

IN THE
Supreme Court of the United States

RUTHELLE FRANK, *et al.*,

Petitioners,

v.

SCOTT WALKER, Governor of Wisconsin, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

**BRIEF FOR THE ONE WISCONSIN
INSTITUTE AS *AMICUS CURIAE* IN
SUPPORT OF PETITIONERS**

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INTERESTS OF *AMICUS CURIAE*¹

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

INTRODUCTION AND SUMMARY OF ARGUMENT

Voter ID laws have reshaped the United States election process for the better part of the last decade. This case presents a clear opportunity for the Court to examine the legality of voter ID laws in light of a developed factual backdrop – both in the record established in this case, as well as national developments in the nearly seven years since the Court’s decision in *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 194-95 (2008).

1. Pursuant to Supreme Court Rule 37.6, *amicus curiae* states that no counsel for any party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No one other than *amicus curiae* or its counsel made a monetary contribution to the preparation or submission of this brief. Counsel of record for all parties received notice at least ten days prior to the due date of *amicus curiae*’s intention to file this brief. Letters from the parties consenting to the filing of this brief have been filed with the Clerk of the Court, including a blanket letter of consent filed by the petitioner.

The record in this case demonstrates that access to Wisconsin's Department of Motor Vehicles ("DMV") – the agency with exclusive responsibility for issuing the most prevalent forms of qualifying photo ID – is woefully inadequate to accommodate the number of eligible electors who would need to obtain a state-issued ID in order to vote if the law is upheld. Wisconsin's DMV inadequacies are not unique: other states have similarly deficient DMV accessibility. Across the nation, therefore, as voter ID laws are becoming more prevalent (and more restrictive), the lack of accessibility to DMVs is becoming a barrier to the ballot box. In addition, DMVs have proven ineffective in implementing election laws, further exacerbating the problem with voter ID laws requiring DMVs to play a prominent role in ballot access.

The decision below is factually and legally deficient. This Court must act to ensure that eligible electors are not unconstitutionally precluded from casting a ballot.

ARGUMENT

I. Inaccessibility of Wisconsin DMVs Creates A Significant – And For Some, Insurmountable – Barrier To Obtaining A Photo ID.

State-issued photo IDs are the most prevalent form of identification voters use to comply with voter ID laws. These IDs can only be obtained after an individual personally visits a DMV service center. Because individuals must go to the DMV in person, the accessibility of DMV service centers is an essential component to evaluating any voter ID law: When eligible electors face insurmountable obstacles to get to the DMV to obtain

the requisite ID, they are precluded from voting. Even when obstacles are not impossible to overcome, for some they are so significant that it results in the loss of the franchise. In that sense, the DMV's role is transformed into a gatekeeper of the ballot box.

At trial, witnesses testified about various difficulties they faced in their efforts to obtain qualifying state-issued photo identification. *See Frank v. Walker*, No. 11-CV-01128, 12-CV-00185, 2014 WL 1775432, at *32-33, fn. 17 (E.D. Wis. Apr. 29, 2014). The trial court concluded that many Wisconsin voters do not have access to the state's DMVs, resulting in a significant barrier to ballot access despite any fee waiver. *Id.* at *29-30.

The obstacles faced by the witnesses who testified at trial are not surprising given that Wisconsin has an inadequate number of DMV service centers: only 92 DMV service centers serve the entire state.² These 92 DMVs are spread across 56,145 square miles, which necessarily results in most Wisconsinites traveling a far distance to reach the nearest DMV location.

Because the eligible electors who are seeking to obtain a state-issued ID to vote, by definition, will not have a driver's license, these individuals cannot drive themselves. And studies have shown a strong correlation between individuals who lack state-issued ID and those without

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

access to transportation – private or public.³ Put another way, many eligible electors who lack the necessary ID also have no way to get to the DMV to obtain the ID. In Wisconsin, of the approximately 257,000 eligible electors who lack access to transportation, more than 18 percent – nearly 50,000 individuals – live more than 10 miles from a DMV service center.⁴

Along with a limited number of locations, most of Wisconsin's DMV service centers are open for very limited hours. More specifically, according to the Department of Transportation's website:

- 3 DMVs are open on Saturdays; none is open on Sundays; 89 DMVs are closed both weekend days.
- 1 DMV is open until 6:00 p.m. all five days of the week; 1 DMV is open until 6:00 p.m. – but only on Wednesdays; all other DMV locations close by 5:00 p.m.
- 31 locations are open 5 days per week.
- 1 DMV is open 3 days per week.
- 49 DMVs are open 2 days each week.

