No. 14A_____

In the

Supreme Court of the United States

RUTHELLE FRANK, et al.,
Applicants,

v.

SCOTT WALKER, et al.,
Respondents.

-and-

LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC) OF WISCONSIN, et al.,
Applicants,

v.

DAVID G. DEININGER, et al.,
Respondents.

EMERGENCY APPLICATION TO STAY SEVENTH CIRCUIT JUDGMENT PENDING DISPOSITION OF A PETITION FOR A WRIT OF CERTIORARI

**Directed to the Honorable Elena Kagan,
Associate Justice of the United States Supreme Court
and Circuit Justice for the Seventh Circuit**

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STATEMENT PURSUANT TO SUPREME COURT RULE 29.6

Pursuant to Supreme Court Rule 29.6, the undersigned states that none of the Applicants has a parent corporation, and no publicly held corporation holds 10 percent or more of any Applicant's stock.

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To the Honorable Elena Kagan, Associate Justice of the United States Supreme Court and Circuit Justice for the Seventh Circuit:

Applicants respectfully request an emergency order staying the October 6, 2014 judgment of the United States Court of Appeals for the Seventh Circuit pending the timely filing and disposition of a petition for a writ of certiorari. The judgment below reversed the district court's permanent injunction of Wisconsin's new voter ID law, allowing the State to enforce the law in next month's election despite insufficient time to fairly and responsibly implement the law to prevent the disenfranchisement of hundreds of thousands of registered Wisconsin voters.

Wisconsin's Act 23 is one of the strictest voter ID laws in the country. The law, enacted in May 2011, would require voters to show one of only a few forms of specified photo identification to cast a ballot. The law has been enjoined since March 2012, shortly after it took effect, and has never been enforced in any federal election. On April 29, 2014, after a two-week trial, the district court permanently enjoined the law, holding that it violates Section 2 of the Voting Rights Act and the Fourteenth Amendment. The district court reached the "inescapable" conclusion that "Act 23's burdens will deter or prevent a substantial number of the 300,000 plus [registered] voters who lack an ID from voting"—disproportionately affecting Black and Latino voters. App. 99, 120. In declining to stay the injunction pending appeal, the district court found it "absolutely clear that Act 23 will prevent more legitimate votes from being cast than fraudulent votes." App. 61.

A panel of the Seventh Circuit stayed the district court's permanent injunction on September 12, hours after oral argument, allowing the State to "enforce the photo ID requirement in this November's election." App. 42. Before the panel's order, Wisconsin had taken virtually no steps to implement Act 23 for the upcoming election. The stay thus virtually guaranteed chaos at the polls and irreparable disenfranchisement of many thousands of registered Wisconsin voters.

On September 26, the Seventh Circuit denied rehearing *en banc* of the panel's stay order "by an equally divided court." App. 39–40. Five judges of the Seventh Circuit—Chief Judge Wood and Judges Posner, Rovner, Williams, and Hamilton—voted to "revoke[]" the stay order and declared that the court of appeals "should not accept, as the state is willing to do, the disenfranchisement of up to 10% of Wisconsin's registered voters." App. 37 (Williams, J., dissenting). The dissenting judges decried that "for the state to take this position is shocking." App. 32.

On October 2, plaintiffs asked this Court to vacate the stay. The same day, the Circuit Justice called for a response from the State no later than October 7. But on October 6, a day before the State's response was due, the Seventh Circuit panel issued its judgment reversing the district court's decision on the merits, holding that Act 23 does not violate Section 2 or the Fourteenth Amendment.

Unless this Court grants a stay, the panel's judgment will sow confusion at the polls and suppress voting in the November 4 general election in Wisconsin. Voting is the foundational right of a free society. Chaos in an election—especially when entirely preventable—is undemocratic. Yet weeks before a major election, the

panel dramatically changed the status quo for voters—*i.e.*, the continuation of Wisconsin's traditional voting practices and suspension of Act 23's stringent new photo ID requirements.

The court of appeals' judgment upholding the law did not address whether the State in the coming weeks can adequately train poll workers, sufficiently educate voters about the new photo ID requirements, or get qualifying IDs into the hands of those who want them. But as the dissenting judges explained, "It is simply impossible—as a matter of common sense and of logistics—that hundreds of thousands of Wisconsin voters will both learn about the need for photo identification and obtain the requisite identification in the next 36 days." App. 32 (Williams, J., dissenting). Wisconsin's limited DMV locations—the only places where voters without qualifying ID can obtain one free of charge—cannot issue anywhere near the number of IDs that are needed to avoid widespread disenfranchisement. And "[o]btaining the necessary identification can take *months* for voters who were born outside Wisconsin and who lack birth certificates. Make no mistake, that is no small number of the registered voters at issue." *Id.* (emphasis added).

Worse still, many voters *already have cast absentee ballots*. After the panel authorized the State to enforce Act 23 next month, the State immediately declared that the "thousands of absentee ballots that were mailed to voters before the panel's order" will not be counted unless voters now come forward with photo ID that was not required when they cast their ballots. App. 33 (Williams, J., dissenting). These voters' once-valid votes thus are rendered void by the decision below.

"Changing the rules so soon before the election is contrary not just to the practical realities of an impending election, but it is inconsistent with [this Court's] approach to such cases." *Id.* (Williams, J., dissenting). Eleventh-hour changes to voting requirements "can themselves result in voter confusion and consequent incentive to remain away from the polls," a risk that that increases "[a]s an election draws closer." *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006). Many voters, unsure of what identification is now required to vote, will likely stay home from the polls, while others will be turned away.

On the other side of the ledger, the State made no factual showing at trial—and the panel made no mention—of any harm to the State from postponing implementation of the new voter ID law until after the election. The panel's decision thus is "guarding against a problem"—in-person voter fraud—that Wisconsin "does not have and has never had." App. 37 (Williams, J., dissenting). "The state has conducted hundreds of elections without a voter identification requirement. It had been preparing for months to do the same again," until the panel changed the rules at the last minute. App. 36 (Williams, J., dissenting).

The electorate should never have to suffer chaos and confusion on the eve of a major election. This Court should stay the Seventh Circuit's judgment pending the filing and disposition of a petition for a writ of certiorari. Until then, "the status quo before the panel's order should be restored—the status quo that all Wisconsin had been operating under, and the status quo that if not restored will irreparably harm registered voters in Wisconsin." App. 34 (Williams, J., dissenting).

