



September Issues Forum

Election Administration in 2016: What Have We Learned?

Find out what's happening with Wisconsin's election laws!

Wednesday, September 7, 2016

6:00 p.m. Social time with snacks. Rejoin old friends. Meet new ones.

7:00 p.m. Program with our speakers:

Josh Kaul, Voter ID litigation attorney from Perkins Coie

Maribeth Witzel-Behl, City of Madison Clerk

Capitol Lakes Grand Hall

333 West Main Street in downtown Madison.

The event is free and open to the public.

Free parking in the ramp across the street.

(Bring your ticket into Capitol Lakes to get it validated.)

The Voter ID Steering Committee organized this forum: Mary Anglim, Gail Bliss, Kathy Fullin, Shirley Haidinger, Paul Malischke, Marian Matthews, Ingrid Rothe (primary organizer), and Brook Soltvedt.

For more information visit the League's website at

www.lwvdanecounty.org or call 608-232-9447.

List of background material

To find linked material on the web, go to the Dane County League's website (www.lwvdanecounty.org), scroll down to "Upcoming Forums" and click on the September forum study materials link. Then click on the links in that material.

1. League of Women Voters of Wisconsin position on Voting Rights
2. List of administrative changes to voting/election law since 2011
3. Excerpt from Judge Lynn Adelman's decision in Frank vs. Walker
4. Federal appellate decision striking down Adelman's order
5. Excerpt from Judge James Peterson decision in One WI Institute vs. (WI Elections Commission)
6. Excerpt from Judge Peterson's stay order in One WI Institute vs. (WI Elections Commission)
7. Information from Madison City Clerk Maribeth Witzel-Behl

[August 2 story in WI State Journal about various court rulings](#)

Study questions

1. Are you a Special Registration Deputy (SRD)?

If not, would you be willing to become one?

Would you be willing to attend a Voter Ambassador Training provided by the Madison City Clerk?

Would you prefer a training provided by a League member?

2. Are you familiar with the League's "SRD Central" on our website (www.lwvdanecounty.org)? It provides a lot of current information that SRDs can use, including links to sign up to help register voters.

Instead of checking "SRD central" as the primary source of information about changes in the law or opportunities to help register people, would you rather receive periodic e-mails with current information and opportunities to assist voters?

3. The Peterson decision is based on the finding that changes in election administration laws, including Voter ID, disproportionately impact certain subsets of voters, including minorities, seniors, students, people with disabilities, and those with low incomes. Our experience from the August 9 election is that many people still do not know they must bring a voter photo ID to the polls. Would you be willing to talk to your friends and family members who may not have an ID, and ask them if they have an ID valid for voting (or, in the case of seniors or people with disabilities, if they want to apply for a permanent absentee ballot)?

Do you know others who might know people who need help getting an ID or applying for permanent absentee status?

4. Polls show that 67% of people in Wisconsin support requiring that voters show a valid ID when voting. Here are some examples of people who were unable to provide a valid ID at recent elections: (1) a woman who had sent her passport to the US State Department in order to obtain a visa (which may take up to 10 weeks); (2) a student who had obtained a UW student ID for voting, but could not pull up his proof of residence on his smart phone because there was bad cellular reception and no wifi at the polling place; (3) a woman with disabilities who does not drive and thought her birth certificate would prove her identity; (4) a senior who had given up his driver's license, who walked to the polls, not knowing about the permanent absentee ballot option (which does not require an ID); (5) a woman whose wallet was stolen the day before the election.

Do you know of other examples of people who were unable to cast a ballot? Have you talked about these problems with family and friends?

Do you have tips for others on ways to explain how this requirement unfairly disenfranchises some voters?

5. Did the presentations by Josh Kaul and Maribeth Witzel-Behl help you better understand election laws in Wisconsin?

What did you find particularly interesting, compelling or useful? Why?

League of Women Voters of Wisconsin position on Voting Rights

[Link to full explanation](#). The summary is:

The League of Women Voters of Wisconsin believes that voting is a fundamental citizen right that must be guaranteed. Wisconsin election laws should provide citizens with maximum opportunity for registration, voting at the polls, and absentee voting.

Regarding Voting, we support:

- No photo ID or other requirements that place undue burden on the voter or erect barriers to voter participation

Regarding Absentee Ballots, we support:

- Ease of obtaining and executing absentee ballots including adequate timing for voters to exercise their right to vote and election officials to process the ballots
- A system of early voting primarily for presidential primary, presidential and gubernatorial elections that provides for the early ballots to be entered into the machine for validation but with no tallying until Election Day. The system should include security measures for the machines and a time frame that provides ample time for poll lists to be updated by Election Day. Multiple sites should be allowed at the discretion of the municipalities.

Changes to Election Administration since 2011.

Early voting provision of [2011 Act 23](#): reduced early voting from 30 days to 12 days.

Residency provision of [2011 Act 23](#): increased the residency requirement from 10 days before an election to 28 consecutive days before an election. The Act also provided that an individual who moves within this state later than 28 days before an election must vote at his or her previous ward.

