

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.

**DEFENDANTS' UNOPPOSED MOTION FOR EXPEDITED
BRIEFING AND DECISION ON DEFENDANTS' MOTION
TO STAY INJUNCTION AND RULING PENDING APPEAL**

Pursuant to Federal Rule of Civil Procedure 6(e)(1)(C), Defendants hereby move this Court for an order setting an expedited schedule for briefing and decision on the contemporaneously filed Defendants' Motion to Stay Injunction and Ruling Pending Appeal. Defendants respectfully request that this Court set the following schedule:

- August 9: Plaintiffs' response to stay motion is due.
- Defendants reserve the right to file a reply on August 10 if needed, but Defendants request that the Court not delay issuing its ruling if a decision is prepared before a reply is filed.

Expedited determination of the stay motion is necessary to resolve the request for a stay with enough time before the November 2016 election to effectuate the relief granted by this Court or an appellate court. Defendants respectfully request expedited consideration of the stay motion, and a ruling on or before Thursday, August 11. The Defendants intend to file a motion for a stay of the injunction and ruling in the Seventh Circuit on Friday, August 12, 2016 if this Court does not grant a stay by that date.

This Court's injunction and ruling require fundamental changes to Wisconsin's election procedures before the November 2016 election. As explained in the Defendants' stay motion, that injunction and ruling should be stayed. If this Court declines to enter a stay, Defendants will request a stay from the Seventh Circuit; additional review by the U.S. Supreme Court is also possible.

There will need to be time for appellate decisions far enough in advance of the November 2016 election to properly inform the public and train poll workers on the procedures that will be in effect on election day. For example, it would cause tremendous confusion if this Court declined a stay, and Defendants then altered in-person absentee voting requirements and allowed voter registrations in accordance with this Court's order, only to have the Seventh Circuit or Supreme Court reverse or stay this Court's order sometime close to the election. This is a very real possibility, given the

disruption that this Court's injunction and ruling would cause to Wisconsin's current elections administration procedures. To minimize the need for such last-minute corrections, Defendants request rapid resolution of the stay motion.

This risk is not academic, as illustrated by proceedings in the related *Frank v. Walker* litigation now pending before the Seventh Circuit. After the district court in *Frank* issued a permanent injunction, appellate review through the Seventh Circuit and Supreme Court took six months. *See Frank v. Walker*, 135 S. Ct. 7, 7 (2014) (Supreme Court's October 9, 2014, order vacating the Seventh Circuit's stay of this Court's April 29, 2014, injunction). Under such a timeline, review in this case would not be complete until after the November 8, 2016, election. This would leave voters and administrators in a state of confusion leading up to election day, a result that may be avoided if this Court promptly decides Defendants' current stay motion.

Moreover, Wisconsin's election administration calendar is governed by numerous statutory deadlines, some of which are approaching rapidly:

- August 31: Municipal clerks begin sending absentee ballots to electors with valid requests on file. *See* 42 U.S.C. § 1973ff-1; Wis. Stat. § 7.15(1)(cm).

- September 22: Deadline for municipal clerks to send absentee ballots to electors with valid requests on file for the General Election (47 days before election). *See* Wis. Stat. §§ 7.10(3), 7.15(1)(c), (cm).¹

Expedited consideration is also consistent with the “*Purcell* principle,” which provides that timing is of the utmost importance in election-law cases. *See Purcell v. Gonzalez*, 549 U.S. 1, 4–6 (2006). To that end, Defendants ask this Court to set a schedule that resolves the stay motion on or before August 11, 2016. If the Court does not dispose of the motion by that date, Defendants intend to file a motion for a stay of the injunction and ruling in the Seventh Circuit on August 12, 2016, for the reasons set forth herein.

Undersigned counsel has contacted Plaintiffs’ counsel regarding expedited consideration of the stay motion. Counsel for the Plaintiffs does not object to a deadline of August 9, 2016 for their response to the Defendants’ Motion to Stay Injunction and Ruling Pending Appeal.

¹ For a full list of impending deadlines, this Court may take judicial notice of the state’s Calendar of Election and Campaign Events, available at http://www.gab.wi.gov/sites/default/files/publication/65/2015_2016_calendar_of_election_and_campaign_events_64237.pdf. *See* Fed. R. Evid. 201.

Dated this 3rd day of August, 2016.

Respectfully submitted,

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