

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

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

Plaintiffs,)

v.)

ANN S. JACOBS, MARK L. THOMSEN)
MARGE BOSTELMANN, JULIE M.)
GLANCEY, ROBERT F. SPINDELL, JR.,)
and DEAN KNUDSON, in their official)
capacities as Commissioners of the)
Wisconsin Elections Commission,)
MEAGAN WOLFE, in her official)
capacity as the Administrator of the)
Wisconsin Elections Commission,)

Defendants.)

Case No. 19-cv-323

BRIEF IN SUPPORT OF PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT

In 2011, the Wisconsin Legislature enacted a law requiring voters to prove their identity before casting a ballot. Under the law, most common forms of photo identification are accepted as voter IDs exactly as issued by the state, federal, or tribal government which issues the ID. In contrast, college and university photo IDs may only be used as a voter ID if the IDs contain an issuance date, an expiration date not more than two years after the issuance date, and the student’s signature, and it is these requirements that Plaintiffs challenge in this suit (“the challenged requirements” or “the challenged

restrictions”). 2011 Wis. Act 23, creating Wis. Stat. § 5.02(6m)(f). Students are additionally required to present separate proof of current enrollment, though a judicial ruling has modified when that requirement is triggered. Wis. Stat. § 5.02(6m)(f). But the challenged requirements are actually not used to confirm the identity of the student voter. Nor do they serve any other rational, legitimate, and important state interest that can justify the burdens they impose on students voting in Wisconsin. Accordingly, the challenged requirements must be struck down as unconstitutional and in violation of the 1964 Civil Rights Act, 52 U.S.C. § 10101(a)(2)(B).

Prior litigation resulted in a 2016 ruling permitting the use of *expired* college and university IDs and thereby completely dissolved any state interest in enforcing the issuance date, expiration date, and two-year expiration requirements. This Court held that expired college and university IDs could be used to vote because the student was required to present separate proof of current enrollment. This summer, the Seventh Circuit affirmed that decision on different grounds, noting that the state had failed to justify its differential treatment of college and university students by requiring separate proof of current enrollment in addition to an unexpired ID card. The Wisconsin Elections Commission (“WEC” or “the Commission”) has interpreted that decision to mean that students must present *either* an unexpired student ID card *without* proof of current enrollment *or* an expired student ID *with* proof of current enrollment.

College and university students who may have options to obtain a valid voter ID face burdens in doing so. Those options, which have always been limited, are further restricted during this pandemic that is continually up-ending the normal operation of

colleges and universities. More importantly, however, the availability of these options do not change the indisputable fact that students with non-compliant college or university ID cards are burdened in obtaining valid photo ID they can use to vote. Howsoever that burden is measured or quantified, it is real and must be justified under the *Anderson-Burdick* framework by, at a minimum, a rational, legitimate, and important state regulatory interest. Unjustified, burdensome restrictions must fall, even if there are alternatives.

There are no rational, legitimate, and important state interests that justify imposing this burden. Should the Defendants argue that they need the expiration date on the ID card to determine whether the voter must present separate proof of current enrollment, this argument would fail because there is no rational justification to treat an ID card without an expiration date differently from an ID card with an expiration date that has passed. Because college and university IDs can now be either unexpired or accompanied by proof of current enrollment when used as voter ID, issuance and expiration dates are, not only unnecessary, but unsupported by any rational, legitimate, and important state interest. If Defendants maintain that the expiration date is nonetheless necessary to evaluate whether the ID card is a "recent" ID card, that would constitute a flagrant attempt to rewrite the voter ID law in light of the *Luft* ruling that precludes them from making this very argument. This argument would also ignore the reality that the voter *identification* law included many IDs (and therefore photographs) with long lifespans before expiration and even a number of IDs that never expire. So long

as the voter's name and photo reasonably match and can be verified, the state manifestly lacks any interest in recency.

For purposes of this Motion, the parties have entered into a Joint Stipulation of Facts ("JSOF"). *See* dkt. 43. The parties dispute whether there is a rational, legitimate, and important state regulatory interest that justifies the expiration date, issuance date, and two-year expiration requirements for college and university ID cards presented or submitted as voter ID. It is apparently undisputed that neither the Wisconsin Legislature nor the WEC has ever articulated a legitimate, rational, and important state interest to justify the signature requirement. Signatures on voter IDs have never been reviewed or used by any election official or poll worker in Wisconsin for any purpose.

Accordingly, because Defendants cannot justify the issuance date, expiration date, two-year expiration, and signature requirements with any rational, legitimate, and important state interest, these requirements must be struck down as unconstitutional under the First and Fourteenth Amendments to the U.S. Constitution. In addition, because the omission of these elements from an ID card is immaterial in determining Wisconsin voters' eligibility, these requirements also violate 52 U.S.C. § 10101(a)(2)(B).

FACTUAL BACKGROUND

Under WIS. STAT. § 5.02(6m)(f), a college or university student enrolled in an accredited postsecondary educational institution in Wisconsin can use the student's campus photo ID card as their voter ID, if it contains the student's name, a photo, an issuance date, an expiration date not more than two years after the issuance date, and the student's signature. JSOF ¶ 27. The statute also requires that students present separate

proof of current enrollment in order to use their student IDs to vote. Wis. Stat. § 5.02(6m)(f); JSOF ¶¶ 43–44. The Wisconsin Elections Commission, in an Addendum to the Election Day Manual, has stated that *expired* college and university photo IDs are valid as voter ID if presented or submitted in conjunction with proof of current enrollment, and that students with a compliant *unexpired* college or university ID need not submit proof of current enrollment, based on the decisions in *One Wisconsin Institute, Inc. v. Thomsen*, 198 F. Supp. 3d 896, 904 (W.D. Wis. 2016), and *Luft v. Evers*, 963 F.3d 665, 677 (7th Cir. 2020). JSOF ¶ 43. The Addendum states in relevant part: “University, college, or tech school IDs that are unexpired do not have to be accompanied by an enrollment document. If the school ID is expired, it must be accompanied by an enrollment verification document, such as a tuition receipt, class schedule or letter from the school.” JSOF ¶ 43. WEC’s Election Day Manual also states that: “Proof of enrollment includes, but is not limited to, a fee receipt, class schedule or an enrollment verification form.” JSOF ¶ 43.

