

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

---

ONE WISCONSIN INSTITUTE, INC., et al.,

Plaintiffs,

v.

Case No. 15-CV-324

MARK L. THOMSEN et al.,

Defendants.

---

COMMON CAUSE, COMMON CAUSE  
WISCONSIN, BENJAMIN R.  
QUINTERO,

Plaintiffs,

v.

Case No. 19-CV-323

MARK L. THOMSEN, *et al.*,

Defendants.

---

THE ANDREW GOODMAN FOUNDATION  
AND AMANDA SCOTT,

Plaintiffs,

v.

Case No. 19-CV-955

MARGE BOSTELMANN, JULIE M.  
GLANCEY, ANN S. JACOBS, DEAN  
KNUDSON, ROBERT F. SPINDELL, JR., and  
MARK L. THOMSEN, in their official capacities  
as Wisconsin Elections Commissioners,

Defendants.

---

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

---

JUSTIN LUFT, et al.,

Plaintiffs,

v.

Case No. 11-CV-1128

TONY EVERS, et al.,

Defendants.

---

**DEFENDANTS' BRIEF IN SUPPORT  
OF MOTION TO CONSOLIDATE**

---

**INTRODUCTION**

Defendants request consolidation of four cases, all of which challenge Wisconsin's voter ID law requirements. Consolidation will prevent duplicative litigation and inconsistent rulings, and promote an orderly and uniform schedule in light of the upcoming general election on November 3, 2020.

The cases are: *One Wisconsin Inst. Inc. v. Jacobs*, Case No. 15-CV-324 (W.D. Wis., Judge Peterson); *Luft v. Evers*, Case No. 11-CV-1128 (E.D. Wis., Judge Peterson); *Common Cause v. Thomsen*, Case No. 19-CV-323 (W.D. Wis., Judge Peterson); and *The Andrew Goodman Found. v. Bostelmann*, Case No. 19-CV-955 (W.D. Wis., Judge Conley). *One Wisconsin* and *Luft* are challenges to Wisconsin's voter ID law; *Common Cause* and *Andrew Goodman* are challenges to Wisconsin's requirements for student IDs for voting purposes.

In *Luft*, the Seventh Circuit recently instructed that the cases involving Wisconsin's voter ID law "be assigned on remand to a single judge" to "eliminate the sort of inconsistent treatment that has unfortunately occurred in the photo-ID parts of the multiple suits." Pursuant to that directive, *One Wisconsin* and *Luft* are now both assigned to Judge Peterson, and *One Wisconsin*, *Common Cause*, and *Andrew Goodman* are all proceeding in the Western District. These cases are ripe for consolidation because they involve constitutional challenges to the same voter ID legislation. *One Wisconsin* and *Luft* were already consolidated by the Seventh Circuit on appeal, name the same defendants, utilize the same discovery, and involve the same witnesses.

Similarly, *Common Cause* and *Andrew Goodman* challenge the same statutory student ID requirement that was at issue in *One Wisconsin*. They sue the same defendants and may also overlap in discovery and witnesses. Consolidating *One Wisconsin* and *Luft*, and *Common Cause* and *Andrew Goodman* will promote efficiency for the court and parties by economizing time and effort without circumscribing the opportunity for full litigation of all relevant claims.

Most importantly, all four cases involve challenges to Wisconsin's voter ID law. While Defendants maintain that those challenges will fail as a matter of law, avoiding inconsistent or last-minute decisions is critical for

administration of the November 3, 2020 election. If Plaintiffs seek any rulings before the November 3, 2020 election, it is critical that any decisions be consistent and be made on a timeline that does not interfere with the election or cause unnecessary uncertainty during election preparations. The best way to minimize election disruption is to consolidate all four cases.

