

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

RUTHELLE FRANK, CARL ELLIS, JUSTIN LUFT, DARTRIC DAVIS, BARBARA ODEN, SANDRA JASHINSKI, PAMELA DUKES, ANTHONY SHARP, ANTHONY JUDD, ANNA SHEA, MATTHEW DEARING, MAX KLIGMAN, SAMANTHA MESZAROS, STEVE KVASNICKA, SARAH LAHTI, DOMONIQUE WHITEHURST by his mother and next friend SABRENA PUTNAM, and EDWARD HOGAN

Plaintiffs,

v.

SCOTT WALKER, in his official capacity as Governor of the State of Wisconsin;

JUDGE THOMAS BARLAND, JUDGE GERALD C. NICHOL, JUDGE MICHAEL BRENNAN, JUDGE THOMAS CANE, JUDGE DAVID G. DEININGER, JUDGE TIMOTHY VOCKE, in their official capacities as Members of the Wisconsin Government Accountability Board, KEVIN J. KENNEDY, in his official capacity as Director and General Counsel of the Wisconsin Government Accountability Board, and NATHANIEL E. ROBINSON, in his official capacity as Administrator of the Elections Division of the Wisconsin Government Accountability Board;

MARK GOTTLIEB, in his official capacity as Secretary of the Wisconsin Department of

Civil Action File No. _____

COMPLAINT

Transportation; LYNNE JUDD, in her official capacity, as Administrator of the Division of Motor Vehicles; KRISTINA BOARDMAN, in her official capacity as Director of the Bureau of Field Services at the Division of Motor Vehicles; DONALD D. REINCKE his official capacity as Region Manager of the DMV Bureau of Field Services office for the Southwest Region; TRACY JO HOWARD, in her official capacity as Region Operational Manager of the DMV Bureau of Field Services office for the Southwest Region; SANDRA M. BRISCO in her official capacity as Region Manager of the DMV Bureau of Field Services office for the Southeast Region; BARNEY L. HALL, in his official capacity as Region Operational Manager of the DMV Bureau of Field Services office for the Southeast Region; DONALD J. GENIN, in his official capacity as Region Manager of the DMV Bureau of Field Services office for the Northeast Region; JILL LOUIS GEOFFROY, in her official capacity as Region Manager of the DMV Bureau of Field Services office for the North Central Region; PATRICIA A. NELSON, in her official capacity as Region Manager of the DMV Bureau of Field Services office for the Northwest Region;

Defendants.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Plaintiffs Ruthelle Frank, Carl Ellis, Justin Luft, Dartric Davis, Barbara Oden, Sandra Jashinski, Pamela Dukes, Anthony Sharp, Anthony Judd, Anna Shea, Matthew Dearing, Max Kligman, Samantha Meszaros, Steve Kvasnicka,

Sarah Lahti, Domonique Whitehurst by his mother and next friend Sabrena Putnam, and Edward Hogan (collectively, “Plaintiffs”), who are eligible Wisconsin voters, bring this action to protect their right to vote under the United States Constitution and federal law. Wisconsin’s voter identification law, 2011 Wisconsin Act 23 (“the photo ID law”), will—as applied to these voters and the classes of voters they represent—deprive them of their fundamental right to vote.

Plaintiffs, through their undersigned counsel, bring this Complaint against Defendant Scott Walker, in his official capacity as Governor of the State of Wisconsin (“Governor Walker”); Judge Thomas Barland, in his official capacity as Chair of the Wisconsin Government Accountability Board (“GAB”); Judge Gerald C. Nichol, in his official capacity as Vice Chair of the GAB; Judge Michael Brennan, in his official capacity as a member of the GAB; Judge Thomas Cane, in his official capacity as a member of the GAB; Judge David G. Deininger, in his official capacity as a member of the GAB; Judge Timothy Vocke, in his official capacity as a member of the GAB; Kevin J. Kennedy, in his official capacity as Director and General Counsel of the GAB; Nathaniel E. Robinson, in his official capacity as Administrator of the Elections Division of the GAB (“the GAB Defendants”); Defendant Mark Gottlieb, in his official capacity as Secretary of the Wisconsin Department of Transportation (“WisDOT”) (“Secretary Gottlieb”); Defendant Lynne Judd, in her official capacity as the Administrator of the Division

of Motor Vehicles (“DMV”) at WisDOT; Defendant Kristina Boardman, in her official capacity as the Director of the Bureau of Field Services at the DMV; Defendants Donald D. Reincke and Tracy Jo Howard, in their respective official capacities as Region Manager and Region Operational Manager of the DMV Bureau of Field Services office for the Southwest Region; Defendants Sandra M. Brisco and Barney L. Hall in their respective official capacities as Region Manager and Region Operational Manager of the DMV Bureau of Field Services office for the Southeast Region; Defendant Donald J. Genin in his official capacity as Region Manager of the DMV Bureau of Field Services office for the Northeast Region; Defendant Jill Louis Geoffroy in her official capacity as Region Manager of the DMV Bureau of Field Services office for the North Central Region; and Defendant Patricia A. Nelson in her official capacity as Region Manager of the DMV Bureau of Field Services office for the Northwest Region (“the WisDOT/DMV Defendants”) (collectively, “Defendants”). Plaintiffs allege upon knowledge as to their own conduct and observations and upon information and belief as to the conduct of others:

NATURE OF THE ACTION

1. This action seeks declaratory and injunctive relief against Wisconsin state officials’ enforcement of 2011 Wisconsin Act 23 (the “photo ID law”), which requires voters in Wisconsin to present photo identification in order to cast their

votes either in person at a polling place or by absentee ballot. This requirement will be effective as of Wisconsin's spring primary on February 21, 2012.

2. This lawsuit seeks a declaratory judgment that the photo ID law is unconstitutional as applied to certain classes of eligible Wisconsin voters, and to enjoin its enforcement with respect to these classes. The photo ID law imposes a severe and undue burden on the fundamental right to vote under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution; violates the Twenty-Fourth and Fourteenth Amendments to the United States Constitution as an unconstitutional poll tax; and violates the Equal Protection Clause of the Fourteenth Amendment in arbitrarily refusing to accept certain identification documents.

PARTIES

3. Each of the plaintiffs named in this Complaint is a citizen of the United States, a resident of the State of Wisconsin, and is, or will be on or before February 21, 2012, a duly qualified elector eligible to vote in local, state, and federal elections in Wisconsin. Every United States citizen age 18 or older who has resided in an election district or ward in the State of Wisconsin for 28 consecutive days before any election where the citizen offers to vote is an eligible elector (hereinafter, "eligible Wisconsin voter"). Wis. Stat. § 6.02(1).

4. Plaintiff Ruthelle Frank is an 84-year-old Caucasian resident of Brokaw, Wisconsin, where she has served on the Village Board since 1996, and an eligible voter registered to vote in Wisconsin. She has no accepted form of photo ID under the photo ID law and lacks a certified copy of her birth certificate, which she needs to prove citizenship to the Wisconsin DMV. Ms. Frank was born at her home in Brokaw in 1927. Though she has never possessed a birth certificate, upon information and belief, the state Register of Deeds has a record of her birth and could produce a certified copy of her birth certificate at a charge. However, that record bears an incorrect spelling of her maiden name: Wedepohl. The process to amend a birth certificate is lengthy and costly, with some reports suggesting it might require \$200 or more. She has voted in every election since 1948 and intends to vote in Wisconsin again next year.