First-year, continuing, and transfer students have enrolled in postsecondary educational institutions across Wisconsin for the 2020-2021 academic year. Some of these students have moved to Wisconsin from another state to attend private and public colleges, universities, and technical colleges. JSOF ¶ 47. Although these students may have a driver’s license or state ID card with their name and photo from another state, some students who have enrolled in postsecondary educational institutions across Wisconsin for the 2020-2021 academic year do not possess any of the forms of valid photo ID on the Wisconsin voter ID law’s list. JSOF ¶ 48. This means that these students cannot

use their non-compliant regular student photo ID card and must obtain a different form of valid photo ID in order to vote. JSOF ¶¶ 53-55. First-year students who are new residents of Wisconsin are particularly vulnerable to this law as they learn of the requirement weeks before Election Day at best and on Election Day at the polling place at worst, JSOF ¶¶ 45, 88-104, and frequently only have their out-of-state driver's license or state ID card and their regular, non-compliant student photo ID card, neither of which can be used to vote. JSOF ¶¶ 47-48, 90-91, 100.

At least 36 postsecondary educational institutions in Wisconsin issue regular student ID cards that do not comply with the challenged requirements of the voter ID law and, therefore, cannot be used to vote. JSOF ¶¶ 57-60. Twenty-eight of these institutions will issue a separate voter ID that does comply with the voter ID law upon student request. *Id.* Eight institutions do not offer any student ID card that can be used to vote. *Id.* Although the parties lack information for just a few schools, they have agreed to the following facts about Wisconsin college and university IDs:

Five of the thirteen University of Wisconsin four-year institutions issue regular student IDs that are valid as voter ID, and the other eight do not have a regular student ID that is valid as voter ID but, upon individual student request, will separately issue a student voter ID card that complies with the voter ID law's requirements for student IDs to be used as voter ID. JSOF ¶ 57. Four of the thirteen University of Wisconsin two-year institutions (which are now affiliated with four-year institutions) issue regular student IDs that are valid as voter ID, and the other nine do not have a regular student ID that is valid as voter ID but, upon individual student request, will separately issue a student

voter ID card that complies with the voter ID law's requirements for student IDs to be used as voter ID. JSOF ¶ 58.

Eleven of the thirty private colleges and universities in Wisconsin issue regular student IDs that are valid as voter ID. Sixteen do not have a regular student ID that is valid as voter ID; ten of which will, upon individual student request, separately issue a student voter ID card that complies with the voter ID law's requirements for student IDs to be used as voter ID, and six of which do not. JSOF ¶ 59. Information on student ID compliance is unknown as to three of the thirty institutions. *Id.*

Thirteen of the seventeen technical and community colleges in Wisconsin issue regular student IDs that are valid as voter ID. Three do not have a regular student ID that is valid as voter ID. One of these colleges will, upon individual student request, separately issue a student voter ID card that complies with the voter ID law's requirements for student IDs to be used as voter ID. The other two will not. Information on student ID compliance is unknown as to the one remaining technical college. JSOF ¶ 60.

Tens of thousands of students enrolled in a Wisconsin college or university have moved from another state, and thousands of first-year and transfer college students every year become new Wisconsin residents to attend school. JSOF ¶¶ 49-51, 61-70. At UW-Madison alone, which does not issue a regular voter ID that meets the voter ID law's requirements, nearly 40 percent of the 38,098 U.S. citizen students enrolled in Fall 2019 were from another U.S. state at the time of their admission. JSOF ¶¶ 57 & n.36, 61. Within the UW-Madison undergraduate population 10,451 students were from another U.S. state

or territory, 3,054 of which were first-year students. JSOF ¶ 61. At Marquette University, which does not issue a regular voter ID that meets the voter ID law's requirements, only one third of the 8,281 undergraduates enrolled in Fall 2019 were from Wisconsin, and over 1,000 first-year students who enrolled in the university after completing high school in another state. JSOF ¶¶ 59 & n.38, 62. And just over 30 percent of the 3,496 students enrolled at Carroll University, which also does not issue a regular voter ID that meets the voter ID law's requirements, are from states other than Wisconsin. JSOF ¶ 63. Many of these students will lack an accepted voter ID card and need to obtain one from a college or university ID card office, a DMV office, or some other agency or organization that issues qualifying identification. JSOF ¶¶ 47-48, 90-91, 100.

Due to outbreaks of Covid-19 on campuses, some Wisconsin colleges and universities have quarantined students, entire residence halls, or all campus residence halls.¹ For example, UW-Madison ordered the quarantine of multiple residence halls and nine fraternities or sororities. UW-La Crosse ordered a quarantine of all residence halls for fourteen days.² Marquette University ordered the 373 students who reside in Schroeder Hall to quarantine for fourteen days.³ And the semester has only just begun.

¹ Adam Rogan, *7 Out of 19 U.S. Cities Where Covid Cases Are Rising Fastest Are in Wisconsin*, Milwaukee Magazine (Sept. 14, 2020), <https://www.milwaukeeemag.com/7-out-of-19-u-s-cities-where-covid-cases-are-rising-fastest-are-in-wisconsin/>.

² JR Radcliffe and Meg Jones, *University of Wisconsin-La Crosse Pauses in-Person Instruction for Two Weeks as Cases Spike There and in Other Cities That Host UW Campuses*, Milwaukee Journal Sentinel (Sept. 13, 2020), <https://www.jsonline.com/story/news/2020/09/13/uw-lacrosse-joins-madison-two-week-pause-person-classes/5785906002/>.

³ *University, Milwaukee Health Department Direct Schroeder Hall Residents to Quarantine for Two Weeks*, Marquette Today (Sept. 14, 2020), <https://today.marquette.edu/2020/09/university-milwaukee-health-department->

In order to apply for a driver's license or state ID card at a Wisconsin DMV office, students first need to obtain documents which DMV requires – documents which they may not possess or have with them at school. JSOF ¶¶ 9, 91, 100. More than half of Wisconsin's DMV offices are open only two days per week, while other offices face closures or more limited hours due to the pandemic, and only seven DMV offices offer limited weekend hours. JSOF ¶ 8. If a student has a driver's license or state ID card from another state, the student must surrender that license or ID card to obtain a Wisconsin driver's license, state ID, receipt for a license or state ID, or to initiate the ID petition process. JSOF ¶ 9.

The U.S. passport application and issuance process has been slowed down by the pandemic. Renewal of U.S. passports by mail is delayed, and a passport holder cannot renew by mail if that individual's first passport was obtained before they were 16 years old. Additionally, there are limited options for in-person, new-issuance applications. Passport agencies are only open to process passports where there is a life or death emergency. JSOF ¶ 19.