## BACKGROUND AND STATUS OF THE CASES

### **I. *Luft v. Evers* is on remand from the Seventh Circuit after reversal of a district court order allowing an affidavit exception to the voter ID law.**

The case now captioned *Luft v. Evers* began as *Frank v. Walker* and was filed in December 2011 asserting claims under the Fourteenth and Twenty-Fourth Amendments and Section 2 of the Voting Rights Act. (*Frank*, E.D. Wis. 11-cv-1128Dkt. 1, 31.) On April 29, 2014, the district court permanently enjoined Defendants from enforcing the photo ID law and struck the law down as facially invalid. *Frank v. Walker*, 17 F. Supp. 3d 837, 880 (E.D. Wis. 2014).

The Seventh Circuit reversed in *Frank v. Walker*, 768 F.3d 744 (7th Cir. 2014) (“*Frank I*”), rejecting these challenges to Wisconsin’s voter photo ID law. *Frank I* explained that *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181 (2008) “concluded that both the prevention of voter impersonation on election day and the preservation of public confidence in the integrity of elections justify a photo ID requirement.” *Frank I*, 768 F.3d at 745. *Frank I* added that *Crawford* decided that the burdens encountered in obtaining a photo ID are

not significantly more than the usual burdens of voting, adding that “[t]hese observations hold for Wisconsin as well as for Indiana.” *Id.* at 745–46. *Frank I* did not foreclose all as-applied challenges to photo ID laws, leaving open a challenge to the law “if the reason [certain voters] lack photo ID is that the state has made it impossible, or even hard, for them to get photo ID . . . .” *Frank I*, 768 F.3d at 748.<sup>1</sup>

In March 2016, the day after the *Frank I* mandate issued, Plaintiffs sought “judgment in favor of Plaintiffs on certain [constitutional] as-applied claims, which have already been fully tried before this Court.” (*Frank*, E.D. Wis. 11-cv-1128 Dkt. 223:2; 223:8–18.) As a remedy, Plaintiffs asked for a permanent “injunction allowing persons to vote at their polling place without presenting an ID but instead by signing an affidavit attesting to their identity and to the difficulties they would face in obtaining ID.” *Frank v. Walker*, 141 F. Supp. 3d 932, 935 (E.D. Wis. 2015). The district court denied Plaintiffs’ claims as foreclosed by *Frank I. Id.*

In *Frank v. Walker*, 819 F.3d 384, 386, (7th Cir. 2016) (“*Frank II*”), the Seventh Circuit again reversed, explaining that as-applied relief could be “compatible with” *Frank I* and *Crawford*. 819 F.3d at 386–87. Such relief is “potentially sound” if it means granting a tailored remedy to “particular

---

<sup>1</sup> *Frank I* also ruled that Wisconsin’s photo ID law did not violate the Voting Rights Act, 768 F.3d at 755, a claim which Plaintiffs did not raise on remand.

persons” who face “high hurdles,” such that they are “unable to get acceptable photo ID with reasonable effort.” *Id.* at 386. But any relief for such specific voters—assuming Plaintiffs show they exist—must not impact “the general application of Act 23 to the millions of persons who have or readily can get qualifying photo ID.” *Id.* at 387. The court also noted that “[t]he state’s administrative agencies may have made other adjustments,” and that the district court must “permit the parties to explore how the state’s system works today before taking up plaintiffs’ remaining substantive contentions.” *Id.* at 388.

After *Frank II*, Plaintiffs filed a motion for class certification, to amend their complaint to add additional plaintiffs, and for preliminary injunctive relief in the form of an affidavit at the polls. (*Frank*, E.D. Wis. 11-cv-1128 Dkt. 278.) In response to this new motion, Defendants sought to develop a record on the current IDPP law. (*See generally Frank* E.D. Wis. 11-cv-1128 Dkt. 285.) On July 19, 2016, the district court granted Plaintiffs’ motions and awarded class-based, preliminary relief. *Frank v. Walker*, 196 F. Supp.3d 893 (E.D. Wis. 2016). The district court further allowed Plaintiffs to file a supplemental complaint to add Plaintiffs Melvin Roberson, Leroy Switlick, and James Green; certified a class of “all those eligible to vote in Wisconsin who cannot with reasonable effort obtain a qualifying photo ID”; and ordered Defendants to implement and publicize an affidavit procedure for the

November 2016 election. *See generally id.* The court noted that the affidavit must allow each voter to “declare under penalty of perjury” that he or she has “been unable to obtain acceptable photo identification with reasonable effort.” *Id.* at 919–20.