Background

1. Wisconsin's Act 23, enacted on May 25, 2011, requires Wisconsin voters to produce one of several specified forms of photo identification in order to cast a ballot. App. 65–66. Voters who do not have a qualifying ID can obtain one at a DMV location, but only if they produce documents, typically including a certified birth certificate, proving citizenship or legal presence, name and date of birth, identity, and Wisconsin residency. App. 87–90. The ostensible purpose of this measure is to combat in-person voter fraud—that is, when a person appears at the polls and attempts to vote as someone else. App. 72–78. Act 23 is among "the most restrictive voter identification law[s] in the United States." Order for Judgment and Judgment Granting Declaratory and Injunctive Relief, *Milwaukee Branch of the NAACP v. Walker*, No. 11 CV 5492 (Wis. Cir. Ct. July 17, 2012).

The Wisconsin legislature deferred enforcement of Act 23 for eight months until the low-turnout local primaries in February 2012. During this eight-month period, the legislature directed State officials to "conduct a public informational campaign," "[e]ngage in outreach to identify and contact groups of electors who may need assistance," and affirmatively "provide assistance" to those people needing it. 2011 Wis. Act 23, §§ 95, 144(1)–(2). Despite these efforts, the enforcement of Act 23 in February 2012 caused significant confusion, mistakes, and burdens, and some registered voters were outright denied the opportunity to cast a ballot. *See* Trial Tr. 153–54, 172–73, 376–77, 416–17, 433, 436, 2063. A Wisconsin state court enjoined the Act two weeks after the February 2012 primary. Order Granting Motion for Temporary Injunction, *Milwaukee Br. of the NAACP v. Walker*, No. 11 CV 5492

(Wis. Cir. Ct. Mar. 6, 2012). The Act remained enjoined under various state and federal court orders for the following 30 months.[1] During this 30-month period, the State suspended voter ID training and outreach efforts. *See* Trial Tr. 1922, 1955–57; Patrick Marley, *Elections board requests $460,000 for voter ID campaign*, MILWAUKEE J. SENTINEL (Sept. 30, 2014), http://tinyurl.com/kl8b5k5.

2. Plaintiffs filed suit in the Eastern District of Wisconsin to enjoin enforcement of Act 23 on grounds that it would disproportionately disenfranchise Black and Latino voters in violation of Section 2 of the Voting Rights Act (52 U.S.C. § 10301), and would impose an unjustifiable burden on voters in violation of the Fourteenth Amendment. In November 2013, the district court conducted a two-week bench trial at which the parties presented 43 fact witnesses, six expert witnesses, and introduced thousands of pages of documentary evidence.[2]

In an exhaustive 90-page decision, the district court permanently enjoined Wisconsin's voter ID law under Section 2 and the Fourteenth Amendment. App. 62–151 (Apr. 29, 2014 Order). The court found that "approximately 300,000 registered voters in Wisconsin, roughly 9% of all registered voters, lack a qualifying ID" needed to vote under Act 23. App. 84. The court reached the "inescapable" conclusion that Act 23 would "disproportionately" burden and disenfranchise Black

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[1] App. 38–127 (district court injunction); Decision and Order Granting Summary Declaratory Judgment and Permanent Injunction at 6, *League,* No. 11-CV-4669 (Dane Cnty. Cir. Ct., Mar. 12, 2012); Order Granting Motion for Temporary Injunction at 4, *NAACP* , No. 11-CV-5492 (Dane Cnty. Cir. Ct., Mar. 6, 2012).

[2] This consolidated case involves two lawsuits. The *Frank* case was filed on December 13, 2011. The *LULAC* case was filed on February 23, 2012.

and Latino voters in Wisconsin. App. 120. The court found that while many registered voters might obtain acceptable IDs with sufficient (occasionally "tenacious") efforts, many others could not. App. 93 & n.17, 98–99.

The district court acknowledged the State's interest in "[d]etecting and preventing in-person voter-impersonation fraud." App. 48. But the court found that, after two years of litigation, "[t]he defendants could not point to a single instance of known voter impersonation occurring in Wisconsin at any time in the recent past," and "it is exceedingly unlikely that voter impersonation will become a problem in Wisconsin in the foreseeable future." App. 72–73; *see also* 74–78.

The district court also acknowledged the State's interest in "promoting confidence in the integrity of the electoral process." App. 78–78. On this point, the court found that "photo ID requirements have no effect on confidence or trust in the electoral process" in Wisconsin. App. 79. To the contrary, such laws may "undermine the public's confidence in the electoral process as much as they promote it." *Id.* Voter ID laws "caus[e] members of the public to think that the photo ID requirement is itself disenfranchising voters and making it harder for citizens to vote, thus making results of elections less reflective of the will of the people." App. 81. Specifically, Wisconsin voters testified that "Act 23 will exacerbate the lack of trust that the Black and Latino communities already have in the system," and that "Act 23 is designed to keep certain people from voting" and "to confuse voters." *Id.* Moreover, "the publicity surrounding photo ID legislation creates the false perception that voter-impersonation fraud is widespread, thereby needlessly

undermining the public's confidence in the electoral process." App. 79 (citing unrebutted testimony of plaintiffs' expert and letter from the Wisconsin Government Accountability Board to the Wisconsin legislature).

The court denied the State's motion to stay the injunction pending appeal, concluding "that it is absolutely clear that Act 23 will prevent more legitimate votes from being cast than fraudulent votes." App. 99.

3. On appeal before the Seventh Circuit, the United States filed an *amicus curiae* brief supporting plaintiffs on both the Section 2 and Fourteenth Amendment claims and expressing the growing national significance of the issues presented in this case. Brief for the United States as *Amicus Curiae* Supporting Plaintiffs-Appellees and Urging Affirmance, *Frank v. Walker*, Nos. 14-2058 & 14-2059 (7th Cir. filed July 30, 2014) (ECF 43).

On September 11, 2014—the day before oral argument in the Seventh Circuit—the State adopted an "Emergency Rule" to modify the procedures to obtain a voter ID at a DMV location. *See* Wisconsin Dep't of Transportation, EmR14 (Sept. 11, 2014), http://tinyurl.com/mdrk4aq. Wisconsin adopted this "Emergency Rule" following decisions of the Wisconsin Supreme Court. *See League of Women Voters v. Walker*, 851 N.W.2d 302 (Wis. July 31, 2014); *Milwaukee Branch of the NAACP v. Walker*, 851 N.W.2d 262 (Wis. July 31, 2014). The Wisconsin Supreme Court held that Act 23 imposed a "severe burden" on voters that other jurisdictions have characterized as a "de facto poll tax." *NAACP*, 851 N.W.2d 262, ¶¶ 50, 60, 62. The court adopted a "saving construction" of DMV regulations that supposedly would

lessen the burden on voters and eliminate fees to obtain a qualifying ID needed to vote. *Id.* ¶¶ 69–70. Based on that "saving construction," the state high court lifted the state court injunctions against enforcement of Act 23. The State's "Emergency Rule" purports to implement this "saving construction."