LEGAL STANDARD

Summary judgment is appropriate if the moving party "shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "Only disputes over facts that might affect the outcome of

[direct-schroeder-hall-residents-to-quarantine-for-two-weeks/](https://www.tmj4.com/news/local-news/marquette-university-orders-all-students-at-schroeder-hall-to-quarantine-for-2-weeks/); Jackson Danbeck, *Marquette University Orders All Students at Schroeder Hall to Quarantine for 2 Weeks*, WTMJ-TV Milwaukee (Sept. 14, 2020) [https://www.tmj4.com/news/local-news/marquette-university-orders-all-students-at-schroeder-hall-to-quarantine-for-2-weeks.](https://www.tmj4.com/news/local-news/marquette-university-orders-all-students-at-schroeder-hall-to-quarantine-for-2-weeks/)

the suit under the governing law will properly preclude the entry of summary judgment.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Bahena v. Jefferson Capital Sys., LLC*, 363 F. Supp. 3d 914, 919 (W.D. Wis. 2019). “Where, as here, the parties file cross-motions for summary judgment, all reasonable inferences are drawn in favor of the party against whom the motion at issue was made.” *Tripp v. Scholz*, 872 F.3d 857, 862 (7th Cir. 2017).

ARGUMENT

The issuance date, expiration date, two-year expiration, and signature requirements for college and university IDs that are presented or submitted as voter ID have imposed burdens on student voters that are not justified by any rational, legitimate, and important state regulatory interest. Accordingly, these pointless and burdensome requirements must be struck down as unconstitutional.

1. *Anderson-Burdick* Challenges to Issuance Date, Expiration Date, Two-Year Expiration, and Signature Requirements for College and University IDs

a. The *Anderson-Burdick* Test and *Luft v. Evers*

Under the First and Fourteenth Amendments to the U.S. Constitution, any burden on the right to vote must be balanced against a state’s interest in that requirement. The Supreme Court has set forth the following test:

[T]he rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights. Thus, as we have recognized when those rights are subjected to “severe” restrictions, the regulation must be “narrowly drawn to advance a state interest of compelling importance.” *Norman v. Reed*, 502 U.S. 279, 289, 112 S.Ct. 698, 705, 116 L.Ed.2d 711 (1992). But when a state election law provision imposes only “reasonable, nondiscriminatory restrictions” upon the First and Fourteenth Amendment rights of voters, “the State’s important regulatory interests are generally

sufficient to justify” the restrictions. *Anderson*, 460 U.S., at 788, 103 S.Ct., at 1569–1570; *see also id.*, at 788–789, n. 9, 103 S.Ct., at 1569–1570, n. 9.

Burdick v. Takushi, 504 U.S. 428, 434 (1992). “A court considering a challenge to a state election law must weigh the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate against the precise interests put forward by the State as justifications for the burden imposed by its rule, taking into consideration the extent to which those interests make it necessary to burden the plaintiff's rights.” *Id.* at 434 (citations and quotation marks omitted). Any burden on a class of voters “must be justified by relevant and legitimate state interests ‘sufficiently weighty to justify the limitation.’” *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 191 (2008) (citing *Norman v. Reed*, 502 U.S. 279, 288–89 (1992)).

The Seventh Circuit’s recent decision in *Luft v. Evers* instructs courts not to apply the *Anderson-Burdick* balancing analysis to a particular election regulation “in isolation,” but rather to take a holistic view of a state’s election laws and procedures. 963 F.3d 665, 671–72 (7th Cir. 2020). “Courts weigh these burdens against the state’s interests by looking at the whole electoral system.” *Id.* at 671–72. The full set of relevant election law regulations and voting opportunities “matter when assessing challenges to a handful of rules that make voting harder.” *Id.* at 672. Accordingly, *Luft* obligates courts to consider all laws that might alleviate or eliminate the burdens imposed by the challenged requirements.

But this does not mean that states are exempt from justifying legal restrictions or classifications that impose a burden on voters, even if there may be alternatives and options within an election code that reduce particular burdens or at least give voters

additional options to register and vote. This is clear from the Seventh Circuit's treatment of the permanent injunction this Court granted in *One Wisconsin Institute v. Thomsen*, 198 F. Supp. 3d 896, 961–62 (W.D. Wis. 2016) against the requirement that a college or university ID be unexpired. *Luft*, 963 F.3d at 677. In affirming this Court's holding, albeit on different grounds, the Seventh Circuit explained that:

There's nothing wrong with a requirement that IDs be current.

There is still a problem. A student ID card, alone among the sorts of photo ID that Wisconsin accepts, is not sufficient for voting unless the student also shows proof of current enrollment. *Id.* at § 5.02(6m)(f). No other category of acceptable identification—including for drivers, military members, passport holders, or veterans—depends on ongoing affiliation of any sort. ***The statute sets students apart in this respect, and the state has not tried to justify this distinction. We take the omission as a concession that it lacks a rational basis.*** This is not, as the district judge believed, because redundant requirements in statutes—such as current ID + proof of enrollment—are invariably irrational. Many a lawyer prefers a belt-and-suspenders approach. ***The problem here is that students are treated differently from other potential voters, and the state has left that difference unjustified.*** We affirm that part of the judgment on this alternate ground.

Id. (emphases added). According to *Luft*, the state must still justify legislative choices, particularly those that treat one group of voters differently from another group.

In *Luft*, student voters had been singled out and required to present proof of “ongoing affiliation.” *Id.* This case challenges other aspects of the same statute that also impose burdens on student voters and are not justified by any rational, legitimate, and important state interest. Notwithstanding any other options or alternative accepted IDs, the state must nevertheless justify restrictions and classifications that impose a burden on voters. It bears underscoring that the same options or alternative accepted IDs and any other purported reasons that Defendants will advance here to oppose Plaintiffs' claims

were all available at the time the Seventh Circuit affirmed this Court's injunction against the requirement that college and university IDs be unexpired. Though the Court in *Luft* could have merely pointed to the theoretical availability of other accepted forms of voter ID for students to use and rejected the plaintiffs' claim, it did not do so. Absent a rational, legitimate, and important state interest, those alternative accepted IDs and theoretical options for compliance with the voter ID requirement were insufficient to sustain the challenged provision in *Luft* and, absent a rational, legitimate, and important state interest to justify the challenged restrictions and classifications in this case, they are equally insufficient here.⁴

The theoretical availability of alternative accepted IDs fails to cure the constitutional violation. Where a voting law contains an absurd restriction that has no rational, legitimate justification, it is no answer for the state to point to other election laws that give voters options or a work-around or alleviate their burdens in some way. If, for example, the Wisconsin voter ID law permitted the use of other states' drivers' licenses or state ID cards when the voter is at least six feet tall, but not when the voter is shorter than six feet tall, the state could not argue for that absurd provision's constitutionality by pointing to the availability of other accepted IDs, the ID petition process ("IDPP") at the Wisconsin DMV, or any other alternative or accommodation available (at least in theory) to Wisconsin voters who have an out-of-state driver's license or state ID card but are