On August 10, 2016, the Seventh Circuit stayed the district court’s injunction, explaining that, under *Frank II*, “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*, 2016 WL 4224616, at \*1 (7th Cir. Aug. 10, 2016). The district court’s injunction went beyond this narrow, as-applied relief by permitting an affidavit exception for those who cannot obtain an ID because of “work,” “family responsibilities,” and even those who simply “belie[ve] that spending a single minute to obtain a qualifying photo ID is not reasonable.” *Id.* Therefore, the Seventh Circuit held that “[b]ecause 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.” *Id.*

The Seventh Circuit denied Plaintiffs’ reconsideration request (*Frank*, E.D. Wis. 11-cv-1128 Dkt. 318), and on August 26, 2016, the Seventh Circuit

denied Plaintiffs' Petition For Initial Hearing En Banc. *Frank v. Walker*, 835 F.3d 649 (7th Cir. 2016) ("*Frank III*").

This case proceeded on appeal as Seventh Circuit Case Nos. 16-3003 and 16-3052. Oral argument in the Seventh Circuit was combined with arguments in *One Wisconsin*, which took place on February 24, 2017. Written discovery proceeded in the district court until, by mutual agreement of the parties, it was stayed pending a decision on appeal.

**II. *One Wisconsin v. Jacobs* is also on remand, jointly with *Luft v. Evers*.<sup>2</sup>**

In *One Wisconsin*, Plaintiffs' originally challenged sixteen Wisconsin election laws and raised more than 50 claims under the First, Fourteenth, Fifteenth, and Twenty-Sixth Amendments, as well as the Voting Rights Act. (*One Wisconsin*, W.D. Wis. 15-cv-324 Dkt. 141.) The district court held a nine-day bench trial in May 2016. (*One Wisconsin*, W.D. Wis. 15-cv-324 Dkt. 188.) On July 29, 2016, the district court issued its final decision and order. *One Wisconsin Inst., Inc. v. Thomsen*, 198 F. Supp. 3d 896 (W.D. Wis. 2016).

As to Wisconsin's voter ID law, Plaintiffs claimed that the law unduly burdened the right to vote under *Anderson-Burdick*, violated the Voting Rights Act, and intentionally discriminated based on race and age. Many of these

---

<sup>2</sup> *Luft v. Evers* is the same case as *Frank v. Walker*. The caption change is the result of substitution of parties under Federal Rule of Civil Procedure 25.



challenges involved the Wisconsin Department of Transportation's ID Petition Process ("IDPP") which allows any eligible voter to quickly get an ID. The district court rejected all three claims. First, addressing *Anderson-Burdick*, the district court explained that any problems with the IDPP "do[ ] not mean that the voter ID law is unconstitutional in all of its applications," and that Plaintiffs' facial claim was "effectively foreclose[d]" by "*Crawford* and *Frank*." *Id.* at 916–17. Second, as to the Voting Rights Act, the district court again rejected Plaintiffs' challenge as foreclosed by *Frank I.* *Id.* at 960. Finally, the court rejected Plaintiffs' theory that the voter ID law was motivated by animus against certain racial groups and young people. *Id.* at 921–22, 927.

But as applied to voters that use the IDPP, the district court held that Wisconsin's voter ID law fell short under the *Anderson-Burdick* test. *Id.* at 949. The court reached this conclusion by relying on some pre-2016 examples of applicant difficulties that led the State to adopt the May 2016 rule. The court then ordered the State to issue to every IDPP applicant a permanent photo ID for voting, which would not expire for eight years. *Id.* at 963–64; *see* Wis. Stat. § 343.20(1)(a). The court provided that this permanent ID would be revocable only upon a finding of ineligibility. *Id.* The district court entered its judgment in this case on August 16, 2016. (*One Wisconsin*, W.D. Wis. 15-cv-324 Dkt. 235.)