3. See Keesha Gaskins, & Sundeep Iyer, *The Challenge of Obtaining Voter Identification*, BRENNAN CENTER FOR JUSTICE AT NEW YORK UNIVERSITY SCHOOL OF LAW (2012) at 3-4, available at <http://www.brennancenter.org/publication/challenge-obtaining-voter-identification>.

4. *Id.*

- 1 is open 3 days per month.
- 2 are open 2 days each month.
- 3 are open only 1 day per month.
- 4 are open for 6 days each year.
- 1 is open 3 days per year.⁵

The limited number of DMVs and hours of operation render the Wisconsin DMV service centers ill-equipped to meet the needs of the Wisconsin electorate. By comparison, state and local municipalities have made a concerted effort to ensure Wisconsin voters have access to the polls on Election Day. Each Election Day, there are between 2,000 and 3,000 polling location across Wisconsin, and each poll is open from 7 a.m. to 8 p.m. Wis. Stat. §§ 5.25(5)(c); 6.78(1m).⁶ Thus, in one day, polling place hours of operation are the equivalent of approximately two and a half months of DMV access.

The Institute first raised the lack of DMV access before the law was enacted in 2011.⁷ But instead of

5. *DMV service centers*, WISCONSIN DEPARTMENT OF TRANSPORTATION, at <http://www.dot.wisconsin.gov/about/locate/dmv/>.

6. See also *Towns Quick Facts*, WISCONSIN TOWNS ASSOCIATION at <http://www.wisctowns.com/about-towns>.

7. During the time the Wisconsin State Legislature was debating 2011 Assembly Bill 7, which was enacted as Wisconsin's photo ID law, the Institute conducted extensive research on the location and accessibility of the Wisconsin Department of

working to improve DMV access, the government's initial plan was to close nearly ten percent of its DMV service centers.⁸ Public pressure resulted in those DMV service centers remaining open.⁹ But the accessibility issues remain. In fact, despite having knowledge of such limited access for nearly four years, the state of Wisconsin has done nothing to materially improve Wisconsin's DMV landscape. In 2011, there were 91 DMVs, with only one having weekend hours.¹⁰ Since then, only one service center has been added, and the hours of operation have only been marginally increased. Indeed, the Governor's recently introduced 2015-16 budget includes no allocation to increase the number of service centers, hours of operation, or otherwise address the increased demand that would result from the implementation of the voter ID law. *See* 2015 Wisconsin S.B. 21.

Wisconsin is not unique in its limited DMV access. For example, In Mississippi and Alabama, roughly 30

Transportation, Division of Motor Vehicle ("DMV") service centers. *See, e.g.,* Tova Wangs, *Misplaced Priorities: Voter ID In Wisconsin*, DEMOS.ORG at <http://www.demos.org/publication/voter-identification-wisconsin-misplaced-priority>.

8. Steve Singiser, *Wisconsin: After signing Voter ID, Walker makes it harder to get IDs*, DAILY KOS, July 25, 2011, at <http://www.dailykos.com/story/2011/07/25/998594/-Wisconsin-After-signing-Voter-ID-Walker-makes-it-harder-to-get-IDs>.

9. Emma Roller, *State puts breaks on plan to close DMV sites*, MILWAUKEE JOURNAL SENTINEL, Aug. 4, 2011, available at <http://www.jsonline.com/news/statepolitics/126814653.html>.

10. *See Why Voter ID is bad for Wisconsin*, ONE WISCONSIN NOW BLOG, January 13, 2011, at <http://www.onewisconsinnow.org/blog/2011/01/why-voter-id-is-bad-for-wisconsin.html>.

percent of the eligible electors without vehicle access reside at least 10 miles from a DMV service center.¹¹ In Georgia, the number is 16.6 percent – which represents more than 66,000 eligible electors.¹² And nearly 14 percent, or approximately 135,500 Pennsylvania eligible electors are in the same situation.¹³

The court below concluded that Wisconsin’s photo ID law is “materially identical to Indiana’s photo ID statute.” Among the many reasons that statement is incorrect, the practical realities of Wisconsin voters’ access to the state’s DMV invalidate this conclusion. Wisconsin’s DMV inaccessibility stands in stark contrast to the accessibility of the Indiana Bureau of Motor Vehicles (“BMV”). Only 1.2 percent of the Indiana eligible electors live more than 10 miles from a BMV service center. And although Wisconsin has 50 percent more square mileage than Indiana, Indiana has 140 BMV service centers, compared to Wisconsin’s 92. In addition, whereas Wisconsin has only 33 full-time locations, nearly all of Indiana’s 140 BMVs are open five days a week.¹⁴ Indiana also has 124 BMVs open on the weekends.¹⁵ Wisconsin has *three*.¹⁶ The landscape of DMV service centers in Wisconsin – and Mississippi, Alabama,

11. Keesha Gaskins, *The Challenge of Obtaining Voter Identification*, BRENNAN CENTER FOR JUSTICE AT NEW YORK UNIVERSITY SCHOOL OF LAW (2012) at 3-4.