⁴ Similarly, the Seventh Circuit's discussion of the Wisconsin DMV's ID petition process makes clear that there may still be a constitutional defect after further proceedings on remand. *Luft*, 963 F.3d at 679-80. This further corroborates that the existence of alternative forms of accepted ID does not cure and is no answer to unconstitutional restrictions and line-drawing elsewhere in Wisconsin's voter identification regime.

shorter than six feet tall. So too here. The challenged restrictions and classifications the Wisconsin Legislature has uniquely imposed on college and university ID cards are wholly unjustified by any rational, legitimate, and important state regulatory interest. For this reason, they must be enjoined.

b. Burdens on Students Who Do Not Have a Voter ID-Compliant College or University ID

The challenged restrictions on the use of college and university ID cards burden student voters who hold a non-compliant regular student ID card that cannot be used to vote and do not possess another photo ID that is accepted as voter ID in Wisconsin. Under *Burdick*, this Court “must weigh the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate against the precise interests put forward by the State as justifications for the burden imposed by its rule, taking into consideration the extent to which those interests make it necessary to burden the plaintiff’s rights.” 504 U.S. at 434 (citations and quotation marks omitted).

Under WIS. STAT. § 5.02(6m)(f), a Wisconsin college or university student can use their campus photo ID card as their voter ID only if it contains the student’s name, a photo, an issuance date, an expiration date not more than two years after the issuance date, and the student’s signature. JSOF ¶ 42. As to the separate proof of current enrollment requirement, the Wisconsin Elections Commission, in an Addendum to the Election Day Manual, has stated that *expired* college and university photo IDs are valid as voter ID if presented or submitted in conjunction with proof of current enrollment, and that students with a compliant *unexpired* college or university ID need not submit proof

of current enrollment, based on the decisions in *One Wisconsin Institute, Inc. v. Thomsen*, 198 F. Supp. 3d 896, 904 (W.D. Wis. 2016), and *Luft v. Evers*, 963 F.3d 665, 677 (7th Cir. 2020). JSOF ¶ 43. The Addendum states in relevant part: “University, college, or tech school IDs that are unexpired do not have to be accompanied by an enrollment document. If the school ID is expired, it must be accompanied by an enrollment verification document, such as a tuition receipt, class schedule or letter from the school.” JSOF ¶ 43.

First-year, continuing, and transfer students have enrolled in postsecondary educational institutions across Wisconsin for the 2020-2021 academic year. It is undisputed that “[s]ome of these students have moved to Wisconsin from another state to attend private and public colleges, universities, and technical colleges.” JSOF ¶ 47. It is also undisputed that “[a]lthough [these students] may have a driver’s license or state ID card with their name and photo from another state, some students who have enrolled in postsecondary educational institutions across Wisconsin for the 2020-2021 academic year do not possess any of the forms of valid photo ID on the Wisconsin voter ID law’s list.” JSOF ¶ 48. This means that these students cannot use their non-compliant regular student photo ID card and must obtain a valid photo ID in order to vote. JSOF ¶¶ 53–55. First-year students who are new residents of Wisconsin are particularly vulnerable to this law as they learn of the requirement weeks before Election Day at best and on Election Day at the polling place at worst, JSOF ¶¶ 45, 88–104, and frequently only have their out-of-state driver’s license or state ID card and their regular, non-compliant student photo ID card, neither of which can be used to vote. JSOF ¶¶ 47-48, 90–91, 99–100.

Many campuses in Wisconsin do not offer students a regular student ID that complies with the challenged requirements. JSOF ¶¶ 53–60. At least 36 postsecondary educational institutions in Wisconsin issue regular student photo ID cards that do not comply with the challenged requirements of the voter ID law and, therefore, cannot be used to vote. JSOF 57–60. At these schools, students must request a separate voter ID that satisfies the expiration date, issuance date, two-year expiration, and signature requirements, or obtain some other form of accepted photo ID on the list. JSOF ¶¶ 55, 57–60. Thirty-three institutions issue a regular student ID that can be used as voter ID, but thirty-six institutions do not issue a regular student ID card that can be used to vote and either, upon student request, issue a separate voter ID that does comply with the voter ID law (28 institutions), or do not offer any photo ID card that can be used to vote (8 institutions). JSOF ¶¶ 57–60. Students must learn of this voter ID requirement, learn that a separate voter ID is available, go to an ID card office, and affirmatively request that ID. JSOF ¶¶ 90–93, 99–101.

A substantial number of Wisconsin college and university students face this needless barrier. There are many students who attended high school in another state, are new Wisconsin residents, hold a driver's license or state ID from another state, and do not yet own a U.S. passport or do not keep it at school for security reasons. JSOF ¶¶ 91, 100. Tens of thousands of students enrolled in a Wisconsin college or university have moved from another state, and thousands of first-year and transfer college students every

year become new Wisconsin residents to attend school. JSOF ¶¶ 49–51, 61–70.⁵ At UW-Madison alone, which does not issue a regular voter ID that meets the voter ID law’s requirements, nearly 40 percent of the 38,098 U.S. citizen students enrolled in Fall 2019 were from another U.S. state at the time of their admission. JSOF ¶¶ 57 & n. 36, 61. Within the UW-Madison undergraduate population 10,451 students were from another U.S. state or territory, 3,054 of which were first-year students. JSOF ¶ 61. At Marquette University, which does not issue a regular voter ID that meets the voter ID law’s requirements, only one third of the 8,281 undergraduates enrolled in Fall 2019 were from Wisconsin, and over 1,000 first-year students who enrolled in the university after completing high school in another state. JSOF ¶¶ 59 & n. 38, 62. And just over 30 percent of the 3,496 students enrolled at Carroll University, which also does not issue a regular voter ID that meets the voter ID law’s requirements, are from states other than Wisconsin. JSOF ¶ 63. This is just a sample; there are of course other institutions with students who are new residents of Wisconsin and who do not have any form of ID on campus and an indeterminate number of college and university students who grew up and attended high school in Wisconsin but nevertheless do not have a Wisconsin driver’s license or state ID card. Many of these students will lack an accepted voter ID card and need to obtain one from a college or university ID card office, a DMV office, or some other agency or organization that issues qualifying identification. JSOF ¶¶ 47–48, 88–89, 99.

⁵ In the 2017-2018 school year, 28,995 first-year students enrolled in the University of Wisconsin System. JSOF ¶ 49. Of these transfer students, 31 percent were from out-of-state institutions. JSOF ¶ 50.