Defendants moved in the district court for a stay pending appeal. (*One Wisconsin*, W.D. Wis. 15-cv-324 Dkt. 241.) The district court denied the motion

as to the seven laws facially invalidated, but the court agreed to stay its IDPP remedy (except with regard to the requirement that the State promote the IDPP to the public). (*One Wisconsin*, W.D. Wis. 15-cv-324 Dkt. 255:6–7.) The court explained that its remedy was not necessary at this time because, under the IDPP, “anyone” who initiates the IDPP will, at the very least, “get a receipt that will serve as a valid ID for the November 2016 election.” (*One Wisconsin*, W.D. Wis. 15-cv-324 Dkt. 255:2.) Both parties appealed the ruling and the consolidated appeals proceeded as Seventh Circuit Case Nos. 16-3083 and 16-3091.

### III. The Seventh Circuit’s decision in *Luft v. Evers*.<sup>3</sup>

The Seventh Circuit issued its decision in the *Frank* and *One Wisconsin* appeals in one consolidated opinion decided on June 29, 2020—*Luft v. Evers*, 963 F.3d 665 (7th Cir. 2020). The case formerly captioned *Frank v. Walker* was, by the time of the Seventh Circuit Decision, captioned *Luft v. Evers*.

As to *Frank*, the Seventh Circuit reversed the preliminary injunction that permitted an affidavit exception to the voter ID law. *Luft*, 963 F.3d at 678–79. As to *One Wisconsin*, the Seventh Circuit vacated the district court’s orders as to the IDPP and remanded for further proceedings. (*Luft*, 7th Cir.

---

<sup>3</sup> The Seventh Circuit’s decision, and the scope of the remand, is also explained in the Defendants’ Scheduling Memorandum and ID Petition Process Update, filed in the *One Wisconsin* case.

Dkt. 97:2.) It otherwise affirmed the district court’s judgment. (*Luft*, 7th Cir. Dkt. 97:2.)

The remand inquiry in the Seventh Circuit’s consolidated decision is the same for both *Luft* and *Wisconsin*—whether every eligible voter can get a qualifying photo ID with reasonable effort. *Luft*, 963 F.3d at 679. The Seventh Circuit stated the relevant question:

The constitutional question under *Frank II* is whether the state ensures that every eligible voter can get a qualifying photo ID with reasonable effort. *Frank III* says that the state’s process, as the state describes it, is adequate to that end, if reliably implemented. But are those conditions met?

*Id.* (emphasis omitted). In *Frank II*, the Seventh Circuit reiterated the U.S. Supreme Court’s observation that “[f]or most voters who need them, 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.” *Frank*, 819 F.3d at 386 (quoting *Crawford*, 553 U.S. at 198. The court described the proper factual inquiry as whether voters are “unable to get acceptable photo ID with reasonable effort.” *Frank*, 819 F.3d at 386. Here, the Seventh Circuit elaborated on that standard when reversing the *Frank* injunction, where it held that that a voter’s disagreement with having to go to the DMV and get an ID “does not show that

requiring one trip to a governmental office is unreasonable.” *Luft*, 963 F.3d at 678–79.

In *Frank III*, the Seventh Circuit applied that standard to the IDPP when it denied Plaintiffs’ request for an initial hearing en banc. *Frank*, 835 F.3d at 651–52. It found no need for an initial en banc hearing based upon representations that anyone can enter the IDPP by bringing as much information as he or she has and get a credential for voting:

“initiation” of the IDPP means only that the voter must show up at a DMV with as much as he or she has, and that the State will not refuse to recognize the “initiation” of the process because a birth certificate, proof of citizenship, Social Security card, or other particular document is missing . . . [and] that the State adequately inform the general public that those who enter the IDPP will promptly receive a credential for voting, unless it is plain that they are not qualified.