At oral argument before the Seventh Circuit on September 12, the State requested an immediate stay of the district court's permanent injunction, arguing that the Emergency Rule would reduce the burden on voters attempting to obtain a qualifying ID. App. 26, 42. Later that day, the panel issued a one-page order "stay[ing] the injunction issued by the district court" and inviting the State to "enforce the photo ID requirement in this November's elections." App. 42.

On September 26, the panel denied plaintiffs' motion for reconsideration, and the Seventh Circuit denied rehearing *en banc* of the stay order "by an equally divided court." App. 40. On September 30, the panel issued a *per curiam* opinion respecting its September 12 stay order. Concurrently, Judge Williams—joined by Chief Judge Wood and Judges Posner, Rovner, and Hamilton—issued an opinion dissenting from the denial of rehearing *en banc*. App. 31–38. The dissent concluded that the panel "should not have altered the status quo so soon before [the November] elections. And that is true whatever one's view of the merits of the case." App. 31, 34 (separately finding the panel's view of the merits to be "dead wrong").

4. On October 2, plaintiffs filed an emergency application in this Court to vacate the panel's stay. On October 6, the court of appeals issued its judgment

reversing the district court's decision on the merits. On the Fourteenth Amendment claim, the panel held that *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008), "requires us to reject a constitutional challenge to Wisconsin's statute." App. 14. The panel acknowledged that "Wisconsin's law differs from Indiana's law" and that the factual record in this case differs from the record in *Crawford*. App. 3–4. But the panel concluded that none of those differences warranted a different result. On the Section 2 claim, the panel recognized that the district court found "a disparate outcome"—that is, Act 23 imposes a greater burden on Blacks and Latinos seeking to exercise the franchise. App. 17. The panel concluded, however, that this disparate outcome "do[es] not show a 'denial' of anything by Wisconsin, as §2(a) requires; unless Wisconsin makes it *needlessly* hard to get photo ID, it has not denied anything to any voter." *Id.*

On October 7, plaintiffs asked the Seventh Circuit to stay its judgment pending this Court's review. The court of appeals has not yet decided that motion. However, given these "most extraordinary circumstances" on the eve of an election and the *en banc* Seventh Circuit's earlier refusal to vacate the stay by an equally divided court, S. Ct. R. 23.3, plaintiffs are filing this application now. Plaintiffs have no other avenue in which to seek the relief sought here.

Reasons for Granting the Stay

The standards for granting a stay of a court of appeals' judgment pending disposition of a petition for certiorari are "well settled." *Deaur v. United States*, 483 U.S. 1301, 1302 (1987) (Rehnquist, C.J., in chambers). A Circuit Justice may grant a stay if there is "a reasonable probability that certiorari will be granted," a

"significant possibility that the judgment below will be reversed," a "likelihood of irreparable harm (assuming the correctness of the applicant's position) if the judgment is not stayed," and the "balance of equities" supports a stay. *Barnes v. E-Systems, Inc. Group Hosp. Med. & Surgical Ins. Plan*, 501 U.S. 1301, 1302, 1305 (1991) (Scalia, J., in chambers). This case meets all of those requirements.

I. The Seventh Circuit's Judgment Will Cause Chaos at the Polls and Will Disenfranchise Many Thousands of Voters in November

The "right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government." *Reynolds v. Sims*, 377 U.S. 533, 555 (1964). "Other rights, even the most basic, are illusory if the right to vote is undermined." *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). Disenfranchisement is the epitome of irreparable harm.

Casting aside these principles, the Seventh Circuit's decision would thrust Wisconsin's election machinery into disarray by changing the voting rules at the last minute and by disenfranchising hundreds of thousands of registered Wisconsin voters who lack a qualifying ID under Act 23. Absent this Court's immediate intervention, the decision below will deny those voters the opportunity to cast a ballot unless they learn about the newly applicable photo ID requirement and manage to procure a qualifying photo ID between now and the election in 27 days—a Herculean task that common sense, the district court, and five judges of the Seventh Circuit concluded would be "simply impossible." App. 32.

The district court found that Act 23 will lead to "the disenfranchisement of up to 10% of Wisconsin's registered voters." App. 37 (Williams, J., dissenting). The dissent was right to call this outcome "shocking" and a "brazen" position for a State to take with respect to its own citizens. App. 32. The panel, by contrast, laid blame on voters who, over the past three years, did not "scrounge up a birth certificate and stand in line at the office that issues drivers' licenses." App. 8. Of course, Act 23 was enjoined during nearly all of that period, when the law would have operated as a "de facto poll tax." *NAACP*, 851 N.W.2d at 275, ¶ 50. The panel's assumption that all citizens can readily "scrounge up" is insensitive and divorced from reality. For instance, the record shows that elderly African Americans who were born in the Jim Crow South frequently have no birth certificates because those States often did not issue birth certificates to African Americans. App. 92 n.17, 124 n.36. The same is true for the court's notion that folks can readily "stand in line." The record shows that elderly and disabled citizens often face challenges travelling to a DMV and standing in line. So, too, do people with working-class jobs. App. 91–94.

Separate from the legality of Act 23, the State cannot effectively implement the law's photo ID requirements instantaneously, like the flip of a switch. As Judge Kavanaugh of the D.C. Circuit explained for the three-judge district court in *South Carolina v. United States*, the fact that a legislature has provided a lengthy period for voter education and poll-worker training before new voter ID requirements take effect "strongly suggest[s] that these steps cannot be adequately completed" in a truncated time, especially just weeks before a major election. 898 F. Supp. 2d 30,

49 (D.D.C. 2012). Here, Wisconsin's legislature decided in 2011 that *at least eight months* would be necessary for an adequate "public information campaign," outreach to voters, and actually "provid[ing] assistance" to voters needing it. 2011 Wis. Act 23 §§ 95, 144(1)–(2). Act 23 "was designed to have a rollout period of 8 months before a primary and 16 months before a general election—not mere weeks." App. 36 (Williams, J., dissenting). The State has acknowledged that 25% of registered voters do not know that they need a qualifying photo ID to vote in the upcoming election. Opp. to Appl. to Vacate Stay at 3–4 (No. 14A352).