5. Plaintiff Carl Ellis is a 52-year-old African-American/Caucasian resident of Milwaukee, Wisconsin and an eligible voter. A veteran of the United States Army, Mr. Ellis is currently living in a homeless shelter for veterans and has no income or savings. Mr. Ellis has no accepted form of photo ID under the photo ID law and lacks a certified copy of his birth certificate from the Illinois Department of Public Health's Vital Records Office. Given his financial circumstances, Mr. Ellis cannot afford to pay for a certified copy of his Illinois birth certificate. He does, however, possess a Veterans Identification Card ("VIC"), which is issued by

the U.S. Department of Veterans Affairs and contains his name and photograph. He intends to vote in Wisconsin next year.

6. Plaintiff Justin Luft is a 20-year-old Caucasian resident of Milwaukee, Wisconsin and an eligible voter. He has no accepted form of photo ID under the photo ID law. He has traveled twice to the Wisconsin DMV office to obtain a state ID card, but was unable to do so due to the lack of a Social Security Card (“SSC”) or any other accepted form of proof of identity. Mr. Luft has visited the Social Security Administration (“SSA”) office five times with his mother in a reasonable, but unsuccessful, effort to obtain a duplicate of his SSC. He does not have a car, and thus, all the trips he has made to try to obtain an SSC and state ID card have been by bus. He intends to vote in Wisconsin next year.

7. Plaintiff Dartric Davis is a 21-year-old African-American resident of Milwaukee, Wisconsin and an eligible voter. Mr. Davis has no accepted form of photo ID under the photo ID law and lacks a certified copy of his birth certificate from the Illinois Department of Public Health’s Vital Records Office. He moved to Wisconsin in 2011 and has never held a Wisconsin driver’s license or Wisconsin state ID card. Mr. Davis has made several attempts to acquire a certified copy of his birth certificate from Illinois, but has so far been unable to do so. He intends to vote in Wisconsin next year.

8. Plaintiff Barbara Oden is a 57-year-old, African-American resident of Milwaukee, Wisconsin and an eligible voter. Ms. Oden has no accepted form of photo ID under the photo ID law and lacks a certified copy of her birth certificate and a Social Security Card (“SSC”). She needs these documents to prove citizenship and identity, respectively, to the Wisconsin DMV in order to obtain a free state ID card. She was denied a SSC by an employee at the Social Security Administration office, who informed her that she must present a photo ID in order to obtain an SSC. Ms. Oden has no income or savings. She intends to vote in Wisconsin next year.

9. Plaintiff Sandra Jashinski is a 48-year-old, Caucasian and Native American (Cherokee) resident of Milwaukee, Wisconsin and an eligible voter. Ms. Jashinski has no accepted form of photo ID under the photo ID law and lacks a Social Security Card (“SSC”), which she requires to prove her identity to the Wisconsin DMV and obtain a free state ID card. An employee at the Social Security Administration office informed Ms. Jashinski that she must present a photo ID in order to obtain an SSC and then denied her an SSC when she could not present a photo ID. As a homeless person, Ms. Jashinski also has no way to prove a current Wisconsin residence street address. She intends to vote in Wisconsin next year.

10. Plaintiff Pamela Dukes is a 51-year-old African-American resident of Milwaukee, Wisconsin and an eligible voter. She has none of the accepted forms of photo ID under the photo ID law and lacks a certified copy of her birth certificate from Cook County, Illinois, which she needs to prove citizenship to the Wisconsin DMV. Ms. Dukes receives monthly Supplemental Security Income (“SSI”) disability benefits, but has no other income or savings. She spends the overwhelming majority of her SSI income on rent, and the remainder is devoted to utility bills and other necessary living expenses. She is therefore unable to afford a certified copy of her Illinois birth certificate. She intends to vote in Wisconsin next year.

11. Plaintiff Anthony Sharp is a 19-year-old, African-American resident of Milwaukee, Wisconsin and an eligible voter. He is living with his mother, possesses none of the accepted forms of photo ID under the photo ID law, and lacks a certified copy of his birth certificate, which he requires to prove citizenship to the Wisconsin DMV. Mr. Sharp has no income or savings and is therefore unable to afford a certified copy of his Wisconsin birth certificate. He intends to vote in Wisconsin next year.

12. Plaintiff Anthony Judd is a 46-year-old, Caucasian resident of Milwaukee, Wisconsin and an eligible voter. He has none of the accepted forms of photo ID under the photo ID law and lacks a certified copy of his New York birth

certificate, which he needs to prove citizenship to the Wisconsin DMV. Mr. Judd has no regular income whatsoever, receives no government benefits, and has no savings. He is therefore unable to afford a certified copy of his New York birth certificate. He intends to vote in Wisconsin next year.

13. Plaintiff Anna Shea is a 20-year-old Caucasian junior at Lawrence University, an accredited four-year private university in Appleton, Wisconsin, and an eligible voter. She lacks all the accepted forms of photo ID under the photo ID law, including a compliant student ID card. She currently holds an unexpired driver's license from the State of Colorado which she does not want to surrender. Ms. Shea voted in the November 2010 general election and intends to vote in Wisconsin next year.

14. Plaintiff Matthew Dearing is an 18-year-old African-American freshman at Lawrence University, an accredited four-year private university in Appleton, Wisconsin, and an eligible voter. He lacks all the accepted forms of photo ID under the photo ID law, including a compliant student ID card. He currently holds an unexpired driver's license from the State of New York which he does not want to surrender. Mr. Dearing intends to vote in Wisconsin next year and will vote for the first time in 2012.

15. Plaintiff Max Kligman is a 19-year-old Caucasian freshman at Lawrence University, an accredited four-year private university in Appleton,

Wisconsin, and an eligible voter. He lacks all the accepted forms of photo ID under the photo ID law, including a compliant student ID card. He currently holds an unexpired driver's license from the State of California which he does not want to surrender. Mr. Kligman intends to vote in Wisconsin next year and will vote for the first time in 2012.

16. Plaintiff Samantha Meszaros is an 18-year-old Caucasian freshman at Carthage College, an accredited four-year private college in Kenosha, Wisconsin, and an eligible voter. She lacks all the accepted forms of photo ID under the photo ID law, including a compliant student ID card. She currently holds an unexpired driver's license from the State of Illinois which she does not want to surrender. Ms. Meszaros intends to vote in Wisconsin next year and will vote for the first time in 2012.

17. Plaintiff Steve Kvasnicka is a 20-year-old Caucasian junior at Carthage College, an accredited 4-year private college in Kenosha, Wisconsin, and an eligible voter. He lacks all the accepted forms of photo ID under the photo ID law, including a compliant student ID card. He currently holds an unexpired driver's license from the State of Illinois which he does not want to surrender. Mr. Kvasnicka intends to vote in Wisconsin next year.

18. Plaintiff Sarah Lahti is an 18-year-old Caucasian resident of Milwaukee, Wisconsin, and a student at Milwaukee Area Technical College ("MATC"), where

she is studying for her GED. She lacks all the accepted forms of photo ID under the photo ID law, including a compliant student ID card. She currently holds an unexpired driver's license from the State of Tennessee which she does not want to surrender. Ms. Lahti has an MATC student ID card with her name and photo. She intends to vote in Wisconsin next year and will vote for the first time in 2012.

19. Plaintiff Domonique Whitehurst, by his mother and next friend Sabrena Putnam, is a 17-year-old African-American and Native American (Blackfoot) student at Milwaukee Area Technical College. He will turn 18 on February 4, 2012, prior to the spring primary. Mr. Whitehurst has an MATC ID card with his name and photo. He has no other accepted form of photo ID under the photo ID law. Mr. Whitehurst intends to vote in Wisconsin next year and will vote for the first time in 2012.

20. Plaintiff Edward Hogan is a 21-year-old Caucasian resident of Milwaukee, Wisconsin, and a student at Milwaukee Area Technical College ("MATC"), where he is studying towards an associate's degree. He lacks all the accepted forms of photo ID under the photo ID law, including a compliant student ID card. Mr. Hogan has an MATC student ID card with his name and photo. He intends to vote in Wisconsin next year.