*Id.* These are the conditions from *Frank III* that the Seventh Circuit referenced in its remand instructions. *Luft*, 963 F.3d at 679.

The Seventh Circuit also gave one specific parameter for the decision on remand, that the IDPP may properly require applicants to comply with reasonable requests for information: “When the district court looks into this subject again on remand, it must not order any relief that excuses applicants from the failure to comply with reasonable requests for information that is material to voting eligibility.” *Luft*, 963 F.3d at 680.

Taken together, the inquiry on remand in both *One Wisconsin* and *Luft* are the same: whether the IDPP allows a person who complies with reasonable requests for information to obtain an ID for voting purposes.

**IV. *Common Cause v. Thomsen* is a student ID challenge that was stayed pending *One Wisconsin* and *Luft*.**

*Common Cause* was filed in April 2019. (See *Common Cause*, W.D. Wis. 19-cv-323 Dkt. 1.) Plaintiffs challenge the constitutionality of the provisions in Wis. Stat. § 5.02(6m)(f) that prohibit the use of a student ID for voting unless the ID displays an issuance date, expiration date, and signature. Plaintiffs allege that these requirements violate the First and Fourteenth Amendments under the *Anderson-Burdick* analysis. (*Common Cause*, W.D. Wis. 19-cv-323 Dkt. 1.) For relief, Plaintiffs seek declaratory and injunctive relief that these requirements are unenforceable. (*Common Cause*, W.D. Wis. 19-cv-323 Dkt. 1:23-24.)

Defendants answered the complaint in June 2019. (*Common Cause*, W.D. Wis. 19-cv-323 Dkt. 19.) At the same time, Defendants moved to stay the case pending resolution of the appeals in *One Wisconsin* and *Luft*. (*Common Cause*, W.D. Wis. 19-cv-323 Dkt. 20.) The district court granted the motion on July 26, 2019, noting that “[t]he issues raised in this case are closely related to *One Wisconsin*, in which this court enjoined Wisconsin officials from enforcing a ban on using an expired college ID for voting.” (*Common Cause*,

W.D. Wis. 19-cv-323 Dkt. 24.) The court explained that “[a]lthough the issues on appeal in *One Wisconsin* may not be identical to those in this case, the decision of the court of appeals is likely to provide significant guidance in resolving this case.” (*Common Cause*, W.D. Wis. 19-cv-323 Dkt. 24.) The court instructed that the stay would be lifted “[o]nce the appeal in *One Wisconsin* is resolved.” (*Common Cause*, W.D. Wis. 19-cv-323 Dkt. 24)

After the Seventh Circuit’s decision in *Luft*, the district court lifted the stay and Plaintiffs informed the court that they intend to pursue the case now that the stay had been lifted. (*Common Cause*, W.D. Wis. 19-cv-323 Dkt. 25, 26.) Plaintiffs also notified the court that they intend to move “for a minimal amendment of their Complaint and for a preliminary injunction for the November general election on an expedited basis.” (*Common Cause*, W.D. Wis. 19-cv-323 Dkt. 26.)

On August 3, 2020, Defendants filed a motion for partial judgment on the pleadings, as to Count 1 of Plaintiffs’ complaint challenging the issuance and expiration date requirements for student IDs. (*Common Cause*, W.D. Wis. 19-cv-323 Dkt. 27.) The basis for the motion was the Seventh Circuit’s decision in *Luft*. (*See Common Cause*, W.D. Wis. 19-cv-323 Dkt. 28.)

This district court has scheduled a telephone pretrial conference for this case on August 21, 2020, before Magistrate Judge Stephen L. Crocker.