Wisconsin does not have the infrastructure or bandwidth to implement the necessary measures in the next four weeks. The Wisconsin DMV has only 92 offices statewide. App. 91. In 48 counties representing over a quarter of Wisconsin's voting age population, those offices are open only two days a week for a total of ten hours—"and these are weekdays, not weekends." App. 32 (Williams, J., dissenting). Between now and Election Day, DMV offices in 11 Wisconsin cities will be open three or fewer days; two will not be open at all. Voters in each of these cities must travel at least 12 miles to get to the next-closest DMV office; some voters would need to travel as far as 26 miles. This is a potentially insurmountable burden for citizens who, by definition, do not have driver's licenses.[3]

Given these practical impediments, the panel wholly misses the mark when it states that "all we know from the fact that a particular person lacks a photo ID is

[3] Location and hours and dates of operation of DMV service centers can be found using State's "Find my closest DMV" tool, http://tinyurl.com/p9u7bjl.

that he was unwilling to invest the necessary time [to get one]." App. 8. But hundreds of thousands of registered voters without qualifying ID had no reason to "invest the necessary time," *id.*, until the Seventh Circuit's decision changed the status quo weeks before the election. The question now is whether those among the 10% of Wisconsin voters who *are* willing to "invest the time" and wish to vote in the upcoming election will learn of the new voter ID requirement and will be able to obtain a qualifying ID, now that it is incumbent upon them to do so. They cannot.

The Wisconsin DMV issues approximately 220 new IDs per day statewide.[4] At that rate, the State will issue fewer than 10,000 new IDs between now and Election Day. Even if the State does so, that would still leave at least 290,000 registered Wisconsin voters without a qualifying ID who would be unable to vote on November 4. In order to issue qualifying IDs to all 300,000 registered voters who do not have one, DMV would need to issue over 9,000 IDs *per day*—seven days per week—between now and Election Day.

After Act 23 was passed, the State earmarked $2 million for training and outreach about the new law, had full-time employees dedicated to implementing the law, and had State officials and others make over 150 presentations to voters and election officials throughout the State about Act 23's requirements. *See* Trial Tr. 1921–22, 1944–46. The State now has *no* funds available for public information or outreach to ensure voters are aware of the "emergency" implementation of Act 23,

[4] Dee J. Hall & Doug Erickson, *State has no budget for voter ID, agencies say*, WIS. STATE J. (Sept. 21, 2014), http://tinyurl.com/msvtpb8.

let alone adequate funds to assist huge numbers of voters in obtaining voter IDs.[5] Last week, Wisconsin's Government Accountability Board requested $460,000 from the legislature to educate voters about the new ID requirement, but those efforts appear to be going nowhere.[6] Even if funds are later appropriated, it would be too late. Numerous officials—including the chief election officials for Wisconsin's two largest cities, Milwaukee and Madison—have acknowledged that there is not enough time to educate and assist voters or train poll workers.[7]

The irreparable harm to absentee voters is even more acute. State officials mailed nearly 12,000 absentee ballots to registered Wisconsin voters before the Seventh Circuit stayed the injunction on September 12. The instructions provided with those ballots did not include a photo ID requirement, and many voters have already completed and returned those absentee ballots.[8] After the Seventh Circuit stayed the district court's permanent injunction, the State declared that those

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[5] Hall & Erickson, *State has no budget, supra* note 4.

[6] Editorial Board, *GAB calm in middle of political storm*, WIS. STATE J. (Oct. 5, 2014), http://tinyurl.com/lglbw4h (Senate Majority Leader "questioned the expense, creating confusion about whether the money is available or not"; a budget committee meeting to consider the proposal was cancelled shortly thereafter).

[7] Hall & Erickson, *State has no budget, supra* note 4 (Executive Director of the Milwaukee Election Commission stating "there is not proper time to educate all voters . . . and ensure they're also able to cast a ballot on Election Day"); Zoe Sullivan, *Wisconsin Voter ID Ruling Threatens Chaos On Election Day*, THE GUARDIAN (Sept. 23, 2014) (Madison clerk stating "implementation of the voter ID law at this late date . . . likely will cause significant confusion for voters and poll workers and cause disruptions and delays at the polls"), http://tinyurl.com/mgp3rq3.

[8] Dee J. Hall, *Absentee ballots already cast will need photo ID, elections official says*, BARABOO NEWS REPUBLIC (Sept. 17, 2014), http://tinyurl.com/pkfj353; Patrick Marley, *Voters who returned* absentee *ballots must send ID copies,* MILWAUKEE J. SENTINEL (Sept. 16, 2014), http://tinyurl.com/neabkok.

ballots will not be counted unless the voters who cast them now come forward with photocopies of their qualifying IDs.[9] To be clear: "those thousands of absentee ballots that were mailed to voters before the panel's order . . . do not count when returned in the manner their instructions direct, for they do not comply with the Wisconsin voter identification law." App. 33 (Williams, J., dissenting).

This after-the-fact disenfranchisement of thousands of registered Wisconsin voters who sought to exercise the franchise is unconscionable and unconstitutional. Numerous voters already have cast ballots in accordance with "the instructions of the officials charged with running the election." *Griffin v. Burns*, 570 F.2d 1065, 1076 (1st Cir. 1978). A State violates a citizen's right to vote—and their due process right to have the vote counted—by invalidating the ballot based on a subsequent change in voting requirements. *See id.* This rule has been adopted by a majority of the circuits—in stark contrast to the decision below.[10]

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[9] Memorandum from M. Haas, Elections Division Administrator, on Voter Photo ID and Absentee Ballots for 2014 General Election to Wisconsin County Clerks, Wisconsin Municipal Clerks, City of Milwaukee Election Comm'n, Milwaukee County Election Comm'n (Sept. 16, 2014), http://tinyurl.com/qy5asum.

[10] *See Ne. Ohio Coal. for Homeless v. Husted*, 696 F.3d 580, 597 (6th Cir. 2012) ("[S]ubstantial changes to state election procedures and/or the implementation of non-uniform standards run afoul of due process if they result in significant disenfranchisement and vote dilution. So too do state actions that induce voters to miscast their votes."); *Hoblock v. Albany Cnty. Bd. of Elections*, 422 F.3d 77, 98 (2d Cir. 2005) ("when election officials refuse to tally absentee ballots that they have deliberately (even if mistakenly) sent to voters, such a refusal may violate the voters' constitutional rights"); *Bennett v. Yoshina*, 140 F.3d 1218, 1226–27 (9th Cir. 1998) ("a court will strike down an election on substantive due process grounds if two elements are present: (1) likely reliance by voters on an established election procedure and/or official pronouncements about what the procedure will be in the coming election; and (2) significant disenfranchisement that results from a change

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II. There Is a Reasonable Probability That This Court Will Grant Certiorari

This case presents two issues of paramount national importance that plainly warrant this Court's review.