The undisputed facts concerning two students at Marquette University and Alverno College, respectively, are illustrative and provide some necessary context as to how this law operates in the real world to burden and impede college student voters. Jessica Gomez was a first-year student in November 2018, newly enrolled at Marquette after attending high school in Illinois. JSOF ¶¶ 88–90. Ms. Gomez went to vote at 11:00 a.m. and learned for the first time of the voter ID requirement and the invalidity of her non-compliant Marquette ID card from a poll worker. JSOF ¶ 90. Because she did not have any other form of accepted photo ID, she needed to request and obtain a separate Marquette voter ID card that contained an issuance date, expiration date not more than two years after the issuance date, and her signature. JSOF ¶¶ 90–92. But once she obtained that separate compliant form of voter ID, Ms. Gomez had to attend four hours of classes and could not reattempt to vote until after 4:00 p.m. JSOF ¶ 93. Registration and voting took her about an hour, and she was done at roughly 5:00 p.m., even though she had first attempted to vote at 11:00 a.m. JSOF ¶¶ 94–95. If Ms. Gomez had first attempted to vote some time after her classes, the ID card office may well have closed before she could wait in line, learn of the requirement from a poll worker, exit the polling place, walk over to the ID card office, and secure a compliant Marquette ID she could use to vote. The office closes at 5:30 p.m. JSOF ¶ 92. She likely would have been denied her right to vote because of these irrational, unjustified, and therefore unconstitutional requirements for college and university ID cards to be used as voter ID.

Another voter, Cassandra Abarca, has a similar story from the November 2018 election. At the time, Ms. Abarca was a first-year student at Alverno College and a new

resident in Wisconsin after attending high school in Illinois. JSOF ¶ 96. Ms. Abarca first learned of the voter ID requirement, the non-compliance of her regular Alverno student ID card, and the need to request a separate compliant voter ID from the ID card office from an upperclassman on Election Day. JSOF ¶ 99. Ms. Abarca had no other form of accepted voter ID that she could use to vote; therefore, she needed to request that separate form of voter ID from Alverno's ID card office. JSOF ¶ 98. Because Ms. Abarca had to go to work that day, she was planning to vote once work let off at 5:00 p.m. JSOF ¶¶ 99, 101. Had that upperclassman not informed her of the voter ID requirement and the need to request a separate form of voter ID from Alverno early on in the day, she would have been denied her right to vote when she went to the polling place at 5:00 p.m. JSOF ¶ 99. The Student Affairs office that issues voter IDs closes at 5:00 p.m. *Id.*

Ms. Gomez's and Ms. Abarca's stories thankfully have happy endings – they were both able to register and vote after classes and work. JSOF ¶¶ 93–95, 101–103. But it is reasonable to infer that others are less fortunate and do not learn of these needless and unjustified requirements for college and university ID cards until it is too late to do anything about it – until an ID card office is closed or only hours or minutes remain before the close of the polls and there are no alternatives. There is no reprieve from class and work schedules on Election Day. Whenever students like Ms. Gomez learn of this requirement from a poll worker, they must leave the line, exit the polling place, go to an ID card office, secure an ID, return to the polling place, and wait in a potentially long line all over again. This surely deters student voter participation and, in some or many cases, will result in denial of the right to vote. To impose these burdens on students who have

a limited number of photo IDs and could use their regular student photo ID card but for the challenged restrictions, the state must articulate a rational, legitimate, and important state regulatory interest as justification.

Even if a student voter seeks to secure another form of accepted ID in lieu of requesting a separate voter ID from their school, they will encounter several obstacles in the process of obtaining it. Students might attempt to apply for a driver's license or state ID card at a DMV office, but first they need to obtain documents which DMV requires—documents which they may not possess or have with them at school.⁶ Next, more than half of Wisconsin's DMV offices are open only two days per week, while other offices face closures due to the pandemic, and only seven DMV offices offer limited weekend hours. JSOF ¶ 8. If a student has a driver's license or state ID card from another state, the student must surrender that license or ID card to obtain a Wisconsin driver's license, state ID, receipt for a license or ID, or to initiate the IDPP. JSOF ¶ 9.

This year adds a new layer of obstacles for student voters without an accepted form of voter identification. Securing a special voting-compliant student ID or an alternative acceptable ID was already a burden for some students in the last general election. JSOF ¶¶ 88-104. The burden will likely be much greater—and possibly insurmountable—in this year's election due to the Covid-19 pandemic and resulting illnesses, quarantines, isolation orders, and office closures. Due to outbreaks of Covid-19

⁶ JSOF ¶ 9 (“Applicants for a Wisconsin driver's license or state ID card must provide: proof of U.S. citizenship, lawful permanent resident status, or temporary visitor status; proof of name and date of birth; proof of Wisconsin residency; and proof of identity.”); *id.* at ¶¶ 73, 91, 100 (some students do not possess these items while at school).

on campuses, some Wisconsin colleges and universities have quarantined students, entire residence halls, or all campus residence halls.⁷ For example, UW-Madison ordered the quarantine of multiple residence halls and nine fraternities or sororities. UW-La Crosse ordered a quarantine of all residence halls for fourteen days.⁸ Marquette University ordered the 373 students who reside in Schroeder Hall to quarantine for fourteen days.⁹ And the semester has only just begun.

During the time that students are ordered to isolate or quarantine, they are not permitted to (1) travel home or elsewhere to retrieve documents that may be required to obtain a Wisconsin driver's license or state ID card; (2) travel to the DMV office to obtain a Wisconsin driver's license or state ID card; or (3) go to the university office that issues voting-compliant IDs (if their campus provides these).

Even a student who is not quarantined or ordered to isolate may face additional difficulties this year. DMV offices around Wisconsin have more limited hours than in the past, due to pandemic-related closures. JSOF ¶ 8. The U.S. passport application and issuance process has been slowed down by the pandemic. Renewal of U.S. passports by mail is delayed, and a passport holder cannot renew by mail if that individual's first passport was obtained before they were 16 years old. Additionally, there are limited options for in-person, new-issuance applications. Passport agencies are only open to process passports for a life or death emergency. JSOF ¶ 19.

⁷ Rogan, *supra* note 1.

⁸ Radcliffe and Jones, *supra* note 2.

⁹ Marquette Today, *supra* note 3; Danbeck, *supra* note 3.