12. *Id.*

13. *Id.*

14. See Indiana Bureau of Motor Vehicles, *Branch Locations and Hours*, available at www.in.gov/bmv/2337.htm.

15. *Id.*

16. *DMV Service Centers*, *supra*, n. 6.

Georgia, and Pennsylvania – has little in common with Indiana.

In light of the factual record established in this case, it is impossible to conclude that DMV inaccessibility is an insignificant “indirect cost” of obtaining a photo ID. For much of the electorate, the cost is plainly evident. And it is a significant – for some, complete – impediment to the franchise.

II. The Wisconsin DMV Has Already Failed In Serving As Gatekeeper of the Ballot Box

In addition to the DMV accessibility issues, DMVs are currently ill-equipped to play a prominent role in the electoral process. Put another way, the current unfettered and unexamined expansion of the DMVs’ role in elections threatens the franchise. Wisconsin’s roll-out of its voter ID law provides this Court with a blatant and unambiguous example of the DMV’s lack of suitability when it decided to keep secret an elector’s right to receive the photo ID without paying a fee.

In *Crawford*, this Court noted the potential constitutional problem under *Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966), if a state required voters to pay a fee to obtain the ID. *Crawford*, 553 U.S. at 198. Following *Crawford*, states have consistently enacted voter ID laws that include provisions allowing voters to obtain free state-issued ID cards as part of their voter ID laws.¹⁷

17. See Karen Shanton, & Wendy Underhill, *Costs of Voter Identification*, NATIONAL CONFERENCE OF STATE LEGISLATORS (June 2014).

Wisconsin's voter ID law is no exception: Wisconsin's eligible electors may obtain a state-issued ID without paying the \$28 charge – although they must still appear in person and obtain the requisite paperwork, both of which carry costs. Despite this “free ID” provision, however, the state's implementation of the law was marred with attempts to keep secret the opportunity to obtain a state ID free of charge.

The day the law went into effect, the Wisconsin DMV issued a memorandum instructing its staff not to offer the free ID unless the individual affirmatively requested it.¹⁸ The memorandum also informed its staff not to answer questions about the type of ID required to voting and to instead direct those individuals to contact another government agency.¹⁹ When its policy became public two months later, the DMV explained that its instructions were based on the plain language of the statute, which did not include an explicit directive for DMV employees to ask those requesting a photo ID if they would be using it to vote.²⁰ The DMV also acknowledged that having to issue

18. See Tyler Kingkade, *Wisconsin Official Instructs Staff Not To Mention Free IDs For Voting*, HUFFINGTON POST (Sept. 9, 2011) available at http://www.huffingtonpost.com/2011/09/08/wisconsin-official-free-voting-ids_n_954218.html.

19. James B. Kelleher, *Wisconsin official told DMV not to push free voter ID cards*, REUTERS (Sept. 8, 2011) available at <http://www.reuters.com/article/2011/09/08/us-wisconsin-voter-id-idUSTRE78713P20110908>.

20. *Top DOT official tells staff not to mention free voter ID cards to the public – unless they ask*, THE CAPITAL TIMES (Sept. 7, 2011) available at http://host.madison.com/news/local/govt-and-politics/capitol-report/top-dot-official-tells-staff-not-to-mention-free-voter/article_335f59fa-d8fe-11e0-8a23-001cc4c03286.html.

a substantial number of IDs free of charge would have a significant budgetary impact. As a result of the DMV's directives, individuals who failed to affirmatively request the "free ID" were required to pay the \$28 fee. Following negative press coverage of the DMV's policy, the DMV informed the media that it would place permanent signs at its service centers alerting individuals to the availability of a free ID for voting.²¹ It is not known how prominently such signs were displayed, or if they were even placed at all. Moreover, as there is no statutory requirement that the DMV post such signs, serious questions remain as to how or whether there will be reasonable efforts to inform the electorate of its right to obtain a photo ID without paying a fee should the law go into effect.

The Wisconsin DMV's implementation of its voter ID law provides this court with a clear cautionary tale. DMV access plays a critically important role in the voter ID process. Tasked with implementing a constitutionally required provision of the law, the Wisconsin DMV's actions instead impeded the process for Wisconsin's electorate.

21. *Id.*

CONCLUSION

This Court should grant the Petition.

Respectfully submitted,

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