First, this case presents an ideal opportunity to answer questions unresolved in *Crawford*, where the plurality found that plaintiffs had not developed a record on key issues concerning Indiana's voter ID law. 553 U.S. at 200–01, 203 n.20 (plurality opinion). More than half the States have enacted voter ID laws of varying degrees of stringency in the wake of *Crawford*. The proper application of *Crawford* is a question of recurring and immense national importance upon which this Court's guidance is critically needed, as illustrated by the fact that several other States' voter ID laws may shortly come before this Court.[11] And as explained in Section 3, *infra*, the extensive trial record here provides exactly the kind of evidence that this Court called for in *Crawford*. Also, the panel's assertion (App.42) that Act 23 "is materially identical to Indiana's photo ID statute" is "dead wrong." App. 34 (Williams, J., dissenting). Indiana's law provided protections to guard against the

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in the election procedures"); *Roe v. State of Ala. By & Through Evans*, 43 F.3d 574, 581 (11th Cir. 1995) ("change in the rules after the election [that] would have the effect of disenfranchising" voters violated constitutional rights); *Marks v. Stinson*, 19 F.3d 873, 888 (3d Cir. 1994) (adopting *Griffen*); *Duncan v. Poythress*, 657 F.2d 691, 700 (5th Cir. 1981) (same); *Hennings v. Grafton*, 523 F.2d 861, 864 (7th Cir. 1975) (same).

[11] *League of Women Voters of North Carolina v. North Carolina*, slip op., No. 14-1859 (4th Cir. Oct. 1, 2014); *United States v. Texas*, No. 2:13-cv-263 (S.D. Tex.) (pending decision following September 2014 bench trial on Section 2 and Fourteenth Amendment claims).

disenfranchisement of voters without a qualifying ID—particularly elderly, disabled, and poor voters. Wisconsin's Act 23 provides no comparable protections.

Second, this case presents the question of the correct legal standard to evaluate claims that state voting laws violate Section 2 of the Voting Rights Act. Section 2 prohibits state laws that result in the "denial or abridgement" of the voting rights of racial minorities. 52 U.S.C. § 10301(a). The Seventh Circuit acknowledged that Act 23 imposes a greater burden on the voting rights of Blacks and Latinos compared to the general population. App. 17. In other words, the court of appeals did not dispute that Act 23 abridges the right to vote of racial minorities. Nevertheless, the panel rejected plaintiffs' Section 2 claim on the theory that this disparate outcome "do[es] not show a 'denial' of anything by Wisconsin, as §2(a) requires." *Id.* The court of appeals' standard reads the word "abridge" of out the statute—in direct conflict with basic principles of statutory construction, this Court's precedents involving Section 2, and decisions of other courts of appeals.[12]

A third issue worthy of review is whether the government may change requirements for registered voters to cast a valid ballot in close proximity to an

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[12] *See, e.g.*, *Thornburg v. Gingles*, 478 U.S. 30, 43 (1986) (Section 2 prohibits states "from imposing any voting qualifications or prerequisites to voting, or any standards, practices, or procedures which result in the denial or abridgment of the right to vote of any [minority] citizen."); *Reno v. Bossier Parish Sch. Bd.* (*"Bossier II"*), 528 U.S. 320, 333–34 (2000) (Section 2 also prohibits "abridgment," whose "core meaning is 'shorten.'"); *Stewart v. Blackwell*, 444 F.3d 843, 877 (6th Cir. 2006) (Section 2 does not only prohibit "actual denial" of right to vote); *Miss. State Chapter, Operation Push v. Allain*, 674 F. Supp. 1245, 1269 (N.D. Miss. 1987) (registration restrictions "result[] in an abridgment of [the] right to vote"), *aff'd sub nom. Miss. State Chapter, Operation Push v. Mabus*, 932 F.2d 400 (5th Cir. 1991).

election—here, after the election already is underway with absentee voting. The panel's decision to authorize enforcement of Act 23 just weeks before a major election conflicts with this Court's decisions. This Court repeatedly has cautioned that lower courts should avoid making last-minute changes to election rules, even where the litigants seeking those changes are likely to prevail. *See Purcell*, 549 U.S. at 4–5 ("Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase."); *Moore v. Brown*, 448 U.S. 1335, 1340 (1980) (Powell, J., in chambers) (declining on September 5 to stay a preliminary injunction affecting the upcoming November election); *Williams v. Rhodes,* 393 U.S. 23, 34–35 (1968) (denying relief, despite unconstitutionality of ballot-access statute, because ballots had already been printed and "the confusion that would attend . . . a last-minute change poses a risk of interference with the rights of other Ohio citizens" such that "relief cannot be granted without serious disruption of [the] electoral process") (decided October 15); *Reynolds v. Sims*, 377 U.S. 533, 585 (1964) (court "should consider the proximity of a forthcoming election and the mechanical complexities of state election laws," as well as whether "a State's election machinery is already in progress") (remedial order on July 25).

The Seventh Circuit's approval of a last-minute change to voting requirements conflicts with decisions of other courts. *See, e.g.*, *Colon-Marrero v. Conty-Perez*, 703 F.3d 134, 139 (1st Cir. 2012) (denying relief because plaintiff's late-filed voter registration challenge came "on the eve of a major election" and

sought "to disrupt long-standing election procedures, which large portions of the electorate have used"); *Lair v. Bullock*, 697 F.3d 1200, 1214 (9th Cir. 2012) (ruling on October 26 that, even though campaign finance law might be unconstitutional, "given the imminent nature of the election, we find it important not to disturb long-established expectations"); *Common Cause/Georgia League of Women Voters of Georgia, Inc. v. Billups*, 439 F. Supp. 2d 1294, 1351 (N.D. Ga. 2006) (plan to implement voter ID law must "allow[] sufficient time for [state] education efforts" and "undertake[] sufficient steps to inform voters of the [ID] requirement before future elections"); *Applewhite v. Pennsylvania*, 54 A.3d 1, 4 (Pa. 2012) (decided Sept. 18) (remanding to determine whether Pennsylvania could implement new voter ID requirement in two months remaining before election); *Applewhite v. Pennsylvania*, No. 330 M.D. 2012, 2012 WL 4497211, at *2 (Pa. Commw. Ct. Oct. 2, 2012) (enjoining law because voters still had extreme difficulty navigating new procedures designed to lessen burdens to obtain a voter ID). This consistent line of authority reveals just how far the decision below strayed from accepted practice.