21. Defendant Scott Walker is the Governor of the State of Wisconsin. He is sued in his official capacity only.

22. Defendant Judge Thomas Barland is the Chair of the Wisconsin Government Accountability Board (“GAB”). Defendant Judge Gerald C. Nichol is the Vice Chair of the GAB. Defendants Judge Michael Brennan, Judge Thomas Cane, Judge David G. Deininger, and Judge Timothy Vocke are the four remaining members of the GAB. The GAB is charged with administering Wisconsin’s election laws and has the authority to promulgate rules applicable to all jurisdictions within the state for the purpose of interpreting or implementing the laws regulating the conduct of elections or ensuring their proper administration. Each of the GAB members listed above is sued in his official capacity only.

23. Defendant Kevin J. Kennedy is the Director and General Counsel of the GAB, and Defendant Nathaniel E. Robinson is the Administrator of the Elections Division of the GAB. They are sued in their official capacities only.

24. Defendant Mark Gottlieb is the Secretary of the Wisconsin Department of Transportation (“WisDOT”), which includes the DMV. He is sued in his official capacity only.

25. Defendant Lynne Judd is the Administrator of the Wisconsin DMV. She is sued in her official capacity only.

26. Defendant Kristina Boardman is the Director of the Bureau of Field Services at the Wisconsin DMV. She is sued in her official capacity only.

27. Defendants Donald D. Reincke and Tracy Jo Howard are, respectively, the Region Manager and Region Operational Manager of the DMV Bureau of Field Services office for the Southwest Region. Defendants Sandra M. Brisco and Barney L. Hall are, respectively, the Region Manager and Region Operational Manager of the DMV Bureau of Field Services office for the Southeast Region. Defendant Donald J. Genin is the Region Manager of the DMV Bureau of Field Services office for the Northeast Region. Defendant Jill Louis Geoffroy is the Region Manager of the DMV Bureau of Field Services office for the North Central Region. Defendant Patricia A. Nelson is the Region Manager of the DMV Bureau of Field Services office for the Northwest Region. The Bureau of Field Services is the entity within DMV responsible for issuing driver's licenses and identification cards. They are sued in their official capacities only.

JURISDICTION AND VENUE

28. This case arises under the Constitution and laws of the United States. This Court has subject matter jurisdiction of this action under 28 U.S.C. §§ 1331, 1343(3) & (4) and 42 U.S.C. § 1983.

29. Venue in this district is proper under 28 U.S.C. § 1391(b)(1), because at least two of the Defendants reside in the Eastern District of Wisconsin and all the Defendants reside in Wisconsin, as well as 28 U.S.C. § 1391(b)(2), because a

substantial part of the events or omissions giving rise to the claims asserted herein have occurred—and continue to occur—in the Eastern District of Wisconsin.

FACTS RELATED TO THE PHOTO ID LAW

30. Prior to the enactment of the photo ID law, no voter in any situation was required to provide any form of proof of identity in order to cast a ballot, much less one of a specified, limited number of photo IDs. Wisconsin voters only needed to provide proof of residence to register to vote in certain situations, but never to cast a ballot. When required, a range of documentation is accepted by Wisconsin election officials to prove residency, including both photo and non-photo forms of identification such as ID cards or licenses of any kind issued by any Wisconsin governmental unit, utility bills, bank account statements, paycheck stubs, any government-issued document, and residential leases.

31. The photo ID law, 2011 Wisconsin Act 23, was signed into law on May 25, 2011 and will be effective for all elections beginning in February 2012. Under the new photo ID law, Wisconsin voters must present one form of photo identification from a limited statutory list in order to cast a ballot.¹ Unlike voter ID laws in other states such as Indiana's photo ID law, which was upheld against a facial challenge in *Crawford v. Marion County Election Board*, 553 U.S. 181

¹ This is in addition to, not instead of, the requirement to register to vote.

(2008), Wisconsin’s photo ID law applies to both in-person voting and most absentee voting.

32. The list of accepted photo IDs in Wisconsin is restricted to only the following: (1) a Wisconsin driver’s license; (2) a Wisconsin state ID card issued by the Wisconsin DMV; (3) an identification card issued by a U.S. uniformed service; (4) a U.S. passport; (5) a certificate of U.S. naturalization that was issued not earlier than 2 years before the date of an election at which it is presented; (6) an unexpired receipt issued at the time of application for a Wisconsin driver’s license or state ID card; (7) an identification card issued by a federally recognized Indian tribe in Wisconsin²; and (8) an unexpired identification card issued by a Wisconsin university or college accredited as defined in Wis. Stat. § 39.30(1)(d), which contains the signature of the individual to whom it is issued, the issuance date, and an expiration date not later than 2 years after the date of issuance (collectively, “accepted photo ID”). Wis. Stat. § 5.02(6m).³ The first four accepted photo IDs

² Upon information and belief, the federally recognized tribes in Wisconsin are: Bad River Band of Lake Superior Chippewa, Forest County Potawatomi, Ho-Chunk Nation, Lac Court Oreilles Band of Lake Superior Chippewa, Lac du Flambeau Band of Lake Superior Chippewa, Menominee Indian Tribe, Oneida Tribe of Indians, Red Cliff Band of Lake Superior Chippewa, St. Croix Chippewa Indians, Sokaogan Mole Lake Community, and Stockbridge Munsee Community.

³ A voter using a college or university ID card must also present separate proof of current enrollment. A discussion of the proof-of-enrollment requirement appears in a September 12th GAB Memorandum. *See* GAB Memorandum, “Photo ID Implementation Issues – Student ID Cards,” Sept. 12, 2011, at 3-4.

must be unexpired or, if expired, must have expired after the date of the most recent general election. Wis. Stat. § 5.02(6m)(a). A voter who is required to surrender his or her operator's license or driving receipt by a law enforcement officer within 60 days of the date of an election may present an original copy of the citation or notice in lieu of the license or receipt for a license, and this too constitutes "accepted photo ID." Wis. Stat. § 6.79(7).

33. The following is a non-exhaustive list of forms of identification that will not be accepted for in-person or absentee voting: (1) any federal photo identification not specifically listed, and thus excluding, among others, Veterans Identification Cards ("VICs"); (2) any Wisconsin government-issued card, license, or document other than a driver's license or state ID card; (3) driver's licenses and state ID cards issued by another state government; (4) any local government-issued card, license, or document; (5) technical college identification cards;⁴ (6) any public or medical assistance benefit cards issued by any unit of government; and (7) any governmental or non-governmental employer photo identification cards.

34. The only voters exempt from showing photo ID when voting in person are electors with proof of confidential elector status due to the existence of a protective order. Wis. Stat. § 6.79(6).

⁴ Certain Wisconsin legislators continue to oppose the use of technical college ID cards and to threaten their valid use as accepted photo ID. *See infra*.

35. The only voters exempt from providing photo identification when voting absentee are military, overseas, or confidential voters, Wis. Stat. §§ 6.34(1), 6.87(4)(b)1; voters in nursing homes, qualified community based residential facilities, qualified adult family homes, and qualified residential care apartment complexes who vote with special voting deputies, Wis. Stat. § 6.875(6)(c), or who live in such a facility but special voting deputies are not sent, and who “submit[] with [their] absentee ballot[s] a statement signed by the same individual who witnesses voting of the ballot that contains the certification of an authorized representative of the complex, facility, or home that the elector resides in the complex, facility, or home and the complex, facility, or home is certified or registered as required by law, that contains the name and address of the elector, and that verifies that the name and address are correct,” Wis. Stat. § 6.87(4)(b)5; voters who are indefinitely confined because of age, physical illness, or infirmity or are disabled for an indefinite period and who, by signing a statement to that effect, require that an absentee ballot be sent to the voter automatically for every election,⁵ Wis. Stat. §§ 6.86(2)(a), 6.87(4)(b)2; and absentee voters who have not changed their names or addresses since the prior time they voted absentee and who previously provided proof of photo identification. Wis. Stat. § 6.87(4)(b)3.