**V. *Andrew Goodman Foundation v. Bostelmann* is also a student ID challenge that was stayed pending *One Wisconsin and Luft*.**

Like *Common Cause*, *Andrew Goodman* challenges the student ID requirements in Wis. Stat. § 5.02(6m)(f). Plaintiffs argue that date-of-issuance, signature, expiration-date, and proof-of-enrollment requirements violate the Twenty-Sixth Amendment. (*Andrew Goodman*, W.D. Wis. 19-cv-955 Dkt. 1 ¶ 29.) For relief, Plaintiffs ask the district court to enjoin the challenged laws, declare that they violate the Twenty-sixth Amendment, and “requir[e] the Commissioners of the Wisconsin Elections Commission to permit voters to use student IDs regardless of their date of issuance, signature, expiration date, and the voter’s ability to confirm current enrollment.” (*Andrew Goodman*, W.D. Wis. 19-cv-955 Dkt. 1:11.)

In December 2019, Defendants filed a motion to stay pending a decision in *One Wisconsin and Luft*. (*Andrew Goodman*, W.D. Wis. 19-cv-955 Dkt. 9.) Defendants answered the initial complaint on January 6, 2020, and on January 22, 2020, Plaintiffs filed an amended complaint, motion for a preliminary injunction, and supporting documents. (*Andrew Goodman*, W.D. Wis. 19-cv-955 Dkt. 22–23-32.)

On February 5, 2020, the district court entered an opinion and order (1) granting the stay motion; (2) striking “[a]ll deadlines and other calendared dates” but requiring the parties to “continue with discovery, including

mandatory Rule 26(a) disclosures”; (3) denying as moot Defendants’ motion to reschedule the final pretrial conference; and (4) denying Plaintiffs’ motion for a preliminary injunction. (*Andrew Goodman*, W.D. Wis. 19-cv-955 Dkt. 25:7.)

## ARGUMENT

### **I. Consolidation is proper where actions involve common questions of law or fact, and to avoid unnecessary costs or delay.**

Rule 42 (a) of the Federal Rules of Civil Procedure provides that “[i]f actions before the court involve a common question of law or fact,” the court may “join for hearing or trial any or all matters at issue in the actions,” “consolidate the actions,” or “issue any other orders to avoid unnecessary costs or delay.” Fed. R. Civ. P. 42(a). Rule 42(a) is a rule of convenience and exists to give the court discretion to decide how cases on its docket are to be handled so that the business of the court may be dispatched with expedition and economy while providing justice to the parties. *See Miller v. U.S. Postal Service*, 729 F.2d 1033, 1036 (5th Cir 1984); *Miller Brewing Co. v. Meal Co.*, 177 F.R.D. 642, 643 (E.D. Wis. 1998).

“District courts enjoy substantial discretion in deciding whether and to what extent to consolidate cases.” *Hall v. Hall*, 138 S. Ct. 1118, 1131 (2018). In exercising that discretion, district courts must weigh the risk of prejudice and confusion wrought by consolidation against the risk of inconsistent rulings on common factual and legal questions, the burden on the parties and the court,



the length of time saved by consolidation, and the relative expense of proceeding with separate lawsuits if they are not consolidated. *See Hendrix v. Raybestos-Manhattan, Inc.*, 776 F.2d 1492, 1495 (11th Cir. 1985) (citing *Arnold v. Eastern Air Lines, Inc.*, 681 F.2d 186, 193 (4th Cir. 1982)); *See also State of Ohio ex rel. Montgomery v. Louis Trauth Dairy, Inc.*, 163 F.R.D. 500, 503 (S.D. Ohio 1995) (in determining whether consolidation is appropriate, “the court balances the value of time and effort saved by consolidation against the inconvenience, delay, or expense increased by it”). “[C]onsolidation is particularly appropriate when the actions are likely to involve substantially the same witnesses and arise from the same series of events or facts.” *Hanson v. District of Columbia*, 257 F.R.D. 19, 21 (D.D.C. 2009).

