

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

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| <p>ONE WISCONSIN INSTITUTE, INC., <i>et al.</i>,</p> <p>Plaintiffs,</p> <p>v.</p> <p>MARK L. THOMSEN, <i>et al.</i>,</p> <p>Defendants.</p> | <p>Case No. 3:15-cv-324</p> |
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PLAINTIFFS' MOTION FOR RELIEF RELATING TO THE VOTER ID LAW

Plaintiffs, by their undersigned counsel, respectfully submit this motion for relief in connection with the Court's September 30, 2016 Order (Dkt. 261) regarding the State's compliance—or lack thereof—with the injunction in this case. As discussed below, the DMV's failure to comply with its obligation to provide temporary IDs to voters who make a single trip to the DMV is more widespread than initially revealed in the articles cited in the Court's Order. Discovery recently provided in this case also demonstrates that many of the individuals who were denied free IDs through the IDPP do not currently have temporary IDs that can be used for voting. In addition, the State's languid efforts to inform the public about the IDPP cannot be considered a sufficient response to this Court's direction that the State inform the general public that individuals who enter the IDPP will receive voting credentials.

Taken together, this evidence makes clear that the State does not have—and is incapable of implementing—a functioning safety net for its strict voter ID law. Because the existence of such a safety net was critical to this Court's issuance of a partial stay and the en banc Seventh Circuit's decision not to grant initial en banc review, the voter ID law must be enjoined unless

and until the State can demonstrate that eligible voters will no longer be disenfranchised because of that law.¹ At the very least, the Court should order the State to take a number of remedial steps, including counting all no-ID provisional ballots unless it can demonstrate that a particular ballot was cast by a voter who is not qualified; complying with all sections of this Court's final order regarding the IDPP (Dkt. 234); providing temporary voter IDs in person at the DMV, upon an individual's entry into the IDPP; undertaking far more vigorous training and outreach efforts in connection with the IDPP; and reporting back to this Court on October 17, October 31, and November 21, 2016, on its compliance with these requirements and the other obligations already spelled out by this Court and the Seventh Circuit.

I. THE STATE IS FAILING TO COMPLY WITH THE INJUNCTION AND ITS REPRESENTATIONS

A. The State Is Not Adequately Ensuring that Voters Who Seek IDs Are Able to Obtain Voting Credentials Promptly

“The State assure[d the en banc Seventh Circuit] that the temporary credentials required in the *One Wisconsin Institute* decision will indeed be available to all qualified persons who seek them.” *One Wis. Institute, Inc. v. Thomsen*, Nos. 16-3083 & 16-3091, Dkt. 22 at 3 (7th Cir. Aug. 29, 2016) (“En Banc Order”). The State is also currently representing to the Seventh Circuit that, as a result of the May 10, 2016 Emergency Rule, “[t]he IDPP provides to every eligible voter a free ID after making one trip to DMV.” *One Wis. Institute, Inc. v. Thomsen*, Nos. 16-3083 & 16-3091, Dkt. 24 at 15 (7th Cir. Sept. 12, 2016); *see also id.* at 4 (district court's injunction “[s]trangely” does no more than “protect[] voters’ rights to the same degree as does the State’s current law”); *id.* at 24-25 (under current IDPP, “all voters get a free photo ID upon request and the State is permitted to verify their credentials thereafter”). In its recent status report, the State

¹ Although voting has already started, any concerns with that fact can be remedied by counting any no-ID provisional ballots that have been cast to date.

represented to this Court that “field staff are now trained to ensure that anyone who fills out these forms will receive a photo ID, mailed to them within six days of their application.” Dkt. 258 at 21 (“Status Report”); *id.* at 22 (“Field staff have also been trained to inform IDPP applicants that their ID will be mailed to them within six business days, that the ID will be valid for 60 days, and that the ID will be renewed, automatically and indefinitely, while the petition is being processed.”); Dkt. 259, Boardman Decl. ¶ 14 (making same representations). According to the status report, “[e]ven individuals who do not have documents proving their identity or place of residence will be able to receive an ID simply by filling out the application forms.” Status Report at 21. The evidence submitted with this filing demonstrates, however, that these representations about the State’s (ever-changing) IDPP policies bear little relationship to what is actually happening in the field, where many employees are wholly unaware of some of the State’s new policies.