Wisconsin's Emergency Rule neither mitigates nor justifies the irreparable harm that Wisconsin voters will suffer due to the rushed implementation of Act 23. Similarly, South Carolina amended its law shortly before the 2012 elections to include an "expansive reasonable impediment provision that was intentionally designed to relieve any potentially problematic aspects . . . and allow[] voters with non-photo voter registration cards to vote as they could before." *South Carolina*, 898 F. Supp. 2d at 46. Nevertheless, the three-judge district court ruled that, as of

October 2, 2012, the State could not complete "a large number of difficult steps [that] would have to be completed in order for the reasonable impediment provision to be properly implemented on November 6, 2012." *Id.* at 49–50. The court explained that "[i]n the course of just a few short weeks, the law by its terms would require: that more than 100,000 South Carolina voters be informed of and educated about the law's new requirements; that several thousand poll workers and poll managers be educated and trained about the intricacies and nuances of the law . . . and that county election boards become knowledgeable of the law." *Id.* at 50. The court expressed special concern that "South Carolina voters without [qualifying] photo IDs would have very little time before the 2012 elections to choose the option of obtaining one of the free qualifying photo IDs." *Id.*

In proceedings below, the State relied on this Court's decision in *Purcell*, but that case undoubtedly supports plaintiffs' position that voting rules cannot be changed at the eleventh hour. In *Purcell*, the Court vacated a Ninth Circuit decision that had enjoined Arizona's voter ID requirement. But, critically, the Arizona law had been *in effect before* the Ninth Circuit's injunction. In other words, the Ninth Circuit's decision to enjoin the voter ID law upset the status quo and threatened to confuse voters and discourage them from voting. This Court's decision in *Purcell* thus restored the long-standing status quo until after the election. 549 U.S. at 3.

The same principle applies here. Wisconsin's Act 23 had been enjoined for 30 months when the panel on September 12 lifted the district court's permanent

injunction. Like the Ninth Circuit in *Purcell*, the Seventh Circuit radically altered the status quo and fundamentally changed voting procedures weeks before Election Day. The government's duty to ensure orderly administration of elections is separate from the merits of voter ID laws generally. The principle is the same: in this country, we do not change the rules for voters mid-game.[13]

III. Applicants Are Likely To Prevail on the Merits

There is a "significant possibility that the judgment below will be reversed." *Barnes*, 501 U.S. at 1302 (Scalia, J., in chambers). The Seventh Circuit concluded that "*Crawford* requires us to reject a constitutional challenge to Wisconsin's statute." App. 14. But the dissenting judges rightly found the panel's reliance on *Crawford* "dead wrong." App. 34 (Williams, J., dissenting). This case is materially different from *Crawford* in at least three critical respects.

A. This Case Has the Robust Factual Record That the Plurality in *Crawford* Found Absent

The plurality opinion in *Crawford* "made very clear that its decision was specific to the evidence in the record in that case. Or, to be more precise, to the complete and utter lack of evidence." *Id.* The three-judge plurality held only that "the evidence in the record is not sufficient to support a facial attack on the validity

[13] The Arizona voter ID law at issue in *Purcell* also gave voters a variety of ways to vote without having to obtain an official state ID. For example, Arizona voters could participate in early voting without having to show an official ID. 549 U.S. at 2. And the Arizona law allowed voters to present *either* an official ID *or* two different forms of non-photo identification bearing the voter's name and address, such as a utility bill, bank statement, or insurance card. *Gonzalez v. Arizona*, 677 F.3d 383, 404 & n.31 (9th Cir. 2012) (en banc), *aff'd on other grounds*, 133 S. Ct. 2247 (2013). Act 23 has no comparable provisions.

of the entire statute . . . ." *Crawford*, 553 U.S. at 189. The plurality denied relief solely "on the basis of the record that has been made in this litigation." *Id.* at 202. The concurrence acknowledged the plurality's holding that the plaintiffs "ha[d] not assembled evidence to show that the special burden [on some voters] is severe enough to warrant strict scrutiny." *Id.* at 204 (Scalia, J., concurring).

The plurality opinion provided a roadmap for building a record to challenge state voter ID laws. The plurality found that (1) "the evidence in the record [did] not provide [the Court] with the number of registered voters without photo identification"; (2) the "evidence presented in the District Court [did] not provide any concrete evidence of the burden imposed on voters who currently lack photo identification"; (3) the record lacked evidence of "how difficult it would be for" certain plaintiffs to obtain a birth certificate; (4) the record contained "nothing about the number of free photo identification cards issued" since Indiana enacted its law; and (5) "nothing in the record establishe[d] the distribution of voters who lack photo identification." 553 U.S. at 200–01, 203 n.20. The plurality stressed that plaintiffs "had not introduced a single, individual Indiana resident who will be unable to vote as a result of [Indiana's law] or who will have his or her right to vote unduly burdened by its requirements." *Id.* at 187.

By contrast, here, "plaintiffs put on detailed evidence of the substantial burdens Wisconsin's voter identification law imposes on numerous voters." App. 35 (Williams, J., dissenting). With respect to the specific evidence missing in *Crawford*, the record here establishes that more than 9% of registered voters—

300,000 people—lack an ID to vote. App. 84. And the record is full of concrete evidence about numerous Wisconsin voters whose right to vote will be—and indeed already has been—denied or substantially and unnecessarily burdened by Act 23's photo ID requirement. App. 85–86, 93–97, 121, 124. Thus, "[t]he record that has been made in this litigation is entirely different from that made in *Crawford*. In every way." App. 35 (Williams, J., dissenting).

B. Act 23 Imposes Far Greater Burdens on Voters Than Indiana's Law

The panel stated that "Wisconsin's law differs from Indiana's, but not in ways that matter under the analysis in *Crawford*." App. 3. That claim is demonstrably wrong. Act 23 imposes much stricter requirements than Indiana's law—especially for elderly, disabled, and poor voters. Three examples stand out.

First, Indiana's law does not apply to absentee voters, and all voters over age 65 and all disabled voters qualify to vote absentee. Ind. Code § 3-11-10-24(a)(4), (5). Thus, "although it may not be a completely acceptable alternative, the elderly in Indiana are able to vote absentee without presenting photo identification." *Crawford*, 553 U.S. at 201. Wisconsin's law provides no comparable protection to all elderly and disabled voters. Rather, "Wisconsin requires photo ID for absentee voting as well as in-person voting; a person casting an absentee ballot must submit a photocopy of an acceptable ID." App. 3.

Second, Indiana's law permits "elderly persons who can attest that they were never issued a birth certificate" to obtain IDs by presenting other documents such as Medicaid/Medicare cards or Social Security benefits statements. *Crawford*, 553 U.S. at 199 n.18. Elderly voters in Wisconsin have no similar option.