⁵ In these situations, the elector must submit “with his or her absentee ballot a statement signed by the same individual who witnesses voting of the ballot which contains the name and address of the elector and verifies that the name and address are correct.” Wis. Stat. § 6.87(4)(b)2.

36. Under Wis. Stat. § 227.24, *as affected by 2011 Wis. Act 21 and as amended by 2001 Wis. Act 32*, an agency’s proposed emergency administrative rule in final draft form is subject to gubernatorial review before it can be submitted for review by the relevant Standing Committee and the Joint Committee for the Review of Administrative Rules (“JCRAR”) and—barring a legislative override—ultimately promulgated. Wis. Stat. § 227.24(1)(e)1g (“An agency may not file an emergency rule with the legislative reference bureau . . . and an emergency rule may not be published until the governor approves the emergency rule in writing.”); *see also* Wis. Stat. § 227.185 (gubernatorial approval required for non-emergency administrative rules); *see also* Executive Order No. 50. If JCRAR determines a statement of policy or an interpretation of a statute is a rule, it may compel an agency to issue an emergency rule and submit it to the Governor under Act 21. Wis. Stat. § 227.26(2)(b). If the agency is so directed, then it must submit a Statement of Scope for Governor Walker’s review and approval or rejection. Wis. Stat. § 227.24(1)(e)1d. There is no binding statutory deadline by which the Governor must respond to the submitting agency. Even if the Governor approves the Statement of Scope, he/she may still reject an emergency rule when it is subsequently submitted in final draft form. Wis. Stat. § 227.24(1)(e)1g.

37. Initially, the GAB interpreted the photo ID law as not permitting the use of technical college ID cards at the polls. *See* GAB Memorandum, “Photo ID

Implementation Issues – Student ID Cards,” Sept. 12, 2011, at 1-3. At its November 9, 2011 meeting, the GAB reversed course and voted unanimously to find that technical colleges are embraced by the photo ID law’s phrase “a . . . college in this state that is accredited.” Wis. Stat. § 5.02(6m)(f). However, on November 15, 2011, the JCRAR voted 6-4 to force the GAB to issue an emergency rule codifying its interpretation of the photo ID law, a rule that must be submitted to Governor Walker under Act 21 before the legislative review process. The Statement of Scope for an emergency rule addressing the use of technical college ID cards was submitted to Governor Walker on November 22, 2011, and Governor Walker approved it on December 2, 2011. *See* GAB Memorandum, “Promulgation of 3 Emergency Rules as Directed by JCRAR,” for Dec. 13, 2011 Meeting, at 1-3. Ten days after the statement’s publication in the administrative register, GAB may approve the proposed emergency rule and then draft the rule. Wis. Stat. § 227.24(1)(e)1d. However, it must then submit the emergency rule in final draft form to Governor Walker, who may approve or reject it. Wis. Stat. § 227.24(1)(e)1g.

38. Governor Walker therefore exercises direct control over the implementation of the photo ID law and the scope and degree of the burdens it imposes on eligible Wisconsin voters, particularly technical college student voters in Class 4 (*see infra*). Governor Walker also exercises veto power over any bill

introduced to prevent the promulgation of an emergency rule. Wis. Stat. § 227.26(2)(i).

39. Even if Governor Walker approves the emergency rule concerning the use of technical college ID cards, the Legislature may still block the emergency rule by enacting a statute. During the November 15th meeting, several of the JCRAR members who voted with the majority expressed their belief that the Legislature did not intend to include technical college ID cards, because an amendment designed to expressly authorize their use as accepted photo ID (in addition to the statutory standard above) was defeated. At this time, the JCRAR's actions threaten to exclude technical college ID cards from the list of accepted photo ID. Furthermore, even assuming Governor Walker and the Legislature do not block the emergency rule, given publication and notice requirements, Defendant Kennedy believes it is "unlikely" the rule will be effective before the February 2012 primary election. *See* GAB Memorandum, "Promulgation of 3 Emergency Rules as Directed by JCRAR," for Dec. 13, 2011 Meeting, at 2-3.

40. There were 382,006 students enrolled in the technical college system in the 2009-2010 academic year, which constitutes 8.8% of Wisconsin's total voting-age population.⁶ Of these technical college students, 59,323 were minority students. By sharp contrast, there were only 18,000 minority students in the entire

⁶ The 2010 Census dataset labeled "2010 Redistricting Data SF (PL 94-171)" was used to calculate this percentage.

University of Wisconsin (“UW”) System in the same academic year. Indeed, there were more minority students (20,916) at Milwaukee Area Technical College alone than in the entire UW System.

41. Student voters at colleges or universities outside the technical college system face their own challenges in casting a ballot. As the GAB’s Director and General Counsel, Defendant Kennedy, has stated, no college or university student ID cards in Wisconsin were in compliance with the specifications of the photo ID law at the time of its passage. Many college and university ID cards lacked one or more of the following required elements: the signature of the individual to whom the ID card is issued, the issuance date, and an expiration date not later than 2 years after the date of issuance. In early September, the GAB voted to permit the use of stickers to supply the missing required information and thereby bring non-complaint student ID cards into compliance. *See* GAB Memorandum, “Photo ID Implementation Issues – Student ID Cards,” Sept. 12, 2011, at 4-5. At its September 27, 2011 meeting, members of the Wisconsin State Legislature’s JCRAR expressed concerns about the use of stickers and communicated their belief that the GAB could only lawfully implement this policy by adopting an administrative rule. Following that meeting, Defendant Kennedy submitted a memo to the GAB, urging it to reverse course. *See* GAB Memorandum, “Administrative Rulemaking Process and Timeline,” Oct. 6, 2011, at 1-2. At its

November 9, 2011 meeting, the GAB reaffirmed that colleges and universities could bring their ID cards into compliance with stickers that included the missing information. However, on November 15, 2011, the JCRAR voted 6-4 to force the GAB to issue an emergency rule codifying the sticker supplementation policy, a rule that will first be submitted to Governor Walker under 2011 Wis. Act 21. *See infra*. Therefore, the JCRAR's actions threaten to block the use of stickers to bring student ID cards into compliance with the photo ID law.

42. In order to promulgate an emergency rule allowing colleges and universities to take advantage of stickers as a cost-efficient fix for the problem, the GAB must first submit a Statement of Scope for Governor Walker's review and approval or rejection. Wis. Stat. § 227.24(1)(e)1d. The GAB has not yet submitted a Statement of Scope concerning this emergency rule to Governor Walker. *See* GAB Memorandum, "Promulgation of 3 Emergency Rules as Directed by JCRAR," for Dec. 13, 2011 Meeting, at 2. As explained in detail by Defendant Kennedy in his October 6, 2011 Memorandum, given certain notice and publication timing requirements, as well as the lack of any binding deadline by which the Governor must respond to the submitting agency, it will be impossible to obtain legal clarity in a timely manner on the validity of using stickers to bring student ID cards into compliance with the photo ID law. Wisconsin colleges and universities require clarity on this issue, and the GAB needs to begin training poll

workers well in advance of the February 21, 2012 Spring Primary. *See* GAB Memorandum, “Administrative Rulemaking Process and Timeline,” Oct. 6, 2011, at 2-4.⁷ Defendant Kennedy clarified in a recent memo to the GAB that it is virtually certain that the rule will not be effect until after the February 2012 primary election. *See* GAB Memorandum, “Promulgation of 3 Emergency Rules as Directed by JCRAR,” for Dec. 13, 2011 Meeting, at 3. In this manner, Governor Walker exercises direct control over the implementation of the photo ID law and the scope and degree of the burdens it imposes on eligible Wisconsin voters, particularly student voters with out-of-state drivers’ licenses who are members of Class 3 (*see infra*).