On September 22, 2016, Molly McGrath accompanied Zack Moore to a DMV field office in Madison. M. McGrath Decl. ¶ 6. Ms. McGrath “frequently help[s] Wisconsin citizens to exercise their right to vote by,” among other things, “helping them to navigate the process for obtaining ID at DMV offices.” *Id.* ¶ 3. Mr. Moore was attempting to obtain a Wisconsin ID for voting, and he presented an Illinois ID, a social security card, and a pay stub proving his residence; but the DMV did not inform him that he would receive an ID that could be used for voting prior to the election if he initiated the IDPP. *Id.* ¶¶ 6, 9. On the contrary, “[t]he DMV employees advised that if he entered the IDPP, it would take 6-8 weeks for him to obtain a state ID and did not advise him that he would receive another credential allowing him to vote in the meantime.” *Id. See generally id.*, Ex. A.

The next day, Ms. McGrath accompanied a different individual, Claudelle Boyd, to a different DMV office in Madison. *Id.* ¶ 12. Although Mr. Boyd’s correct first name is listed on his Illinois state ID, social security card, mail, medical insurance card, and marriage certificate, his birth certificate incorrectly spells his first name “Clardelle” and his Wisconsin ID was issued in that name as well. *Id.* ¶¶ 14-15. Mr. Boyd’s circumstances therefore clearly fall under the DMV’s “one-letter rule” that was adopted on the eve of trial and discussed at length in the DMV witness testimony. *See* PX461 (“DISCREPANCY in spelling of the name on the Passport or BC compared to name on out of state product or name customer uses”). But when Mr. Boyd attempted to obtain an ID in his real name, he did not promptly receive it. Instead, “DMV employees refused to issue an ID with Mr. Boyd’s correct name, stating that they were required to use the name on the ‘source document,’ which they said was the birth certificate”; a “DMV employee advised that they could not use the IDPP because Mr. Boyd has a birth certificate”; and the “DMV employee advised that Mr. Boyd’s only options for obtaining a correct Wisconsin ID were to either obtain a passport listing his correct name or to get his birth certificate corrected.” M. McGrath Decl. ¶¶ 16, 18-19.²

Just yesterday, Ms. McGrath went with Juanita Carr to one of the Madison DMV offices. *Id.* ¶ 23. Ms. Carr was delivered by a midwife in Mississippi and does not have a birth certificate. M. McGrath Decl., Ex. B at 1. At the DMV office, they were told by a DMV employee that “the

² The State’s recent document production offers further proof that the one-letter rule is not being evenly enforced. For example, the Court may recall the example of a young African-American man from Beloit whose first name is “Reginald,” but whose Wisconsin birth certificate reads “Reginal.” Under the “one-letter” rule he should have received a regular, permanent voter ID long ago. Instead, as of the time of trial, the DMV was insisting that Reginald must be in the IDPP and either change his social security records to “Reginal” or formally “change” his name from “Reginal” to “Reginald.” *See* Other Chart No. 20 (PX342-13); PX423 (Reginald’s IDPP file). The DMV’s recent document production shows that, rather than simply give Reginald the regular, permanent voter ID to which he is entitled under the one-letter rule, DMV has continued to send him “temporary” paper IDs at 60-day intervals. *See* Kaul Decl., Ex. A.

petition process has to complete through before they can actually issue you anything.” *Id.* The employee could not promise that Ms. Carr would be able to vote. *Id.* at 7. The employee asserted that “[t]hey tried to [create an ID], where it was strictly for voting,” but “it didn’t work out . . . because of fraud.” *Id.* at 5. The employee was asked if DMV employees received “extra special training” for the election, and the employee said no. *Id.* at 3.