Voter registration provisions of [2011 Act 23](#): eliminated corroboration by friends or neighbors of residency for registration on election day. Eliminated registration on the three days preceding an election. Eliminated ability of Special Registration Deputies trained in one jurisdiction to register voters in other jurisdictions. Eliminated use of college housing lists as proof of residence, by requiring the list to indicate who is a citizen. (Colleges are not allowed to produce such a list under the Family Educational rights and Privacy Act ([FERPA](#)).)

[2011 Act 240](#)—Eliminated the requirement to have a Special Registration Deputy at all public high schools.

[2011 Act 75](#)—Eliminated ability for clerks to email or fax a ballot to all absentee voters except statutory overseas and military voters.

[2013 Act 76](#)—Overturned a Madison ordinance that required landlords to provide voter registration forms to new tenants.

[2013 Act 146](#)— Eliminated early voting on weekends.

[2013 Act 182](#)— Requires all voters to provide documentary proof of residence. Previously, this requirement did not apply to those who registered more than 20 days before an election, since all registrants have their residence checked via a verification postcard.

[2015 Act 261](#)—Completely eliminates Special Registration Deputies (This Act also allows online registration for those who have a driver’s license or DOT ID card. SRDs are eliminated when the system is launched.)

Absentee voting provisions of [2015 Act 261](#): starting with the November 2016 election. Absentee ballots will be rejected if they are missing the witness’s address. This act also changes the deadline for arrival. Previously they needed to be postmarked by Election Day and arrive by the Friday after the election. Act 261 forces rejection of those that arrive after Election Day.

Excerpt from p. 42 of federal Judge Lynn Adelman’s decision in Frank vs. Walker, July 19, 2016
[Read the full decision](#)

Finally, I must specify the form of the affidavit and other details concerning the implementation of the affidavit option. I have modeled the form of the affidavit on North Carolina’s “reasonable impediment declaration.” See Young Decl. Ex. 2, ECF No. 280- 2.

The affidavit must contain the following language:

I declare under penalty of perjury that I am the individual identified below, and that I have been unable to obtain acceptable photo identification with reasonable effort. This is due to the following reason(s):

- Lack of transportation
- Lack of birth certificate or other documents needed to obtain photo ID
- Work schedule
- Disability or illness
- Family responsibilities
- Other (please identify): _____

The affidavit shall have a space for the voter to print his or her name, a space for the voter’s signature, and a space for a date.

The affidavit does not have to be notarized or sworn before any officer. The Elections Commission may include spaces on the affidavit that are to be completed by election officials for administrative purposes, such as a space for identifying the polling location at which the affidavit was received. The defendants shall ensure that copies of the affidavit are available at the polls and also to those who vote by absentee ballot.

Any voter who completes and submits an affidavit shall receive a regular ballot, even if that voter does not show acceptable photo identification. No person may challenge the sufficiency of the reason given by the voter for failing to obtain ID.

Finally, the defendants shall include the affidavit option in any publicity materials related to the photo ID requirement, shall train poll workers to inform voters who arrive at the polls without qualifying ID about the affidavit option, and shall otherwise make reasonable efforts to ensure that voters are made aware of the affidavit option.

Decision of federal Circuit Court staying Adelman's order, August 10, 2016

United States Court of Appeals For the Seventh Circuit, Chicago, IL

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL S. KANNE, *Circuit Judge*

DIANE S. SYKES, *Circuit Judge*

RUTHELLE FRANK, *et al.*, v. SCOTT WALKER, in his official capacity as Governor of the State of Wisconsin, *et al.*,

Order

Appeals from the United States District Court for the Eastern District of Wisconsin.

Lynn Adelman, Judge.

The injunction entered by the district court on July 19, 2016, is stayed pending appeal. Applying the standards of *Nken v. Holder*, 556 U.S. 418 (2009), we conclude both that the district court's decision is likely to be reversed on appeal and that disruption of the state's electoral system in the interim will cause irreparable injury.

Our most recent decision in this case concluded that anyone who is eligible to vote in Wisconsin, but cannot obtain a qualifying photo ID with reasonable effort, is entitled to an accommodation that will permit him or her to cast a ballot.

Frank v. Walker, 819 F.3d 384 (7th Cir. 2016). On remand, the district court concluded that at least some voters fall in this category, notwithstanding the most recent revisions to the procedures that Wisconsin uses to issue photo IDs. But instead of attempting to identify these voters, or to identify the kinds of situations in which the state's procedures fall short, the district court issued an injunction that permits any registered voter to declare by affidavit that reasonable effort would not produce a photo ID—even if the voter has never tried to secure one, and even if by objective standards the effort needed would be reasonable (and would succeed).