**II. *One Wisconsin* and *Luft* involve common questions of law and fact and should be consolidated for purposes of discovery and trial.**

The court should exercise its discretion and order consolidation of *One Wisconsin* and *Luft* because common questions of law and fact abound in these cases. First, on remand, both cases allege the same constitutional violations concerning the State’s voter ID requirements. As the above stated background shows, both cases will focus on the same legal and factual issues surrounding the IDPP, as instructed by the Seventh Circuit in its decision in the consolidated appeals. So, Rule 42(a)’s requirement that the cases “involve a common question of law or fact” is met. *See Fed. R. Civ. P. 42(a)*.

Second, these common questions of law and fact can lead to repetitive and inefficient discovery without consolidation. Convenience will be promoted by allowing the parties in both *One Wisconsin* and *Luft* to engage in one discovery track, preventing the need for duplicate depositions, document requests, and written discovery. Because of the similarity of their claims and their related factual allegations, Plaintiffs in both cases will likely rely on much of the same evidence to support their *Anderson-Burdick* claims.

More specifically, both cases will involve the same discovery regarding the IDPP. Since 2016, Defendants have produced the same discovery regarding the IDPP in both *One Wisconsin* and *Luft*, which consists of all individual IDPP files, along with DMV documents regarding the operation, training, and public media campaign for the IDPP. The Defendants have already agreed to update these disclosures and produce these updates in both *One Wisconsin* and *Luft*. As for depositions, these will also likely involve the same DMV official and IDPP experts. There is no reason to anticipate any variance in the testimony in these two cases, except as to the individual experiences of any named plaintiff. Thus, consolidation will reduce, if not eliminate, the need for duplicative discovery.

Third, with consolidation, the parties could agree to a joint scheduling order set by the district court. While consolidation does not merge two suits into a single cause, *Midwest Community Council, Inc. v. Chicago Park Dist.*,

98 F.R.D. 491, 499 (N.D. Ill. 1983), placing both cases on a single discovery and trial schedule will allow the parties and the court to focus on the same issues at the same time.

Fourth, consolidation for purposes of any trial in *One Wisconsin* and *Luft* will promote convenience and judicial economy, save time, and avoid unnecessary costs to Defendants and witnesses who would otherwise be required to testify in both cases. *See Midwest Community Council, Inc.*, 98 F.R.D. at 499.

Lastly, consolidation will not delay the disposition of either *One Wisconsin* or *Luft*. In fact, it will minimize delays. After remand, both cases are addressing the same question, are essentially at the same stage of the discovery process, and Defendants are prepared to proceed to address the constitutionality of the IDPP as framed by the Seventh Circuit for both cases.

Where, as here, there are two cases that grow out of the same set of facts, share many of the same lawyers and parties, and are in the same court, “it seems pretty obvious that concerns for judicial economy would strongly favor consolidation of the two cases.” *Millman v. United Tech. Corp.*, Nos. 16-CV-312-PPS-SLC and 17-CV-28-PPS-SLC, 2017 WL 1165081, at \*3 (N.D. Ind. March 28, 2017), *citing Ikerd v. Lapworth*, 435 F.2d 197, 204 (7th Cir. 1970). The court should follow the Seventh Circuit’s lead and consolidate these two cases.

**III. *Common Cause* and *Andrew Goodman Foundation* both challenge the same statutory provision regarding student IDs and should be consolidated for purposes of discovery and trial.**

For many of the same reasons, the district court should also order consolidation of *Common Cause* and *Andrew Goodman*. First, both cases challenge the same statutory provision—Wis. Stat. § 5.02(6m)(f)—which requires student IDs to contain dates of issuance and expiration and a signature to be valid for voting purposes, and that students also provide proof of current enrollment. Wis. Stat. § 5.02(6m)(f).

Second, both cases are in a similar procedural posture. Each was stayed pending the Seventh Circuit’s decision in the *One Wisconsin / Luft* appeals. Discovery has not yet begun in either case and Defendants anticipate that both will proceed along similar tracks.