43. Forcing the GAB to issue administrative rules to implement a less expensive fix for student ID cards and to ensure that technical college student ID cards will be accepted has already resulted in an increased probability that numerous colleges and universities will fail to issue compliant student ID cards by the time of the February 21, 2012 Spring Primary.

⁷ In a memorandum for the GAB’s December 13, 2011 meeting, Defendant Kennedy wrote: “Staff remains concerned that JCRAR’s actions on these three matters, and the general exercise of §227.26(2), Wis. Stats., authority for day-to-day election administration issues, affect the ability of the G.A.B. to provide timely and uniform advice for the proper administration of elections, particularly with sufficient notice such that proper training of election officials may be conducted. As a result of 2011 Act 21, the process to complete promulgation of an emergency rule is more complicated and lengthy.” *See* GAB Memorandum, “Promulgation of 3 Emergency Rules as Directed by JCRAR,” for Dec. 13, 2011 Meeting, at 2.

44. Technical college ID cards will need to conform to the same statutory specifications, but these schools have no incentive to begin this time-consuming and costly process without an assurance that such cards will in fact be usable for voting purposes.

45. Upon information and belief, at least two Wisconsin private colleges and one University of Wisconsin campus have started to issue, or stated they will issue, student ID cards that comply with the photo ID law's specifications. Upon information and belief, one Wisconsin technical college has also said it will issue student ID cards that comply with the photo ID law's specifications, but as discussed in paragraph ____, it is unclear whether any technical college ID cards will be considered valid for voting,

46. Upon information and belief, a number of Wisconsin private colleges and UW System campuses have either started to issue, or stated they will issue, separate voting-only ID cards.

47. At the November 9, 2011 hearing, Defendant Kevin Kennedy stated that the GAB will be reviewing every Wisconsin college or university ID card for its conformity to the photo ID law and for its security. The GAB will then inform municipal clerks and poll workers throughout Wisconsin as to which college or university ID cards may be accepted at the polls and which may not be accepted. Therefore, the validity of each voting-only ID card issued by a college or

university will be determined by the GAB. Until the GAB approves a particular college or university's ID, given the uncertainty and policy reversals surrounding the use of student ID cards to vote in Wisconsin, students at that school will have no assurance that these separate voting-only ID cards will in fact be treated as accepted photo ID for voting purposes in 2012.

48. Upon information and belief, other Wisconsin colleges and universities, including but not limited to Carthage College, have expressed no plans to issue any kind of voting-compliant student ID cards.

**FACTS RELATED TO OBTAINING WISCONSIN PHOTO ID AND THE
UNDERLYING DOCUMENTS REQUIRED BY WISCONSIN DMV**

49. The Wisconsin DMV, a division within WisDOT, is required to issue state ID cards free of charge if the applicant is a U.S. citizen, will be at least 18 years old by the next election, and requests that the card be provided free for voting purposes. Wis. Stat. § 343.50(5)(a), *as amended by 2011 Wis. Act 23 § 138*.

50. There are 88 DMV offices currently operating in the State of Wisconsin, and 3 new offices are scheduled to open in 2012 for a total of 91.

51. Upon information and belief, only one DMV office in Wisconsin has any weekend hours, and the Madison Odana Renewal Center only processes renewal license and ID card applications. It is open on Saturday from 8:00 a.m. to

4:00 p.m. Upon information and belief, there is no DMV office in Wisconsin that will process an original driver's license or state ID card application on the weekend.

52. Upon information and belief, no DMV office in Wisconsin stays open later than 5:30 p.m.

53. There are no mobile DMV units in Wisconsin, capable of traveling to and issuing driver's licenses and state ID cards in remote areas of the state. Upon information and belief, WisDOT has no plans to establish and deploy such mobile units.

54. An individual who resides in Wisconsin and wishes to obtain a free Wisconsin ID card for voting purposes must surrender any valid out-of-state driver's license he/she possesses. Wis. Stat. § 343.50(1)(b), *as amended by 2011 Wis. Act 23 § 130*.

55. A person with a driver's license from another state who wishes to obtain a Wisconsin driver's license must pay a fee. Wis. Stat. § 343.21. There is no fee waiver for obtaining a driver's license even if that license will constitute the individual's sole form of accepted photo ID for voting purposes.

56. Wisconsin DMV offices require first-time applicants for state ID cards and driver's licenses to present: (1) proof of name and date of birth, (2) proof of identity, (3) proof of citizenship, legal permanent resident or conditional resident

status of the United States, or legal presence in the United States, (4) proof of Wisconsin residency, and (5) a Social Security Number. Wis. Admin. Code Trans. § 102.15(2). “First-time applicants” encompass all persons who have not previously held a Wisconsin driver’s license or ID card, even if they have such licenses or cards from other states.

57. Applicants for a renewal, reinstatement, reissue, or duplicate⁸ Wisconsin driver’s license or state ID card must present proof of identity, Wis. Admin. Code Trans. § 102.15(2)(b), and may be required to present proof of citizenship, legal permanent resident or conditional resident status of the United States, or legal presence in the United States. *Id.* § 102.15(2)(bm)2. Applicants for a renewal, reinstatement, reissue, or duplicate Wisconsin driver’s license or state ID card following certain actions, such as suspension, revocation, or cancellation of the prior license or ID card, must also provide proof of name and date of birth and proof of residency. *Id.* § 102.15(2)(c). Applicants for an original, renewal, reinstatement, reissue, or duplicate driver’s license or state ID card may be required to provide proof of residency if the applicant uses certain documents to prove name and date of birth or identity, or if the documents do not have a current residential address or do not include a current acceptable Wisconsin residential address. *Id.* § 102.15(4m).

⁸ A replacement for a lost or stolen identification card (or drivers’ license) is called a “duplicate.”

58. Voters who lack the necessary primary documents for an original, renewal, or duplicate driver's license or ID card often must travel to and interact with multiple government offices and entities, such as the vital records office of their birth state and the Social Security Administration, in order to obtain the underlying documents needed to secure a state ID card. The process to obtain documents required in order to obtain a photo ID card can be extremely complex, particularly for individuals with lower levels of education and/or literacy, and difficult for those without access to reliable transportation.

59. If voters lack one or more of the documents required in order to obtain a Wisconsin state ID card, Defendants do not provide direct or individualized assistance to the voters to obtain those documents.

60. Rules promulgated by WisDOT provide that for a driver's license or state ID card application satisfactory proof of name and date of birth includes the following: (a) for a person born in Wisconsin, a certified copy of the person's Wisconsin birth certificate; (b) for a person born in another jurisdiction, other than a Canadian province, a certified copy of his or her birth certificate or the equivalent document from that other jurisdiction or a certificate of birth abroad issued by the U.S. Department of State; (c) a U.S. passport; (d) an expired Wisconsin driver's license; (e) an expired Wisconsin ID card; (f) a U.S. certificate of naturalization (which costs \$345.00); (g) a certificate of U.S. citizenship (which costs \$600.00);

(h) a Native American ID card which was issued by a federally recognized tribe or a band of a federally recognized tribe, issued in Wisconsin, which includes a photograph and signature and has been approved by the Secretary of WisDOT; (i) a court order under seal related to the adoption or divorce or to a name or gender change that includes the person's current full legal name, date of birth and in the case of a name change or divorce order, the person's prior name; (j) an armed forces of the United States common access card or DD Form 2 ID card issued to military personnel; (k) a Department of Homeland Security/Transportation Security Administration ("DHS/TSA") transportation worker identification credential; or various immigration documents. *Id.* § 102.15(3).