Third, Indiana's law provides "an affidavit option that allows indigent voters without identification to vote provisionally." App. 14 (Williams, J., dissenting); *see also* App. 36. Act 23 has no similar provision.

In light of these material differences, *Crawford* does not control the outcome in this case. The Seventh Circuit erred in holding otherwise.

C. The Seventh Circuit Applied an Incorrect Standard Under Section 2

This case, unlike *Crawford*, involves a claim under Section 2 of the Voting Rights Act. Section 2 requires a showing that a voting restriction results in "less opportunity" for minorities to participate in the political process. 52 U.S.C. § 10301(b). The district court found that minorities in Wisconsin are twice as likely to lack ID and are more likely to have greater difficulties obtaining ID. These greater difficulties include not only economic barriers confronting the poor, a disproportionate number of whom are minorities, but other obstacles such as language barriers encountered by Latinos; the challenges of dealing with out-of-state bureaucracies in seeking ancient birth records; and, for many elderly Black voters, the absence of any official birth records whatsoever. App. 93 n.17, 124.

The panel did not find these facts to be "clearly erroneous," and acknowledged that they demonstrate "a disparate outcome." App. 17. But the panel held that minorities do not have "less opportunity" to vote in violation of Section 2 so long as the challenged voting restriction treats members of different races equally on its face, regardless of any disparate impact. App. 21 ("[I]n Wisconsin everyone has the same opportunity to get a qualifying photo ID."). No court of appeals has ever adopted that interpretation of Section 2. *See, e.g.*,

Gonzalez v. Ariz., 677 F.3d 383, 407 (9th Cir. 2012) (*en banc*) (whether voter ID unlawful under Section 2 dependent upon whether there is a racial disparity in rates of ID ownership); *Barnett v. City of Chicago*, 141 F.3d 699, 701 (7th Cir. 1998) (Section 2 akin to disparate impact inquiry). Nor can the panel's reasoning survive scrutiny. Indeed, the panel's rationale would justify reintroducing literacy tests and poll taxes; an illiterate voter has the "same opportunity" to vote as everyone else (so long as he learns how to read), and an impoverished voter has the "same opportunity" to vote as others (so long as he finds the money to pay the poll tax).

The panel also emphasized that the district court's extensive findings "do not show a 'denial' of anything by Wisconsin, as §2(a) requires." App. 17. To the contrary, the district court specifically found that Act 23 has denied and will in the future deny the right to vote. App. 129. Moreover, Section 2's plain language outlaws not only measures that "deny" the right to vote, but those that "abridge" it as well. 52 U.S.C. § 10301(a) (prohibiting "denial *or abridgement* of the right of any citizen of the United States to vote") (emphasis added). The prohibition against "abridg[ing]" the right to vote includes "onerous procedural requirements which effectively handicap exercise of the franchise by voters of color," *Lane v. Wilson*, 307 U.S. 268, 275 (1939), as well as "cumbersome procedure[s]" and "material requirement[s]" that "erect[] a real obstacle to voting," *Harman v. Forssenius*, 380 U.S. 528, 541–42 (1965). The district court's findings amply document how Act 23's provisions impose "onerous" and "cumbersome" requirements on a large number of voters, a disproportionate number of whom are Black or Latino.

The panel also found that there could be no liability under Section 2 without evidence of intentional discrimination by the State. App. 17-18. But that holding improperly grafts an intent requirement into Section 2, in contravention of both the statute's plain language, 52 U.S.C. § 10301(a) (providing for liability based on "results"), and this Court's precedents, *see, e.g.*, *Chisom v. Roemer*, 501 U.S. 380, 404 (1991) ("Congress [has] made clear that a violation of § 2 c[an] be established by proof of discriminatory results alone."). "The essence of a § 2 claim is that a certain electoral law, practice, or structure interacts with *social and historical conditions* to cause an inequality in the opportunities enjoyed by black and white voters." *Thornburg v. Gingles*, 478 U.S. 30, 47 (1986) (emphases added). Here, the district court found that "the reason Blacks and Latinos are disproportionately likely to lack an ID is because they are disproportionately likely to live in poverty, which in turn is traceable to the effects of discrimination in areas such as education, employment, and housing." App. 67. That finding is entirely consistent with this Court's guidance that, among the "social and historical conditions" relevant to Section 2 liability, is "the extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process." *Thornburg*, 478 U.S. at 44–45 (quoting S. Rep. No. 97-417, at 28–29 (1982)).

D. The Decision Below Rests on Inexplicable Inaccuracies

The Seventh Circuit's opinion contains numerous material errors, seriously undermining the court of appeals' decision:

- The panel stated that six key voter witnesses "did not testify that they had tried to get [a copy of their birth certificate], let alone that they had tried but failed." App. 5. But five of these witnesses testified that they tried and failed to get a birth certificate so they could get a voter ID. *See* Trial Tr. 37–38 (testimony of Alice Weddle); *id.* at 214–16 (Shirley Brown); *id.* at 401 (Melvin Robertson); and *id.* at 705–10 (Rose Thompson); *id.* at 852 (Sim Newcomb). A sixth witness, who passed away shortly before trial, also repeatedly and unsuccessfully tried to obtain a birth certificate. App. 93 n.17; Frank Ex. 607 at 10–20 (Nancy Wilde).

- The panel stated that the district court "did not find that substantial numbers of persons eligible to vote have tried to get a photo ID but been unable to do so." App. 5. Wrong: The district court found that a "substantial number of the 300,000 plus eligible voters who lack a photo ID are low-income individuals . . . who have encountered obstacles that have prevented or deterred them from obtaining a photo ID." App. 85.

- The panel stated that Act 23 could help to prevent voters who "are too young or are not citizens" from voting. App. 11. The State has never made these arguments in defense of Act 23, for good reason. Wisconsin state-issued IDs are available to non-citizens. Wis. Adm. Code § Trans. 102.15(3m). And some forms of qualifying ID under Act 23, such as many student IDs, are not required to show a voter's age. Wis. Stat. 5.02(6m)(f).

- The panel stated that Act 23 could help "promote[] accurate recordkeeping (so that people who have moved after the date of registration do not vote in the wrong precinct)." App. 11. Wrong: Act 23 has nothing to do with voting in the correct precinct. Under the law, the address on a voter's ID does not have to match his or her voting address. Trial Tr. 867 (testimony of Executive Director, Wisconsin Government Accountability Board).