Third, both cases seek the same declaratory and injunctive relief prohibiting enforcement of Wis. Stat. 5.02(6m)(f)’s restrictions on student IDs. (See *Common Cause*, W.D. Wis. 19-cv-323 Dkt. 1:23-24; *Andrew Goodman*, W.D. Wis. 19-cv-955 Dkt. 22:14.) Indeed, as the district court pointed out in *Andrew Goodman Foundation*, the cases are unquestionably “related,” such that the plaintiffs’ failure to note *Common Cause* as a related case in the civil cover sheet “smacks of blatant judge shopping.” (*Andrew Goodman*, W.D. Wis. 19-cv-955 Dkt. 25:2 n.2.)

Plaintiffs may argue that because their challenges to the student IDs involve different legal theories (*Anderson-Burdick* vs. intentional discrimination), consolidation is improper. But Rule 42(a) permits a district court to consolidate separate actions when they involve “a common question of law or fact.” Fed. R. Civ. P. 42(a) (emphasis added). Even if there are some questions that are not common, consolidation would still be warranted here. *Batazzi v. Petroleum Helicopters, Inc.*, 664 F.2d 49, 50 (5th Cir. 1981); *See Central Motor Co. v. United States*, 583 F.2d 470 (10th Cir. 1978).

Consolidation will promote judicial economy by placing the cases before one judge and allowing the parties to present, and the court to resolve, legal disputes efficiently. Consolidation also will facilitate witness convenience, minimize the cost of litigation, and eliminate any potential confusion and possible inconsistencies that two cases may cause.

The court should exercise its discretion and consolidate *Common Cause* and *Andrew Goodman* for purposes of discovery and trial.

**IV. The Court should consolidate *Luft*, *One Wisconsin*, *Common Cause*, and *Andrew Goodman* for any proceedings before the November 3 election.**

Defendants also move to consolidate all four voter ID cases—*Luft*, *One Wisconsin*, *Common Cause*, and *Andrew Goodman*—for any proceedings that are required before the November 3, 2020 election. All four cases challenge

aspects of the State's voter ID law, as explained above, and so the requirements of Rule 42(a) are met.

Defendants believe that all challenges will fail, resulting in no changes before the November 3, 2020 election. However, for purposes of election administration, it is critical to prevent uncertainty that could arise with multiple challenges, inconsistent results, or competing timelines. With the November 3, 2020 election rapidly approaching, the most sensible way to proceed is to consolidate all four cases for any proceedings that may be required before the election.

### CONCLUSION

Defendants request that the court grant their motion to consolidate *One Wisconsin* and *Luft* for discovery and trial; to consolidate *Common Cause* and *Andrew Goodman* for discovery and trial; and additionally to consolidate *One Wisconsin*, *Luft*, *Common Cause*, and *Andrew Goodman* to the extent any proceedings are contemplated ahead of the November 3, 2020 election.

*[signature page follows]*

Dated this 11th day of August, 2020.

Respectfully submitted,

ERIC J. WILSON  
Deputy Attorney General of Wisconsin

Electronically signed by:

s/ S. Michael Murphy  
S. MICHAEL MURPHY  
Assistant Attorney General  
State Bar #1027796

JODY J. SCHMELZER  
Assistant Attorney General  
State Bar #1027796

GABE JOHNSON-KARP  
Assistant Attorney General  
State Bar #1084731

CLAYTON P. KAWSKI  
Assistant Attorney General  
State Bar #1066228

Attorneys for Defendants

Wisconsin Department of Justice  
Post Office Box 7857  
Madison, Wisconsin 53707-7857  
(608) 266-5457 (Murphy)  
(608) 266-3094 (Schmelzer)  
(608) 267-8904 (Johnson-Karp)  
(608) 266-8549 (Kawski)  
(608) 267-2223 (Fax)  
murphysm@doj.state.wi.us  
schmelzerjj@doj.state.wi.us  
johnsonkarp@doj.state.wi.us  
kawskicp@doj.state.wi.us