The burdens of requesting and obtaining a separate compliant student ID or, alternatively, requesting and obtaining a Wisconsin driver's license or state ID, U.S. passport, or other accepted form of voter ID are substantial. The alternatives and options available to students who do not possess a valid form of voter ID have always been limited, burdensome, and/or complex and are now further restricted during this pandemic that is continually up-ending higher education's normal functioning. The availability of these options for some students do not change the indisputable fact that students with non-compliant college or university ID cards are burdened in obtaining an alternative valid photo ID they can use to vote. But howsoever the "character and magnitude" of those burdens are quantified or weighed, they are real and require the state to justify why imposing these burdens is necessary. *Burdick*, 504 U.S. at 434. *Anderson-Burdick* requires – at a minimum – that the state point to a rational, legitimate, and important state regulatory interest.

c. No State Interest in Issuance Date and Expiration Date Requirements

Courts must weigh the burdens the challenged requirements impose against "the precise interests put forward by the State as justifications for the burden imposed by its rule, taking into consideration the extent to which those interests make it necessary to burden [Plaintiffs'] rights." *Burdick*, 504 U.S. at 434. Here, there are no reasonable, legitimate, and important state interests that can justify the continued enforcement of the issuance and expiration date requirements for college and university IDs presented or submitted as voter ID.

The purpose of the voter identification requirement is to identify the voter by name and photo. Whether a person votes in person or by mail, election officials and poll workers only review a voter ID to ensure that the name conforms to the name in the voter's registration record and that the photo reasonably resembles the voter, the latter of which is only possible in in-person voting on or before Election Day. JSOF ¶¶ 31-41. The current WEC Election Day Manual instructs poll workers to confirm that the photo ID is one of the acceptable forms of identification; verify that the college or university ID card bears a name, photo, issuance date, expiration date no later than two years after the issuance date, and the student's signature; and, if required, confirm that the student has separate, valid proof of current enrollment. JSOF ¶ 33. Next, the poll worker must verify that the name on the ID conforms to the name on the poll list; verify that any photograph on the proof of identification reasonably resembles the voter who is casting their ballot in person; and verify that the student ID is either unexpired or expired and presented with proof of current enrollment. *Id.*

Crucially, the voter *identification* law is not intended to confirm residence in Wisconsin or any jurisdiction in the state; that has already been established separately by documentary proof of residency during the voter registration process. Documentary proof of residence is shown or submitted by a voter upon registration. JSOF ¶¶ 26-30.¹⁰

¹⁰ Voters must prove their Wisconsin residence either through the voter registration process or at the DMV office. If a voter registers online at myvote.wi.gov, they are superficially exempt from the documentary proof of residence requirement, WIS. STAT. § 6.34(2m), but because they have a Wisconsin driver's license or state ID that they are using to register online, WIS. STAT. §§ 6.34(2), 6.34(3), they have already shown documentary proof of residence at a Wisconsin DMV office. JSOF ¶ 9, Wis. Admin. Code § Trans 102.15(4m).

Notably, the voter ID law does not require that the address listed on the ID match the address listed in the voter registration record, Wis. Stat. § 6.79, which stands to reason as some of the accepted forms of voter ID do not even contain a residential address. JSOF ¶ 18 (U.S. Passport books and cards), 20 (military IDs), 21 (Veteran Health Identification Cards and older Veteran Identification Cards), 22 (tribal IDs), and 25 (naturalization certificates).

Following the U.S. Court of Appeals for the Seventh Circuit's decision in *Luft v. Evers*, affirming this Court's permanent injunction allowing the use of *expired* college and university student ID cards, see *One Wisconsin Institute, Inc. v. Thomsen*, 198 F. Supp. 3d 896, 904 (W.D. Wis. 2016), *order enforced*, 351 F. Supp. 3d 1160 (W.D. Wis. 2019), and *aff'd in part, vacated in part, rev'd in part sub nom. Luft v. Evers*, 963 F.3d 665, 677 (7th Cir. 2020), the requirements that college and university ID cards bear issuance and expiration dates are vestigial, serve no purpose, and therefore must be enjoined. In *One Wisconsin Institute*, this Court foresaw this outcome as a necessary corollary to its ruling against the requirement that the ID be unexpired: "Without the requirement that a voter present an unexpired college or university ID, it seems unnecessary to regulate the ID's expiration date." 198 F. Supp. 3d at 962. Because this Court and the Seventh Circuit have now struck down the requirement that college and university ID cards be unexpired, these issuance date and expiration date requirements will no longer be used for any purpose set forth in Wisconsin law and are therefore unsupported by any legitimate, rational, or important state regulatory interest. Accordingly, the First and Fourteenth Amendment rights of

students who have no other form of valid voter ID are violated by these unnecessary, useless, and irrational requirements.

Defendants likely will argue that they need the expiration date on the voter ID to determine whether the voter must present separate proof of current enrollment or not. Aside from the fact that this argument offers no justification for the issuance date or two-year expiration requirements, this argument fails because there is no rational justification to treat an ID card that completely lacks an expiration date differently from an ID card with an expiration date that has passed. In either case, proof of current enrollment equally confirms what the missing or expired date cannot – that the student is currently enrolled in a Wisconsin-based institution. If a student ID has an expiration date and that date has not yet passed, then the student is exempted from the proof of current enrollment requirement, but that of course is no reason to make its inclusion mandatory.

Defendants may argue that the issuance and expiration dates are justified by a need to confirm Wisconsin residence in addition to the voter's identity. But that is belied by the facts. First, as discussed above, the voter must prove residency when registering, including if registering at the polls. This was never the intended use of the photographic voter identification requirement, which was intended to establish identity alone. JSOF ¶ 18, n. 7 at 10 (separately listing residency and identity documents). Second, expired college and university IDs are now valid voter IDs per this Court's injunction as affirmed by the Seventh Circuit, and an *expired* college ID is just as ineffective at confirming in-state residence as a college ID without an expiration date. Therefore, the courts' injunction permitting the use of expired college and university IDs has further precluded

Defendants from claiming any rational, legitimate, and important state interest of confirming continued Wisconsin residence by enforcing the technical issuance and expiration date requirements. If the requirement that the ID card be unexpired is dispensable and now purely optional, then the issuance date and expiration date requirements are equally dispensable, optional, unjustified, and irrational.

Additionally, a substantial number of forms of accepted voter IDs never expire or contain no expiration date whatsoever. JSOF ¶¶ 20 (certain military IDs), 21 (Veteran Identification Cards), 22 (tribal IDs), 25 (naturalization certificates). Some accepted voter IDs, such as Veteran Identification Cards and certain military IDs, lack issuance dates as well. JSOF ¶ 18, n. 7, at 7, 8, 13-14. The Legislature could not have thought the state had an interest in requiring an ID with a defined expiration window, because it did not uniformly require that of voters. Accordingly, the issuance dates and expiration dates do not serve a rational, legitimate, and important purpose. Finally, this argument also does nothing to justify a two-year expiration requirement.