61. If the applicant is unable to provide accepted proof of name and date of birth and the documents are "unavailable" (defined in Wis. Admin. Code Trans. § 102.15(1) to exclude documents the applicant merely forgot to bring, as well as lost or destroyed documents where a replacement original or certified copy may be obtained upon request), then the applicant may petition the DMV Administrator, Defendant Judd, to consider alternative documentation, or "extraordinary proof," of name and date of birth. Wis. Admin. Code Trans. § 102.15(3)(b). Defendant Judd may delegate to her subordinates the authority to accept or reject such extraordinary proof of name and date of birth, but there are no rules guiding that

determination. *Id.* § 102.15(3)(c). Upon information and belief, no signage or other readily visible notice announces that this alternative procedure even exists.

62. WisDOT rules provide that for a driver's license or state ID card application, satisfactory proof of citizenship, legal permanent resident status, conditional resident status or legal presence includes a U.S. state or local government-issued birth certificate, a valid U.S. passport, a certificate of U.S. citizenship (which costs \$600.00), a U.S. Certificate of naturalization (which costs \$345.00), a DHS/TSA transportation worker identification credential, and a variety of immigration-related documents. Wis. Admin. Code Trans. § 102.15(3m). Therefore, a first-time applicant for a Wisconsin ID card who lacks a U.S. passport, has no immigration and naturalization history, and does not work for DHS/TSA, must either produce a certified copy of his/her birth certificate to obtain a Wisconsin photo ID card or pay \$135.00 to obtain a U.S. passport. No alternative procedure is available for persons unable to obtain this documentation.

63. Persons born in Wisconsin can obtain certified copies of their birth certificates from the Wisconsin Vital Records Office in the Wisconsin Department of Health Services or local registrars. Wisconsin charges \$20.00 to locate and

make a certified copy of a birth certificate, and the voter generally must bear his or her own costs in obtaining the birth certificate.⁹

64. Fees to obtain birth certificates for persons born outside Wisconsin vary and can be even higher than Wisconsin fees. Minnesota, for example, charges \$26.00 for a certified copy of a birth certificate.

65. Certain states' and counties' vital records offices require a government-issued photo ID to obtain a certified copy of one's birth certificate or otherwise set forth a restrictive list of documents that must be shown in order to obtain a certified copy of a birth certificate.

66. In many states, including Wisconsin, identification requirements imposed on individuals differ in practice from the official statutory or regulatory requirements. These requirements are often inconsistently or misleadingly stated in publicly available documents, including on official websites. For example, Wisconsin state law, Wis. Stat. § 69.21, states that state and local registrars "shall" issue a certified copy of a birth certificate to a person "with a direct and tangible interest" in the matter, who pays the required fee. Administrative rules confirm that the "state registrar and local registrars shall provide certified documentary

⁹ The Milwaukee County Board of Supervisors included in its recently-adopted budget funding to provide a limited number of birth certificates free to county residents. Upon information and belief, that plan has not yet been implemented, and will not be adequate to provide free birth certificates for all county residents who need them.

proof of a vital event for individual use to any person who requests that proof and has a direct and tangible interest as defined in s. 69.20 (1), Stats.” Wis. Admin. Code DHS § 142.04. However, the birth certificate application form requires that the person requesting a certified copy of a birth certificate provide “acceptable identification,” in the form of either a “current valid photo ID,” *i.e.*, a Wisconsin or out-of-state driver’s license or state photo ID card, or two forms of a limited list of types of secondary identification documents. The secondary list includes only the following: a government-issued employee I.D. card or badge with photo, a U.S. passport, a checkbook or bankbook, a “major” credit card, a health insurance card, a “recent” dated, signed lease, a “recent” utility bill, or “recent” traffic ticket. The application available on the Wisconsin Department of Health Services’ (“DHS”) website states that the identification requirement applies to both in-person and mail-in applications. However, at the time of this filing, the DHS website and numerous county registrar websites continued to state that that no identification is required if the certificate copies are mailed. For instance, the birth certificate application on the Dane County Register of Deeds website calls for “valid photo ID,” but makes clear that this is only “required to pick up [the certificate] in person.”

67. WisDOT rules provide that for a driver’s license or state ID card application, satisfactory proof of identity includes only the following: (a) a valid

driver's license, including a license from another jurisdiction, except a Canadian province; (b) military discharge papers; (c) a U.S. government and military dependent ID card; (d) a valid photo identification card issued by Wisconsin or another jurisdiction, except a Canadian province; (e) a marriage certificate or certified copy of judgment of divorce; (f) a Social Security Card; (g) an additional document listed in paragraph __ above that would be sufficient to prove name and date of birth, but was not used to prove name and date of birth; or (h) a DHS/TSA transportation worker identification credential. Wis. Admin. Code Trans. § 102.15(4). No alternative procedure is available for persons unable to obtain this documentation.

68. For many low-income eligible Wisconsin voters, presenting a Social Security Card (“SSC”) is the only method to prove identity to the Wisconsin DMV. However, the Social Security Administration generally requires an individual to provide evidence of identity in order to obtain an SSC. To obtain an original SSC, the applicant must establish his/her U.S. citizenship, age, and identity. For a replacement SSC, the applicant must provide documents to establish his/her U.S. citizenship and identity. Identification requirements that SSC applicants are told they must satisfy often differ in practice from the requirements set forth in law.

69. WisDOT rules provide that to obtain a driver's license or state ID card, an individual may be required to provide a form of proof that contains "a current acceptable Wisconsin residence street address." *Id.* § 102.15(4m).¹⁰ A document listing a post office box or commercial mail receiving agency as the mailing address is not acceptable. No alternative procedure is available for persons unable to obtain this documentation.

70. Under official state regulations, satisfactory proof of residency includes only the following: (a) a utility bill for water, gas, electric or landline phone service which is at least 30 days old; (b) a paycheck or stub with the customer's name and address, and the employer's name and address; (c) an account statement at least 30 days old from a Wisconsin financial institution; or (d) mortgage documents for a residential real property located in Wisconsin. *Id.* § 102.15(4m)(b), (c), (d), (f).¹¹

71. The Wisconsin DMV's website sets out a broader list of purportedly acceptable documents to prove residency. The policy authorizing the use of such documents has not, however, been promulgated as an official administrative rule and, for the reasons discussed in Paragraph ____, may not be legally binding and could be blocked or overridden by the actions of Governor Walker or the

¹⁰ The Wisconsin DMV website states that this is mandatory for all first-time applicants aged 18 years or older.

¹¹ So numbered in original; no (a) or (e) are listed in the regulations.

Legislature. Moreover, even the unofficial broader list fails to include such documents as residential leases, homeless shelter verifications, and Internet bills.

PLAINTIFF CLASS ALLEGATIONS

CLASS 1

72. Class 1 is defined as: all eligible Wisconsin voters who lack accepted photo ID and are unable for legal and/or practical reasons to obtain one or more of the primary, underlying documents required to obtain a Wisconsin ID card for voting purposes. These individuals are either legally barred from obtaining one or more of the primary documents needed to obtain a Wisconsin ID card or have made a reasonable but unsuccessful attempt to acquire one or more of the necessary documents.