The experience of Susan McGrath, who asked questions about the IDPP at 10 different DMV offices in mid-to-late September 2016, shows that confusion about the most recent iteration of the IDPP is widespread among DMV employees. The transcripts of those interactions, which are being filed as Exhibits A-J to her declaration, show the following (among other things):

- An employee at the Wisconsin Rapids DMV stated that October 31 would probably be too late to come in for the petition process because it is “going to take some time”; it would be “easiest for everyone” to get the actual birth certificate; the petition process is “very time consuming”; the card is not a “temporary type card”; and the length of the process depends on “how long it takes for the other county government to answer.” S. McGrath Decl., Ex. A at 6-9.
- An employee from the Adams DMV was under the misimpression that petitioners would leave the DMV with a piece of paper that can be used for voting, and an employee from Stevens Point either had the same understanding or believed a birth certificate had to be brought in before an ID could be issued. S. McGrath Decl., Ex. B at 2-3, Ex. G at 3.
- An employee at the Rice Lake DMV and Susan McGrath had the following exchange on September 16—more than a month and a half prior to the election—regarding a purported petitioner:

SM: OK, and is there a certain time it needs to be back so she can vote this year?

EMPLOYEE: Oh, I would do it as soon as possible.

SM: ASAP, that will make her eligible to vote for November voting?

EMPLOYEE: It’s possible, yeah. There’s no guarantees.

S. McGrath Decl., Ex. C at 2-3.

- Eau Claire DMV employees asserted that a petitioner must have some kind of proof of identity and residence; that if a petitioner “comes in with only her address by way of

mail,” the employee “can’t guarantee anything”; and that the process will take seven days even as we get closer to the election. S. McGrath Decl., Ex. D at 2-5.

- An employee at the Black River Falls DMV stated that DMV does not have a voting-only ID and that “they’re tossing around the idea of creating one but that’s not out there yet”; the employee was unaware of the temporary IDs for voting and made clear that a petition would only “potentially” get a state ID. S. McGrath Decl., Ex. E at 3-4.
- A Hudson DMV employee said that getting an ID through the petition process was “going to take quite a while”; that the employee was not sure how long the process would take; and that “you’re not guaranteed to get an ID card”—“nothing’s guaranteed.” S. McGrath Decl., Ex. H at 4-5.
- An employee at the Neillsville DMV stated that “it can take up to a few weeks for Madison to decide if they’ll actually give” a petitioner an ID, and appeared to believe that the photo receipt that can be used for voting was distributed only after an individual had successfully completed the IDPP. S. McGrath Decl., Ex. I at 4-5.

As an Adams DMV employee pointed out, “[t]hey’re changing things so quick with us it’s hard to keep up.” S. McGrath Decl., Ex. G at 7.

The latest error report regarding the Bureau of Field Service’s implementation of the IDPP further demonstrates that the process remains rife with errors at the field level. That report, which covers the period from February 1, 2016, through July 30, 2016—but notes that procedures for reporting errors were not followed for 20 days during that period, which may have resulted in under-reporting of errors—found an error rate of 18%. Kaul Decl., Ex. B at 1. Although noting that “[t]he accuracy rate improved during this report period,”³ the report explained that “the third most frequent errors (‘no acceptable residency documents’ and ‘no acceptable identity documents’) often require a customer to return to a DMV Customer Service Center in order to be entered into the petition process and take considerably more time for BFS staff and central office staff to complete the transaction.” *Id.* at 3. The “most common error type was that the petition was not sent to [the] central office correctly”; “[o]ften, the email”

³ As the Court will recall, prior CAFU audits uncovered a 26-27% error rate in BFS processing of MV3012 ID petitions between March 2015 and January 2016. *See* PX321; PX337.

transmitting the petition to the central office “contained several documents in addition to the petition which could result in DEU releasing highly restricted PII to DHS.” *Id.* at 2. The report found that “[i]t is important for BFS and TTS to continue addressing IDPP training items with staff and to provide a refresher training to all staff prior to the November elections.” *Id.* at 3.

In sum, evidence from the field shows that the IDPP is not being administered in a manner that even resembles some of the State’s representations to this Court and to the Seventh Circuit. It is clear that, in practice, the IDPP remains a trap for the unwary rather than a smooth process for ensuring that a voter will get an ID to vote by “show[ing] up at a DMV with as much as he or she has,” En Banc Order at 4, and that the State is simply incapable of operating the IDPP in a fashion that ensures that the fundamental right to vote will be safeguarded.