The district court's injunction allows any registered voter to check a box stating a reason why reasonable effort would not produce a qualifying photo ID. The boxes include lack of necessary documents (apparently including situations in which the person has not tried to obtain them), "work", "family responsibilities", and "other"—and the voter can put anything in the "other" box, including a belief that spending a single minute to obtain a qualifying photo ID is not reasonable. The injunction adds that state officials are forbidden to dispute or question any reason the registered voter gives. Yet the Supreme Court held in *Crawford v. Marion County Election Board*, 553 U.S. 181, 198 (2008), that "the inconvenience of making a trip to the [department of motor vehicles], gathering the required documents, and posing for a photograph surely does not qualify as a substantial burden on the right to vote, or even represent a significant increase over the usual burdens of voting." A given voter's disagreement with this approach does not show that requiring one trip to a governmental office is unreasonable.

Because the district court has not attempted to distinguish genuine difficulties of the kind our opinion mentioned, 819 F.3d at 385–86, or any other variety of substantial obstacle to voting, from any given voter’s unwillingness to make the effort that the Supreme Court has held that a state can require, there is a substantial likelihood that the injunction will be reversed on appeal.

Order from federal Judge James D. Peterson in One Wisconsin Institute case, July 29, 2016

([the full decision](#) is particularly readable and interesting).

Note: IDPP stands for [“ID petition process” at the DMV.](#)

IT IS ORDERED that:

1. The IDPP as implemented is unconstitutional under the First and Fourteenth Amendments to the United States Constitution;
2. 2013 Wis. Act 146 is unconstitutional under the Fifteenth Amendment to the United States Constitution;
3. The restriction limiting municipalities to one location for in-person absentee voting is unconstitutional under the First and Fourteenth Amendments to the United States Constitution;
4. The state-imposed limits on the time for in-person absentee voting, with the exception of the prohibition applicable to the Monday before election day, are unconstitutional under the First and Fourteenth Amendments to the United States Constitution;
5. The requirement that “dorm lists” to be used as proof of residence include citizenship information is unconstitutional under the First and Fourteenth Amendments to the United States Constitution;
6. The increase of the durational residency requirement from 10 days to 28 days is unconstitutional under the First and Fourteenth Amendments to the United States Constitution;
7. The prohibition on distributing absentee ballots by fax or email is unconstitutional under the First and Fourteenth Amendments to the United States Constitution;
8. The prohibition on using expired, but otherwise qualifying, student IDs is unconstitutional under the First and Fourteenth Amendments to the United States Constitution;
9. Plaintiffs’ request for a permanent injunction is GRANTED, and defendants are permanently enjoined from enforcing any of the provisions held unlawful in sections 1 through 8 of this ORDER;
10. Defendants, and their officers, agents, servants, employees, attorneys, and all those acting in active concert or participation with them, or having actual or implicit knowledge of this order, are further ORDERED to:
 1. Promptly issue a credential valid as a voting ID to any person who enters the IDPP or who has a petition pending;

2. Provide that any such credential has a term of expiration equivalent to that of a Wisconsin driver license or photo ID and will not be cancelled without cause;
 3. Inform the general public that credentials valid for voting will be issued to persons who enter the IDPP;
 4. Further reform the IDPP so that qualified electors will receive a credential valid for voting without undue burden, consistent with this opinion;
11. Provisions 10.a. through 10.d. are to be effectuated within 30 days so that they will be in place and available for voters well before the November 8, 2016, election.
 12. The court retains jurisdiction to oversee compliance with the injunction;
 13. The court intends this ruling to be immediately appealable; for the avoidance of doubt, the court grants permission to any party to file an interlocutory appeal if this order is not final for appeal purposes.

Excerpt from Federal Judge James D. Peterson partial stay of his ruling in One Wisconsin Institute case, August 11, 2016. ([the full stay order is here](#))

Plaintiffs prevailed on some, but not all, of their challenges to changes in Wisconsin's election laws. The court enjoined enforcement of those laws that it found to be unconstitutional. Both sides have appealed. Dkt. 236 and Dkt. 240.

Defendants now move to stay the court's injunction pending appeal. Dkt. 241. Defendants contend that it is likely that the court's decision will be reversed on appeal and that the injunction would require "a vast overhaul of state election procedures," which would require enormous effort and confuse voters. Dkt. 251, at 2. But defendants' description of the court's injunction is, to put it mildly, an exaggeration. The injunction requires modest, but meaningful, adjustments to a few election procedures and requirements. Yet it leaves in place the framework that the legislature has chosen, particularly the strict voter ID law, under which no one votes without an acceptable photo ID. Defendants have not made a strong showing that they are likely to succeed on the merits of their appeal: the court is not persuaded that any aspect of its decision was wrong. Accordingly, the court will deny the motion to stay, in all but one respect.

The court will stay the requirement that the state fundamentally reform the IDPP before the next election. To be clear: the state must reform the IDPP because the current process prevents some qualified electors from getting acceptable IDs, and even successful petitioners must often endure undue burdens before getting those IDs. But the state's emergency measures already in place will allow anyone who enters the IDPP to get a receipt that will serve as a valid ID for the November 2016 election. This is not a permanent solution because the long-term status of the receipts is uncertain. But the required reform can wait until the parties complete their appeal.