If Defendants nonetheless argue that the issuance date and expiration date requirements are necessary to evaluate whether the ID card is a “recent” ID card, Plaintiffs would submit that Defendants are flagrantly trying to rewrite the voter ID statute. Any attempt to recast the issuance and expiration date requirements as “distinct requirements” from the requirement that the college or university ID be unexpired, *see* dkt. 28 at 10, and as “recency” requirements is dead on arrival. The plain language of the voter ID law makes clear that it was solely aimed at verifying voters’ identity, and this was to be achieved by verifying the name and photo on the voter ID against the voter

registration records and the person appearing to vote (in-person voters only as to the latter point of comparison). JSOF ¶ 33. As long as the ID card is valid and the name and photo reasonably resemble the name in the voter registration record and the voter's face, respectively, the state has no other objective or interest in enforcing the requirement.

The Legislature did not express an interest in ID card recency merely for the sake of recency. Indeed, most all accepted forms of regularly-issued IDs in Wisconsin have significantly longer lifespans prior to expiration than a college ID or never expire. That some IDs may be used indefinitely or for eight to twelve years, completely undermines the notion that the Legislature cared about "recency" at all. Wisconsin driver's licenses are valid for eight years and may be used for up to two more years if they expire after a general election. JSOF ¶ 13. Further, the DMV will renew a driver's license or state ID once without securing a new photo from the licensee or ID card holder, JSOF ¶ 14; accordingly, a photo on a driver's license or ID card can be sixteen years old (or more, if it expires after a general election) when presented or submitted to vote. Wisconsin DMV also issues state ID cards that are non-expiring to residents age 65 or over. JSOF ¶ 15. U.S. passports and their photos need not be updated for a ten-year period and can be used as voter ID for that ten-year period plus any time after a general election if it expired after the last general election. JSOF ¶ 18. Finally, a substantial number of forms of accepted voter IDs never expire or contain no expiration date whatsoever. JSOF ¶¶ 20 (certain military IDs), 21 (Veteran Identification Cards), 22 (tribal IDs), 25 (naturalization

certificates).¹¹ Such IDs would not fit within any reasonable definition of “recency.” Nor would the photos on said IDs constitute “recent” photographs, particularly for IDs that never expire where the photos could be decades-old or photos that may be sixteen years old or more on renewed driver’s licenses. All the Legislature cared about was “that any photograph appearing on that document reasonably resemble[] the elector,” Wis. Stat. Ann. § 6.79(2), not whether the image was “recent,” a term nowhere used in the voter ID law.

Because Defendants cannot justify the issuance date and expiration date requirements with any rational, legitimate, and important state interest, these requirements must be struck down as unconstitutional under the First and Fourteenth Amendments to the U.S. Constitution.

d. No State Interest in Two-Year Expiration Requirement

There is no rational, legitimate, and important state interest to support the requirement that college or university ID cards contain an expiration date that is no more than two years after the issuance date listed on the card. WIS. STAT. §§ 5.02(6m)(f). It is undisputed that there are two-year institutions and four-year institutions in Wisconsin, JSOF ¶ 52, and requiring a student at a four-year institution to obtain a new ID card every two years is irrational. Aside from the fact that the voter *identification* requirement is solely intended to *identify the voter*, not to confirm voting eligibility, if the requirement that a college ID card be unexpired is purely optional, then, as previously noted, a two-

¹¹ Some accepted voter IDs, such as Veteran Identification Cards and certain military IDs, lack issuance dates as well. JSOF ¶ 18, n. 7, at 7, 8, 13-14.

year expiration requirement does not do any work to confirm Wisconsin residency. It is a purely arbitrary requirement and a limit that is fundamentally inconsistent with the issuing organization's needs and the underlying purposes of a college ID. And if a school issues a separate, compliant voter ID instead of revising their regular student ID card, they must needlessly expend the effort and resources to reissue voter IDs every two years. For example, even though Marquette University student Jessica Gomez and Alverno College student Cassandra Abarca attend four-year institutions, their Marquette and Alverno voter ID cards that they requested and obtained in order to vote in November 2018 will expire on November 6, 2020, exactly two years after their issuance dates. JSOF ¶ 104. If students who voted as freshmen or sophomores obtained compliant voter IDs from their schools to vote more than 3 days before the November 6, 2018 election, their IDs will expire prior to the November 3, 2020 general election. This is not because a four-year institution wants or needs the ID to expire within two years of issuance, but because the Legislature arbitrarily and without any legitimate or rational basis required this of *all* institutions' campus photo ID cards when used as voter ID.

The two-year expiration requirement is utterly lacking in any rational justification. The ID is intended to serve the sole purpose of confirming the voter's identity – their name and photo and nothing more. In students' cases, they may lawfully be required to show proof of current enrollment if their student ID is expired. The post-*Luft* requirement that a voter present either an unexpired college ID or proof of current enrollment along with an expired ID only serves to underscore the pointlessness of requiring that the ID expire within two years of its issuance date. There is no conceivable purpose in requiring

students to obtain an ID card with a two-year expiration period, especially if they are attending four-year institutions. Accordingly, this requirement should be enjoined as a violation of the First and Fourteenth Amendments as well.

e. No State Interest in Signature Requirement

The requirement that the student ID card contain the student's signature also serves no purpose and is irrational. First, the voter ID law does not require election officials and poll workers to verify that any signature on the ID matches the voter's signature on the poll book or the voter's signature on the voter registration form. Second, no other category of voter IDs is required to contain a signature, WIS. STAT. § 5.02(6m), though some IDs do contain signatures. JSOF ¶¶ 6, 16-18. However, it is undisputed that a number of forms of valid, accepted voter ID, such as Veteran Identification Cards and Veteran Health Identification Cards issued by the U.S. Department of Veterans Affairs and some tribal ID cards, do not even contain signatures. JSOF ¶¶ 20-22. If the Legislature thought the state had a rational, legitimate, and important interest in requiring signatures on voter identification, it would have do so uniformly. Finally, the voter must always sign the pollbook before receiving a ballot. JSOF ¶ 34; Wis. Stat. § 6.79(2)(a). After an election, it is *that* signature that may be compared to the signature on a voter registration form to advance the governmental purpose of detecting and prosecuting voter fraud. Since the voter ID law was enacted in 2011, the Commission and its predecessor the Government Accountability Board ("GAB"), have consistently stated that voter IDs are valid and must be accepted without any comparison of any signature on the voter ID, if

any exists, to the poll book signature or the signature on the absentee ballot request form or the absentee ballot certificate envelope. JSOF ¶¶ 35–37.