B. Many Voters Who Were Issued Denial Letters Still Have Not Received Voting Credentials

Since the beginning of the trial in this case, the State has argued that voters who were denied IDs through the IDPP—such as the four IDPP Plaintiffs in this case—have no ongoing injury in relation to the 2016 election because they are receiving temporary IDs that are good for 60 days and automatically renew. *See* 5/16 Tr. 65:16-66:17 (defense opening statement); Dkt. 206, Def. Post-Trial Br. at 6-7; Dkt. 241, Motion to Stay at 7-8 (“The rule is clear that renewed receipts will continue to be sent, with no limit on the number of automatic renewals. . . . Renewals only stop after a denial[.]”). According to an annotated version of PX341 recently produced by the State, however, temporary IDs mailed to 20 of the “denied” ID petitioners were returned by the post office as undeliverable, and the DMV has sent no further temporary IDs to these individuals. Kaul Decl., Ex. C. Moreover, beyond attempted phone calls here and there, the DMV appears to have made no additional effort to reach out to or track down these voters. *Id.*; *see also* Dkt. 259, Boardman Decl. ¶ 13 (“For those returned receipts, if DMV had a phone

number, then DMV staff attempted to call the petitioner and get an updated mailing address, and sent a receipt to that address.”). DMV apparently has not, for instance, obtained CLEAR reports that could provide updated contact information for these voters.⁴ Thus, approximately 1/3 of the voters who were formally denied IDs—most of whom were *already* disenfranchised in elections earlier this year—still do not have the ID they need to vote in the general election. And, the document summarizing CAFU’s process for handling IDPP petitions indicates that these individuals will only be able to update their addresses with the DMV—and get an ID to vote—if they do so *in writing*. Dkt. 259-07, Boardman Decl., Ex. A6 at 12 (“If the customer indicates that they have an updated address, they will need to submit the address change to us in writing in order to receive an updated temporary receipt.”).

C. The State Is Not Adequately Informing the General Public that Those Who Enter the IDPP Will Promptly Receive a Voting Credential

Finally, the State’s efforts to comply with this Court’s order that the State “[i]nform the general public that credentials valid for voting will be issued to persons who enter the IDPP” are inadequate. Notwithstanding this Court’s injunction, the State has not allocated *any* additional funding for paid advertising beyond the \$250,000 that was appropriated for generalized voter ID advertising prior to this Court’s order. *See* Status Report at 7-8. And the television and radio ads that the State is running make no mention of the fact that voters (theoretically) can obtain an ID that can be used to vote by making a single trip to the DMV. *See id.* at 8-9.

⁴ As this Court found in its July 29, 2016 decision, “[f]ull investigation by CAFU commonly involve[s] acquiring a CLEAR background report,” which contains “residence history” and leads on “possible relatives and associates.” Dkt. 234 at 25 n.5. The State should not be allowed to conduct background investigations for the purpose of evaluating voter ID petitioners but to refuse to use those same techniques to track those petitioners down so they can receive the credentials to which they are entitled.

The State's advertising and outreach efforts are also plainly not targeted in any meaningful way at the individuals who are most likely to need to use the IDPP—voters who are poor, African American or Latino, and live in urban areas. *See generally* PX345; PX471. Over \$150,000—more than 60% of the funds allocated for advertising—have gone to the “online components” of the State's advertising campaign, and the status report discusses in detail the State's use of Twitter and Facebook. Status Report at 10, 13-16. Suffice it to say that these efforts are likely not being conducted with Johnny Randle, Mrs. “Smith,” or similarly situated voters in mind. Perhaps most strikingly, the State reports that it has placed advertisement in 52 movie theaters throughout the State, *id.* at 10-11, *but not a single one of those theaters is in Milwaukee*. *See* Dkt. 260-10, Hass Decl., Ex. A9 at 10.