73. This class of eligible Wisconsin voters who lack accepted photo ID includes—but is not limited to—individuals who must prove citizenship to the Wisconsin DMV with a birth certificate, lack certified copies of their birth certificates, and are unable to obtain birth certificates due to their birth-state's identification requirements; individuals who must prove citizenship to the DMV with a birth certificate, but who were never issued birth certificates; individuals who lack, and cannot obtain, proof of Wisconsin residency under Wis. Admin. Code Trans. § 102.15(4m); and individuals who lack and cannot obtain any of the

forms of proof of identity accepted by the Wisconsin DMV, such as a Social Security Card. This class also includes eligible Wisconsin voters who are unable to obtain a free Wisconsin ID card due to the misapplication of applicable laws and regulations or the imposition of incorrect or excessive documentary requirements upon individuals by the Wisconsin DMV and/or by the local, state, or federal entity responsible for issuing a document required to obtain a Wisconsin state ID card or driver's license.

74. This class is sufficiently numerous such that joinder of all members is impracticable. There are questions of law and questions of fact that are common to the class. Class 1 Representatives Ruthelle Frank, Justin Luft, Dartric Davis, Barbara Oden, and Sandra Jashinski's claims are typical of the claims of the class, and the representatives will fairly and adequately protect the interests of the class.

75. Prosecuting separate actions by individual class members would create a risk of: (a) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for Defendants; or (b) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests. Additionally, by denying the right to vote to eligible Wisconsin voters who have been unable to obtain one or more of the primary

documents needed for a Wisconsin state ID card, Defendants have acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.

CLASS 2

76. Class 2 is defined as: all eligible Wisconsin voters who lack accepted photo ID and for whom the costs incurred in obtaining a Wisconsin state ID card, such as obtaining a certified and accurate copy of a birth certificate to prove citizenship to the Wisconsin DMV and in traveling to the nearest Wisconsin DMV office, would constitute a severe financial burden.

77. According to the 2005-2009 American Community Survey (“ACS”) 5-Year Estimates, 357,912 Wisconsin residents ages 18 to 64 and 57,900 Wisconsin residents ages 65 years and older had incomes below 100 percent of the federal poverty level (“FPL”), and 161,664 Wisconsin residents ages 18 to 64 and 16,183 Wisconsin residents ages 65 years and older had incomes below 50 percent of the FPL.¹²

78. According to a study conducted by the Wisconsin Department of Children and Families, in November 2008 there were 12,608 families who were receiving food stamps in the State of Wisconsin but had zero earned or unearned income.

¹² These figures are estimates with the following margins of error: +/- 0.1%, +/- 0.1%, +/- 0.1%, and +/- 0.3%, respectively.

79. The photo ID law will force a significant percentage of eligible, poor Wisconsin voters to make a choice between, on the one hand, paying for a birth certificate and/or incurring significant travel costs in order to acquire a state ID card and, on the other hand, paying for necessities. This constitutes an undue and unconstitutional burden under the Equal Protection Clause of the Fourteenth Amendment.

80. This class is sufficiently numerous such that joinder of all members is impracticable. There are questions of law and questions of fact that are common to the class. Class 2 Representatives Carl Ellis, Pamela Dukes, Anthony Sharp, and Anthony Judd's claims are typical of the claims of the class, and the representative parties will fairly and adequately protect the interests of the class.

81. Prosecuting separate actions by individual class members would create a risk of: (a) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for Defendants; or (b) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests. Additionally, given that Defendants are forcing low-income, eligible Wisconsin voters to spend scarce financial resources in order to cast their votes, Defendants have acted or refused to act on grounds that apply generally to

the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.

CLASS 3

82. Class 3 is defined as all Wisconsin voters who are residents of Wisconsin for voting purposes, who lack any accepted photo ID, and who would be forced to surrender an out-of-state driver's license in order to obtain a free Wisconsin ID card for voting purposes.

83. This class includes—but is not limited to—currently enrolled students at accredited Wisconsin colleges or universities whose colleges or universities have not issued compliant student ID cards, and who would be forced to surrender out-of-state driver's licenses in order to obtain free Wisconsin ID cards that they need in order to vote.

84. This surrender rule imposes a material requirement on voters who wish to obtain a free state ID card for voting purposes by forcing persons who are Wisconsin residents for voting purposes, but who possess out-of-state driver's licenses, to choose between surrendering their driving privileges to obtain a free Wisconsin state ID card, paying a fee for a Wisconsin driver's license, or losing their right to vote.

85. This class is sufficiently numerous such that joinder of all members is impracticable. There are questions of law and questions of fact that are common to

the class. Class 3 Representatives Anna Shea, Matthew Dearing, Max Kligman, Samantha Meszaros, Steve Kvasnicka, and Sarah Lahti's claims are typical of the claims of the class, and the representative parties will fairly and adequately protect the interests of the class.

86. Prosecuting separate actions by individual class members would create a risk of: (a) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for Defendants; or (b) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests. Defendants have acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.

CLASS 4

87. Class 4 is defined as: all currently enrolled students at accredited Wisconsin technical colleges who intend to vote in Wisconsin in 2012 and who lack accepted photo ID.

88. This class is sufficiently numerous such that joinder of all members is impracticable. There are questions of law and questions of fact that are common to the class. Class 4 Representatives Sarah Lahti, Domonique Whitehurst, and

Edward Hogan's claims are typical of the claims of the class, and the representative parties will fairly and adequately protect the interests of the class.

89. Prosecuting separate actions by individual class members would create a risk of: (a) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for Defendants; or (b) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests. Additionally, Defendants have acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.

CLASS 5

90. Class 5 is defined as: all eligible Wisconsin voters who lack accepted photo ID, must prove citizenship to the DMV office and can only do so with certified and accurate copies of their birth certificates, lack certified and accurate copies of their birth certificates, and will need to pay one or more fees to obtain certified and accurate copies of their birth certificates.

91. This class is sufficiently numerous such that joinder of all members is impracticable. There are questions of law and questions of fact that are common to the class. Class 5 Representatives Ruthelle Frank, Carl Ellis, Pamela Dukes,

Anthony Sharp, and Anthony Judd's claims are typical of the claims of the class, and the representative parties will fairly and adequately protect the interests of the class.

92. Prosecuting separate actions by individual class members would create a risk of: (a) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for Defendants; or (b) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests. Additionally, by forcing eligible Wisconsin voters to pay a fee in order to obtain a required primary document for a state ID card, Defendants have acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.

CLASS 6

93. Class 6 includes all veterans of a uniformed service of the United States who are eligible Wisconsin voters, lack accepted photo ID, and possess a Veterans Identification Card ("VIC") issued by the U.S. Department of Veterans Affairs.

94. This class is sufficiently numerous such that joinder of all members is impracticable. There are questions of law and questions of fact that are common to

the class. Plaintiffs and Class 6 Representative Carl Ellis's claim is typical of the claims of the class, and Mr. Ellis will fairly and adequately protect the interests of the class.

95. Prosecuting separate actions by individual class members would create a risk of: (a) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for Defendants; or (b) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests. Additionally, by refusing to accept U.S. government-issued Veterans Identification Cards, Defendants have acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.

CLAIMS

COUNT ONE: Violation of the Equal Protection Clause of the Fourteenth

Amendment [Class 1]

96. The allegations contained in Paragraphs ___ through ___ are hereby incorporated in Count One of the complaint as if set forth herein.

97. The Equal Protection Clause prohibits the imposition of severe burdens on the right to vote unless they are narrowly drawn to advance a state interest of compelling importance. *Burdick v. Takushi*, 504 U.S. 428, 434 (1992).

98. Eligible Wisconsin voters in Class 1 lack one or more primary documents required to obtain a Wisconsin state ID card and are or have been unable to obtain them. Members of Class 1 are subjected to multiple regulatory and practical barriers to obtaining a Wisconsin state ID card.

99. Since voters in this class are unable to obtain one or more of the necessary primary documents, they cannot obtain a photo ID and therefore cannot vote in Wisconsin.

