location. All other DMV centers are closed on weekends. One DMV, Madison's Odana Road location is open until 6:00 p.m. regularly, and one additional DMV, Saukville, is open until 6:00 p.m. on Wednesdays. All other locations close by 5:00 p.m.⁶

Other significant accessibility issues lie with the nature of the hours kept by Wisconsin's DMV centers. More specifically, according to the Department of Transportation's website:

- 31 locations are open at least five (5) days per week, typically no later than 5 p.m.;
- One, the Saukville DMV, is open three days per week;
- 49 DMV locations are open two days each week;
- One, the Reedsburg DMV, is open *three (3) days per month* (1st, 2nd, and 3rd Wednesdays, 8:15-4:00);
- Two DMVs are open *two (2) days each month*: Fort Atkinson (2nd and 4th Tuesdays, 8:15-4:30) and Oconomowoc (1st and 3rd Thursdays, 8:15-4:15);
- Three DMVs are open only *one day per month*: Abbotsford (3rd Tuesday, 9-3:45), Luck (3rd Wednesday, 9:30-3), and New Richmond (2nd Tuesday, 8:45-4);

⁶ *DMV Service Centers, supra*, n. 3.

- Four are open for *six days each year*: Minocqua (1st Tuesday in January, March, May, July, September, and November from 9:00-3:45), Phillips (1st Wednesday in February, April, June, August, October, and December from 9:15-3:00); Stanley (4th Tuesdays in February, April, June, August, October and December), and Wittenberg (2nd Wednesdays in January, March, May, July, September, and November from 7:45-4:30). Of these, between now and the election, there is extremely limited availability. Minocqua will only operate the day of the election; Wittenberg will not be open at all; and Phillips and Stanley open only one day before the election (October 1 and October 28, respectively); and,
- One, Sauk City, is open *three days this year* (in 2014, January 29, April 30, October 29).⁷

II. Wisconsin's Excessive DMV Inaccessibility and Large Number Of Eligible Electors Without Photo Identification Limits the Application of *Crawford*.

During oral argument, at least one of the judges on the three-judge panel stated it was “hard to reconcile” the trial court’s decision with the U.S. Supreme Court’s decision in *Crawford*.⁸ One Wisconsin Institute submits to the Court that reconciliation is in the facts: Wisconsin’s DMV inaccessibility stands in stark contrast to the accessibility of the Indiana Bureau of Motor Vehicle (“BMV”). Although Wisconsin has 50 percent more square mileage than Indiana, Indiana has 140 BMV service centers, compared to Wisconsin’s 92. In addition, whereas Wisconsin has only 33 “full-time” locations, nearly all of Indiana’s 140 BMVs are

⁷ *Id.*

⁸ Milwaukee Journal Sentinel, *Appeals panel reinstates Wisconsin’s voter ID law, September 12, 2014*, available at: <http://www.jsonline.com/news/appeals-panel-questions-why-voter-id-shouldnt-be-in-place-nov-4-b99350157z1-274904111.html> (last visited September 22, 2014).

open five days a week.⁹ Indiana also has 124 BMVs open on the weekends.¹⁰ Wisconsin has *three*.¹¹ The landscape of Wisconsin's DMV service centers has little in common with Indiana.

In addition, the district court found that “approximately 300,000 registered voters in Wisconsin, roughly 9% of all registered voters, lack a qualifying ID.” *Frank*, 2014 WL 1775432, at *23. This, too, differs from the Indiana situation addressed in *Crawford*, where an Indiana trial court determined 99 percent of Indiana's voters has photo ID. *Crawford*, 553 U.S. at 218.

At least 300,000 eligible electors in Wisconsin lacking a qualifying photo ID, combined with exceptionally limited DMV hours and locations, will likely result in a bottleneck for voter access. This is especially true given that the law is now being implemented approximately 50 days prior to the November election. Adding up the hours of operation listed on the DMV website, the 92 locations are open for a combined total of 14,816 hours between now and Election Day.¹² If the 300,000 electors attempt to obtain a state-issued photo ID during the few weeks leading up to the upcoming November 4, 2014 election, Wisconsin's DMVs will

⁹ See Indiana Bureau of Motor Vehicles, *Branch Locations and Hours*, available at www.in.gov/bmv/2337.htm (last visited September 18, 2014).