Once again, evidence from the field is instructive. Molly McGrath explains in her declaration that, “[i]n her interactions with numerous citizens seeking an ID that meets the state's voter ID requirements, very few have ever mentioned seeing a government sponsored advertisement or media coverage regarding the Voter ID requirement or the process for obtaining an ID to vote.” M. McGrath Decl. ¶ 24. With one exception, “other volunteers, members of the League of Women Voters, family members, and friends” of McGrath's had not seen or heard advertisements or public service announcements concerning the State's Voter ID law or the process for obtaining an ID to vote. *Id.* ¶ 25. Of course, the most persuasive evidence that the State's efforts to inform the general public that voting credentials *will be* issued to individuals who enter the IDPP is the fact that *this message has not even reached DMV employees*.

II. REMEDY

In denying Plaintiffs' Petition for Initial Hearing En Banc, the en banc Seventh Circuit made a point of explaining that the State had “assure[d it] that the temporary credentials required

in the *One Wisconsin Institute* decision will indeed be available to all qualified persons who seek them,” and that the State had written in its response to Plaintiffs’ petition that it had “already voluntarily accommodated any concerns relating to the November 2016 election” and that “[n]o one must present documents, that, for some, have proved challenging to acquire; no one must show a birth certificate, proof of citizenship, and the like.” En Banc Order at 3-4. The en banc court wrote that “[g]iven the State’s representation that ‘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,” the urgency needed to justify an initial en banc hearing had not been shown. *Id.* at 4 (emphasis added). The court added that its conclusion depended on the State’s compliance with this Court’s requirement 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,” and emphasized this Court’s authority to monitor compliance with the injunction. *Id.*

As set forth above, the State is nowhere close to being in compliance with this Court’s injunction or the conditions upon which the en banc Seventh Circuit denied initial hearing en banc. And given the State’s record administering the IDPP—a “disaster” and “wretched failure” that “has disenfranchised a number of citizens who are unquestionably qualified to vote” and who “are overwhelmingly African American and Latino,” Dkt. 234, Findings of Fact and Conclusions of Law at 4, 29—it is not plausible that the State will be able to remedy the problems identified above in the next five weeks. Plaintiffs therefore submit that the only remedy that will prevent the State from disenfranchising voters in the upcoming general election through the continued maladministration of the IDPP is the issuance of an injunction that bars the State

from enforcing the voter ID law unless and until the State can demonstrate that it is fully living up to the representations and considerations on which the en banc Seventh Circuit relied in denying an initial hearing en banc.

In the alternative, Plaintiffs respectfully request that the Court order the State (1) to count all no-ID provisional ballots unless it can demonstrate (through evidence beyond the lack of a qualifying ID) that a particular ballot was cast by a voter who is not qualified; (2) to comply with Sections 10.a, 10.b, and 10.d of the Court's final order (Dkt. 234); (3) to provide temporary IDs that can be used for voting immediately—in person and at the DMV field office (rather than through the mail six days later)—to all voters who enter the IDPP; (4) to conduct additional emergency training on the IDPP for DMV employees and to adopt monitoring and reporting mechanisms that ensure that DMV employees are properly implementing the State's policies; (5) to adopt and implement a far more robust program than that currently in place to inform the general public that credentials valid for voting will be issued to individuals who make a single trip to the DMV and enter the IDPP, targeted to voters who are most likely to need to make use of the IDPP; and (6) to report back to this Court on October 17, October 31, and November 21, 2016, on its compliance with these requirements and the other obligations already spelled out by this Court and the Seventh Circuit.

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Respectfully submitted,

PERKINS COIE LLP

By /s/ Joshua L. Kaul

Joshua L. Kaul
JKaul@perkinscoie.com
Charles G. Curtis, Jr.
CCurtis@perkinscoie.com
One East Main Street, Suite 201
Madison, WI 53703
Telephone: (608) 663-7460
Facsimile: (608) 663-7499

Marc E. Elias
MElias@perkinscoie.com
Bruce V. Spiva
BSpiva@perkinscoie.com
Elisabeth C. Frost
EFrost@perkinscoie.com
Rhett P. Martin
RMartin@perkinscoie.com
Aria C. Branch
ABranch@perkinscoie.com
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960
Telephone: (202) 654-6200
Facsimile: (202) 654-6211

Bobbie J. Wilson
BWilson@perkinscoie.com
505 Howard Street, Suite 1000
San Francisco, CA 94105
Telephone: (415) 344-7000
Facsimile: (415) 344-7050

Attorneys for Plaintiffs