100. The burden imposed on these class members' fundamental right to vote is extremely severe—in many cases, rising to the level of a total deprivation of the right to vote. This burden is not narrowly tailored to any compelling governmental interest.

101. Accordingly, the photo ID law imposes an undue burden as to this class of eligible Wisconsin voters and therefore violates the Equal Protection Clause of the Fourteenth Amendment as applied to them.

COUNT TWO: Violation of the Equal Protection Clause of the Fourteenth Amendment [Class 2]

102. The allegations contained in Paragraphs ___ through ___ are hereby incorporated in Count Three of the complaint as if set forth herein.

103. The Equal Protection Clause prohibits the imposition of severe burdens on the right to vote unless they are narrowly drawn to advance a state interest of compelling importance. *Burdick v. Takushi*, 504 U.S. 428, 434 (1992).

104. For the hundreds of thousands of eligible low-income and poor Wisconsin voters, paying a fee to obtain a certified and accurate copy of a birth certificate and/or incurring travel costs in order to obtain a Wisconsin ID card constitutes a severe burden on the right to vote.

105. The burden imposed on these voters is severe and not narrowly tailored to advance any compelling governmental interest.

106. Accordingly, the photo ID law imposes an undue burden on members of Class 2 and, therefore, violates the Equal Protection Clause of the Fourteenth Amendment as applied to Class 2.

COUNT THREE: Violation of the Twenty-Fourth Amendment and Equal Protection Clause of the Fourteenth Amendment [Class 3]

107. The allegations contained in Paragraphs ___ through ___ are hereby incorporated in Count Four of the complaint as if set forth herein.

108. The Twenty-Fourth Amendment to the United States Constitution provides: “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 or any state by reason of failure to pay any poll tax or other tax.”

109. The Twenty-Fourth Amendment prohibits states from conditioning the right to vote in federal elections on the payment of a tax or fee, or imposing on federal voters an additional condition—or material requirement—that would not apply if they paid such a tax or fee. *Harman v. Forssenius*, 380 U.S. 528, 538-42 (1965). Poll taxes on the right to vote in state elections are unconstitutional under the Equal Protection Clause of the Fourteenth Amendment. *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 666-68 (1966).

110. Wisconsin residents who possess and wish to retain an out-of-state driver’s license and who lack all the other accepted forms of photo ID will not be able to obtain free Wisconsin ID cards for voting purposes without surrendering their out-of-state driver’s licenses.

111. The compulsory surrender of an out-of-state driver’s license constitutes a material requirement imposed on an eligible voter who refuses to forfeit his/her right to vote without paying an unconstitutional poll tax.

112. Therefore, as applied to Class 3, the photo ID law violates the Twenty-Fourth Amendment and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

**COUNT FOUR: Violation of the Equal Protection Clause of the Fourteenth
Amendment [Class 4]**

113. The allegations contained in Paragraphs ___ through ___ are hereby incorporated in Count Five of the complaint as if set forth herein.

114. The Equal Protection Clause prohibits the imposition of severe burdens on the right to vote unless they are narrowly drawn to advance a state interest of compelling importance, and requires that any state election law which imposes reasonable, nondiscriminatory restrictions on the right to vote be justified by the state's important regulatory interests. *Burdick v. Takushi*, 504 U.S. 428, 434 (1992).

115. The GAB has construed the photo ID law to authorize the use of accredited technical college ID cards for voting purposes; however, the ultimate disposition of this rule has been thrown into considerable doubt as described herein. Even though student ID cards from all other accredited colleges and universities in Wisconsin will be accepted, certain Wisconsin legislators believe

technical college ID cards are excluded under the photo ID law and the administrative review process threatens to result in that exclusion.

116. This differential treatment of student ID cards from accredited 2-year colleges and student ID cards from accredited technical colleges is wholly arbitrary, not narrowly drawn to advance a compelling state interest, and not even justified by a merely important regulatory interest.

117. Accordingly, since it lacks a rational basis, the exclusion of technical college ID cards is unconstitutional under the Equal Protection Clause of the Fourteenth Amendment.

COUNT FIVE: Violation of the Twenty-Fourth Amendment and Equal Protection Clause of the Fourteenth Amendment [Class 5]

118. The allegations contained in Paragraphs ___ through ___ are hereby incorporated in Count Six of the complaint as if set forth herein.

119. The Twenty-Fourth Amendment to the United States Constitution provides: “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 or any state by reason of failure to pay any poll tax or other tax.”

120. The Twenty-Fourth Amendment prohibits states from conditioning the right to vote in federal elections on the payment of a tax or fee, or imposing on federal voters an additional condition—or material requirement—that would not apply if they paid such a tax or fee. *Harman v. Forssenius*, 380 U.S. 528, 538-42 (1965). Poll taxes on the right to vote in state elections are unconstitutional under the Equal Protection Clause of the Fourteenth Amendment. *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 666-68 (1966).

121. The fee(s) required to obtain a certified and accurate copy of one's birth certificate constitutes an unconstitutional poll tax for eligible Wisconsin voters in this class.

122. Accordingly, the photo ID law is unconstitutional as applied to members of Class 5.

COUNT SIX: Violation of the Equal Protection Clause of the Fourteenth Amendment [Class 6]

123. The allegations contained in Paragraphs ___ through ___ are hereby incorporated in Count Eight of the complaint as if set forth herein.

124. Veterans Identification Cards (“VICs”) contain the name and photo of the veteran and are issued by a U.S. government agency.

125. The photo ID law does not permit the use of Veterans Identification Cards to cast a ballot.

126. This differential treatment of Veterans Identification Cards issued by the U.S. Department of Veterans Affairs and military ID cards issued by a U.S. uniformed service (including the United States Army, the United States Marine Corps, the United States Navy, the United States Air Force, the United States Coast Guard, the United States Public Health Services Commissioned Corps, and the National Oceanic and Atmospheric Administration Commissioned Corps), which are accepted as photo ID for voting purposes, is wholly arbitrary and lacks a rational basis.

127. Accordingly, the exclusion of Veterans Identification Cards from the list of accepted photo IDs is unconstitutional under the Equal Protection Clause of the Fourteenth Amendment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that:

- (i) The Court declare the photo ID law unconstitutional as applied to Class 1 under the Equal Protection Clause of the Fourteenth Amendment and enjoin the photo ID law as applied to members of Class 1;

- (ii) The Court declare the photo ID law unconstitutional as applied to Class 2 under the Equal Protection Clause of the Fourteenth Amendment and enjoin the photo ID law as applied to members of Class 2;
- (iii) The Court declare the photo ID law unconstitutional as applied to Class 3 under the Twenty-Fourth Amendment and the Equal Protection Clause of the Fourteenth Amendment and enjoin the photo ID law as applied to members of Class 3;
- (iv) The Court declare the photo ID law unconstitutional as applied to Class 4 under the Equal Protection Clause of the Fourteenth Amendment and enjoin the photo ID law as applied to members of Class 4;
- (v) The Court declare the photo ID law unconstitutional as applied to Class 5 under the Twenty-Fourth Amendment and the Equal Protection Clause of the Fourteenth Amendment and enjoin the photo ID law as applied to members of Class 5;
- (vi) The Court declare the photo ID law unconstitutional as applied to Class 6 under the Equal Protection Clause of the Fourteenth Amendment and enjoin the photo ID law as applied to members of Class 6;
- (vii) Award Plaintiffs their reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and Fed. R. Civ. P. 54(d); and
- (viii) Grant such other and further relief as this Court deems just.

Respectfully submitted this 13th day of December, 2011,

/s Laurence J. Dupuis
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***Attorney Admission Application and Motion for Fee Waiver Pending*