There is no mandate in the Wisconsin Election Code to compare any signature on the voter ID to any other signature. WIS. STAT. § 6.79(2)(a); WIS. STAT. § 6.87(1). The WEC Election Day Manual does not require election officials to compare any signature on the voter ID to the voter’s signature in the poll book. The Manual even pointedly omits the signature from a list of “relevant information (name, photo, expiration date)” on a voter ID. JSOF ¶ 37. According to the Election Day Manual, poll workers are simply required to verify that the voter’s stated name and address conform to the name and address listed in the poll book. Poll workers are not instructed to compare the voter’s signature to the signature on the proof of identification. JSOF ¶ 35. Since the voter ID law was enacted in 2011, the WEC, as well as the GAB, have never issued instructions requiring the comparison of a signature on the voter ID with the voter’s signature on the poll book or voter registration record. JSOF ¶ 37.

Additionally, Wisconsin allows municipal clerks to use electronic poll books instead of paper poll books. In its Wisconsin E-Poll Book Show and Tell training module, the WEC informed municipal clerks and their staff that the check-in process also requires voter signatures. First, a screen comes up for voter ID verification, and there is no mention of signature comparison or the possibility of denying a ballot to a voter due to a perceived signature non-match. Next, the electronic poll book must accept the voter’s signature. The voter signs the screen on a tablet or a signature pad with a stylus or finger to create a digitized signature that appears on screen. The voter’s signature from his or her

registration application form does not appear on screen. Instead, the e-pollbook signature is digitally stored for future comparison to the voter registration form signature, should that become necessary in any WEC or law enforcement investigation. Nothing instructs the poll worker to compare the digitally-created signature to any voter ID signature that may exist. The older GAB report on e-pollbooks from 2014 set forth much the same procedure:

Once the voter is verified as being registered, the voter is directed to sign the poll book. Using an electronic poll book, the voter can sign using a digital signature pad similar to using a credit card at a store or they can sign directly on the screen of the device. The signature can be digitally captured and printed on a hardcopy receipt or label.

JSOF ¶ 36.

Finally, for mail-in absentee voters, the voter's signature on the absentee ballot request form stands in lieu of signing the poll book. JSOF ¶ 40. As with in-person voters, there is no mandate in the Wisconsin Election Code to compare any signature on the voter ID to any other signature. JSOF ¶ 41.

Per Wisconsin law, election officials and Election Day poll workers are simply not charged with reviewing or verifying signatures on voter IDs; these signatures serve no purpose. Therefore, the signature requirement for college or university ID used as voter IDs serves no function and lacks a rational, legitimate, and important state interest.

2. Requiring information that serves no practical function to be present on student voter IDs violates Title I of the Civil Rights Act, 52 U.S.C. § 10101(a)(2)(B).

Because the omission of an issuance date, an expiration date that is no more than two years after the issuance date, and a signature from an ID card is immaterial in

determining voters' eligibility, these requirements also violate 52 U.S.C. § 10101(a)(2)(B).

52 U.S.C. § 10101(a)(2)(B) provides that

No person acting under color of law shall . . . deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election[.]

If information requested by a jurisdiction is not or cannot actually be used to determine the qualifications of a voter, it is not material and violates the Civil Rights Act. *See id.*; *Schwier v. Cox*, 412 F. Supp. 2d 1266, 1276 (N.D. Ga. 2005), *aff'd*, 439 F.3d 1285 (11th Cir. 2006) (because collection and use by election officials of full social security numbers violated Privacy Act, they could not be material to voter registration and therefore violated 52 U.S.C. § 10101(a)(2)(B)); *Wash. State Assn. of Churches v. Reed*, 492 F. Supp. 2d 1264, 1270–71 (W.D. Wash. 2006) (holding that error or omission that prevented the state from matching an applicant's information with government databases likely violated 52 U.S.C. § 10101(a)(2)(B)). The materiality provision was “intended to address the practice of requiring unnecessary information . . . with the intent that such requirements would increase the number of errors or omissions on the [relevant records], thus providing an excuse to disqualify potential voters.” *Martin v. Crittenden*, 347 F. Supp. 3d 1302, 1308 (N.D. Ga. 2018) (quoting *Schwier v. Cox*, 340 F.3d 1284, 1294 (11th Cir. 2003)) (holding that plaintiffs were likely to succeed in claim challenging practice of rejecting absentee ballots based solely on an omitted or erroneous birth year).

As an initial matter, a college or university ID card is a “record or paper” which relates to the act of showing a voter ID, which is “requisite to voting” in Wisconsin. *See* 52

U.S.C.A. § 10101(a)(2)(B). It is therefore subject to the materiality requirements of that section. *See id.*

As discussed above, no law or case requires that college or university ID cards used as voter ID in Wisconsin be unexpired; no clerks or poll workers are reviewing the issuance and expiration dates for any rational, legitimate, and important purpose; and clerks and poll workers are not comparing or verifying signatures on any voter ID used in Wisconsin in any way. Since the requirements at issue here are not actually being used to establish voter eligibility or for any other purpose and are not uniformly imposed upon all voters, they are not material. *See Schwier*, 412 F. Supp. 2d at 1276; *Martin v. Crittenden*, 347 F. Supp. 3d at 1308–09. In *Martin*, the court found that as to the absentee ballots rejected solely because of an error or omission in the year of birth field, “the qualifications of the absentee voters [were] not at issue because [county] elections officials have already confirmed such voters’ eligibility through the absentee ballot application process.” 347 F. Supp. 3d at 1308–09. Moreover, some counties in the state did not even request the information in the first place, making Gwinnett County’s request of it even more problematic. *Id.* at 1309. Here, voter identification similarly is not intended to confirm the eligibility requirement of residence in Wisconsin or any particular jurisdiction in the state; nor is the information at issue used for this purpose. Even setting aside that this information is not actually used for that or any purpose, asking some voters to effectively provide information tangentially related to their residence but not asking others to show that information—especially when residency has already been established during the

voter registration process through the documentary proof of residence requirement, JSOF ¶¶ 9, 26-30 – demonstrates that the information is not material.

Thus, the lack of any issuance date, expiration date, two-year expiration, and signature requirements for a college or university ID card are omissions that are “not material in determining whether such individual is qualified under State law to vote in such election.” *See Schwier*, 412 F. Supp. 2d at 1276. Accordingly, no Wisconsin voter can lawfully be denied their right to vote based on these immaterial omissions.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant their Motion for Summary Judgment, enter a declaratory judgment that the issuance date, expiration date, two-year expiration, and signature requirements in Wis. Stat. § 5.02(6m)(f) violate the First and Fourteenth Amendments to the U.S. Constitution and 52 U.S.C. § 10101(a)(2)(B), and issue a permanent injunction prohibiting Defendants from enforcing these requirements.

Respectfully submitted this 18th day of September, 2020.

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