¹⁰ *Id.*

¹¹ *DMV Service Centers*, *supra*, n. 3.

¹² *Id.*

need to process on average 20 eligible electors each hour of operation. Of course, the number of eligible electors who do not possess a photo ID is not uniformly spread across the state. For example, Professor Matthew Barreto, an expert on voting behavior, testified that of 661,958 eligible voters in Milwaukee County, 9.53% or 63,085 voters did not possess an acceptable ID and 34.1% of these voters also lacked primary documents required to obtain an ID card. *Frank*, 2014 WL 1775432, at *80. Milwaukee County has six DMV service centers that will operate for a total of 1880.5 hours between September 15 and November 4, 2014 election day. To process the 63,085 eligible electors in Milwaukee County, Milwaukee's service centers would need to process 33 eligible electors every single hour of operation for the next 50 days.

This systemic inaccessibility helps explain the difficulties faced by witnesses who testified at trial, and reveals that their experiences are far from unique.

Moreover, because Wisconsin's photo ID law effectively transforms the DMV into a gatekeeper of the ballot box, the systemic inaccessibility makes the DMV ill-equipped to perform this role. Wisconsin's DMV service centers are remarkably less accessible than the state's polling places. By state law, Wisconsin must have at least one polling place in each of Wisconsin's 1,851 municipalities.¹³

¹³ *Towns Quick Facts*, Wisconsin Towns Association available at: <http://www.wisctowns.com/about-towns> (last visited September 18, 2014).

Wis. Stat. § 5.25(5)(c). All polling locations are open from 7 a.m. until 8 p.m. on the day of the election. Wis. Stat. § 6.78(1m). It would take the DMV months to reach the same number of hours of access. The DMV is not equipped to be a gatekeeper of the ballot box.

Limited DMV service centers hours present an insurmountable problem for Wisconsin's photo ID law. Thirty-seven DMV service centers will not be open on the November 4, 2014 Election Day.¹⁴ As a result, eligible electors who discover on Election Day that they are lacking a valid photo ID will have severely limited options. Of the remaining 55 DMV centers open on Election Day, *one* is open after 5:00 p.m. *Id.* Wisconsin election law requires polls to remain open until 8:00 p.m. An eligible elector who attempts to vote after 5:00 p.m. on Election Day and discovers he or she needs to obtain a photo ID will be unable to vote. Because Wisconsin's voter ID law provides no exceptions for a voter who fails to obtain a photo ID prior to Election Day, the limited number and hours of Wisconsin's DMV service centers will likely deprive tens of thousands of eligible electors of their right to vote.

CONCLUSION

Inaccessibility of Wisconsin DMVs creates a significant – and for some, insurmountable – barrier to obtaining a photo ID, even under a best-case scenario.

¹⁴ *DMV Service Centers, supra*, n.3.

Rushed implementation of the photo ID law just 50 days prior to the November election will result in disenfranchisement of potentially hundreds of thousands of eligible electors. This Court should grant the motion for Panel Rehearing or Rehearing En Banc, thereby vacating the three-judge panel Order.

Respectfully submitted this 22nd day of September 2014.

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements of Rule 32(a)(5) of the Federal Rules of Appellate Procedure and the type style requirements of Rule 32(a)(6) because this brief has been prepared in a proportionally spaced typeface with serifs using Microsoft Office Word with 14-point Times New Roman font in text and 12-point Times New Roman font in the footnotes. This brief further complies with the volume limitation requirements of Rule 32(a)(7)(B) and (C) and Rule 29(d) because this brief is not more than one-half the maximum length of 15 pages, or 7,000 words, authorized by the rules for the principal parties' Brief in Support of their Motion for a Panel Rehearing or Rehearing En Banc, and this brief contains 2,120 words, inclusive of footnotes.

Dated this 22nd day of September 2014.

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CERTIFICATE OF SERVICE

I, Rebecca K. Mason, certify that on September 22, 2014, I electronically filed the foregoing Motion of the One Wisconsin Institute for Leave to File an Amicus Brief in Support of Panel Rehearing or Rehearing En Banc with the Clerk of Courts in the United States Court of Appeals for the Seventh Circuit by using the CM/ECF System. If the motion is granted, I will send 30 copies of the attached amicus brief to the Clerk of Courts by FedEx.

I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated this 22nd day of September, 2014.

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