- The panel stated that "[t]he record also does not reveal what has happened to voter turnout in the other states (more than a dozen) that require photo IDs for voting." App. 6. Wrong: The State's own expert agreed that Georgia's voter ID law "[h]ad the effect of suppressing turnout." Trial Tr. 1446, 1473–77 (Dr. M.V. Hood III). Plaintiffs' experts testified about academic studies finding that "photo voter ID requirements appeared to exert a vote suppression effect along socioeconomic lines." *Id.* at 1238–40, 1267 (Dr. Marc Levine); *id.* at 1205–06 (Dr. Barry Burden).

- The panel stated that the district court did not "find that differences in economic circumstances are attributable to discrimination by Wisconsin." App. 17. Wrong: The court found that "discrimination in areas such as education, employment, and housing" are the "cornerstone from which other socioeconomic disparities flow." App. 127–28.

The Seventh Circuit also could not fathom that so many registered Wisconsin voters lack a photo ID "in a world in which photo ID is essential to board an airplane, . . . pick up a prescription at a pharmacy, open a bank account or cash a check at a currency exchange, buy a gun, or enter a courthouse to serve as a juror or watch the argument of this appeal." App. 8. Wrong, wrong, wrong, wrong, and wrong again. According to the U.S. Transportation Security Administration, airline travelers do not need a photo ID to board an airplane.[14] According to the Centers for Disease Control and Prevention, patients do not need a photo ID to pick up a prescription in 35 States, including Wisconsin.[15] According to the Department of Treasury, bank customers do not need a photo ID to open a bank account.[16] According to the Department of Justice, citizens do not need a photo ID to buy a

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[14] Transportation Security Admin., *Acceptable IDs*, http://www.tsa.gov/ traveler-information/acceptable-ids ("We understand passengers occasionally arrive at the airport without an ID, because of losing it or inadvertently leaving it at home. If this happens to you, it does not necessarily mean you won't be allowed to fly. If you are willing to provide additional information, we have other ways to confirm your identity, like using publicly available databases, so you can reach your flight.").

[15] Centers for Disease Control and Prevention, *Law: Requiring Patient Identification Before Dispensing*, http://www.cdc.gov/homeandrecreationalsafety/ Poisoning/laws/id_req.html.

[16] U.S. Dep't of Treasury, Office of the Comptroller of the Currency, *Answers About Identification*, http://www.helpwithmybank.gov/get-answers/bank-accounts/ identification/faq-bank-accounts-identification-02.html (an "identification number" such as "the individual's Social Security number or employer identification" is sufficient to open a bank account).

gun.[17] And as this Court undoubtedly is aware, members of the public do not need a photo ID to enter the Supreme Court Building at One First Street. The decision below thus rests on a hypothesized reality that does not exist for hundreds of thousands of less privileged Americans.

IV. The Balance of Equities Supports a Stay

As the five dissenting judges recognized, "[t]he scale balancing the harms here . . . is firmly weighted down by the harm to the plaintiffs. Should Wisconsin citizens not have their votes heard, the harm done is irreversible." App. 37. The immediate implementation of the decision below "will substantially injure numerous registered voters in Wisconsin, and the public at large, with no appreciable benefit to the state." App. 31 (Williams, J., dissenting).

In contrast to the irreparable harm that the Seventh Circuit's judgment will cause to Wisconsin voters, the State will suffer no harm absent a stay (other than delayed enforcement of its law). Act 23 ostensibly was enacted to prevent in-person voter fraud. But the district court found that, after two years of litigation, "virtually no voter impersonation occurs in Wisconsin," and that "it is exceedingly unlikely that voter impersonation will become a problem in Wisconsin in the foreseeable future." App. 72.

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[17] U.S. Dep't of Justice, Office of the Inspector General, *Review of ATF's Project Gunrunner* at 10 (Nov. 2010), http://www.justice.gov/oig/reports/ATF/e1101.pdf ("Individuals who buy guns from an unlicensed private seller in a 'secondary market venue' (such as gun shows, flea markets, and Internet sites) are exempt from the requirements of federal law to show identification . . . .").

The panel found it irrelevant that in-person voter fraud "does not happen in Wisconsin," because Act 23 supposedly "promotes public confidence in the integrity of elections." App. 10, 12. The Seventh Circuit held that the presumption in *Crawford* that voter ID laws can promote public confidence is irrefutable no matter the contrary evidence. App. 12–13. As a result, the Seventh Circuit rejected the district court's extensive factual findings—based on expert testimony and empirical evidence—that Act 23 "caus[ed] members of the public to think that the photo ID requirement is itself disenfranchising voters and making it harder for citizens to vote, thus making results of elections less reflective of the will of the people." App. 81. In any event, the notion that scrambling to enforce Act 23 next month will promote confidence in the integrity of the election is farcical. Reports instead are that the law may disenfranchise enough Black and Latino voters to turn a close election for one party's gubernatorial candidate.[18]

In considering the balance of equities, the decision below cannot be squared with this Court's frequent admonitions against changing the voting rules on the eve of an election. *See supra* at 19. In stark contrast to the decision below, the Sixth Circuit in *U.S. Student Ass'n Foundation v. Land*, 546 F.3d 373, 388–89 (6th Cir. 2008), properly concluded that the public interest weighs in favor of injunctive relief "[b]ecause the risk of actual voter fraud is miniscule when compared with the concrete risk that [the State's] policies will disenfranchise eligible voters." *Id.* at

[18] Claire Groden, *Scott Walker Could Win Thanks to Wisconsin's Voter ID Law*, New Republic (Oct. 6, 2014), http://tinyurl.com/mbpt65o.

388–89. The court explained that the injunction "eliminates a risk of individual disfranchisement without creating any new substantial threats to the integrity of the election process." *Id.* at 389.

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"[T]he right to vote is not the province of just the majority. It is not held just by those who have cars and so already have driver's licenses and by those who travel and so already have passports. The right to vote is also held, and held equally, by all citizens of voting age." App. 32 (Williams, J., dissenting). If this Court does not stay the Seventh Circuit's judgment, many of the people who show up to the polls in Wisconsin on Election Day will be deterred or outright turned away and stripped of their fundamental right to vote—all because a federal court decided to change the election rules at the eleventh hour. The legal questions underlying plaintiffs' challenge to Act 23 deserve solemn consideration by this Court in due course. In the meantime, this Court should maintain the status quo, avoid the chaos that inevitably will follow from the enforcement of new voter ID requirements still unknown to countless voters and poll workers, and permit the voices of all registered Wisconsin voters to be heard on Election Day.

Conclusion

Applicants respectfully ask this Court to stay the Seventh Circuit's October 6, 2014 judgment and leave the district court's permanent injunction in force pending the filing and disposition of a petition for a writ of certiorari.

October 8, 2014

Respectfully submitted,

/s/ Lisa S. Blatt

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