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

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

Plaintiffs,

v. Case No. 19-CV-323

MARK L. THOMSEN, *et al.*,

Defendants.

DEFENDANTS' BRIEF IN SUPPORT OF SUMMARY JUDGMENT

INTRODUCTION

Plaintiffs brought this case last year, asserting that a few clauses of Wisconsin's student-ID-as-voter-ID law are irrational and thus unconstitutional. The Seventh Circuit's recent decision in *Luft* forecloses those claims, so Plaintiffs recently amended their complaint to challenge additional components of the student-ID law and added a new statutory claim. They challenge the requirements that student IDs include an issuance date, an expiration date not later than 2 years after the date of issuance, and a signature, alleging that these elements are "useless." (*See* Dkt. 37:25, 28.)

All of Plaintiffs' claims fail. Their primary argument is that the law is irrational and thus fails rational-basis review, but multiple decisions from

multiple federal courts have confirmed Wisconsin's strong interests in promoting voter confidence and deterring fraud through its voter ID law. Plaintiffs' complaints about a few isolated clauses of the law fail to undercut these strong interests, which are served just as much by the student ID provisions as they are by the rest of Wisconsin's voter ID law.

Plaintiffs' challenge to the student-ID provisions fare no better under the *Anderson/Burdick* balancing test. The provisions they challenge impose no burden; indeed, the student ID provisions afford students an *additional* way to obtain a voting-compliant ID, unavailable to most voters in Wisconsin. For one thing, the vast majority of Wisconsin schools—including every UW System school—offer this additional identification. And for the relatively few students who attend schools that do not (and who do not already possess another form of qualifying identification), those students face no burden other than that which has been held constitutionally permissible time and again: making a trip to the DMV, gathering the required documents, and posing for a photograph. Without any burden from the student ID provisions, Plaintiffs' claims fail at *Anderson/Burdick*'s first step. But even if some burden were found, the State's strong interests in election integrity would nonetheless prevail.

Finally, Plaintiffs' statutory claim is meritless. The "materiality provision" on which they rely, 52 U.S.C. § 10101(a)(2)(B), was enacted to address registration-related tactics like requiring a registrant to recite trivial

information at the risk of losing the right to vote. In the few times that challengers have used this provision to raise claims against voter ID laws, courts have uniformly rejected the claim. And most importantly, even hypothetically accepting that the provision applies here, a voter who tries to use a student ID that does not comply with the statutory requirements is, indeed, making a "material" omission under Wisconsin law, by failing to present qualifying proof of identification. For any of these reasons, Plaintiffs' "materiality provision" claim should be rejected.

With these fatal flaws to Plaintiffs' claims, and no disputes of material fact, Defendants are entitled to summary judgment.

BACKGROUND

Several types of IDs are valid for voting in Wisconsin. College students have an additional option, above and beyond the other types of IDs, of using a qualifying college ID. The vast majority of Wisconsin colleges offer a qualifying ID, meaning students at these colleges can easily obtain one. In addition, college students who do not have an ID can quickly and easily get a free one from the DMV, like all other Wisconsin voters.

Prior litigation has established that the requirements of Wisconsin's voter ID law serve important interests, and that redundant requirements are sound. Here, the plaintiffs attempt a granular challenge to certain subsections of the ID law on constitutional and statutory grounds.

I. Background of qualifying IDs.

A. Wisconsin allows numerous types of IDs for voting.

There are ten categories of photo identification that are acceptable for voting. *See* Wis. Stat. § 5.02(6m). These include Wisconsin driver's licenses, Wisconsin state ID cards, U.S. uniformed service identification cards, U.S. passports, certificates of U.S. naturalization, Wisconsin driver's license receipts, Wisconsin state ID card receipts, tribal membership cards, student IDs, and veteran's identification cards. *See* Wis. Stat. § 5.02(6m).

One such qualifying document is a student ID card that meets certain minimum standards:

> An unexpired identification card issued by a university or college in this state that is accredited, as defined in s. 39.30 (1) (d), or by a technical college in this state that is a member of and governed by the technical college system under ch. 38, that contains the date of issuance and signature of the individual to whom it is issued and that contains an expiration date indicating that the card expires no later than 2 years after the date of issuance if the individual establishes that he or she is enrolled as a student at the university or college on the date that the card is presented.

Wis. Stat. § 5.02(6m)(f).

B. Every form of ID includes basic qualifying standards.

Like the requirements for student IDs, every other form of identification for voting includes elements mandated by law, whether state, federal, or tribal law. *See Luft v. Evers*, 963 F.3d 665, 677 (7th Cir. 2020) (noting that Wis. Stat. § 5.02(6m) "requires almost all [voter ID] documents . . . to be current, if they

are to be used for voting," with "[t]he period of validity var[ying] by type of identification.")

The most widely used identification document, a Wisconsin driver's license, by law must include the holder's signature, date of issuance, and date of expiration, along with numerous other requirements. Wis. Stat. § 343.17(3). So, too, for a Wisconsin state ID card. Wis. Stat. §§ 343.17(3), 343.50(3)(a). Most drivers' licenses and ID cards are valid for eight years. However, the Division of Motor Vehicles may, by rule, require any person who is issued a driver's license to demonstrate continuing qualifications to hold a license at 2-year intervals. Wis. Stat. § 343.20(1)(a), (c). Also, Wisconsin ID cards issued to individuals 65 years of age or older may be non-expiring. Wis. Stat. §§ 343.50(5)(b), (d).

Similar requirements apply to temporary receipts for driver's licenses and ID cards. Both must include the date of issuance, date of expiration, and the person's signature, along with other requirements. Both are valid for a period not to exceed 60 days. Wis. Stat. §§ 343.17(3), 343.11(3), 343.50(1)(c)2.b., 343.50(1)(c)1.; *see also* Dkt. 43:7.

Turning to IDs governed by federal law, military IDs issued by the U.S. Uniformed Services have several requirements established by the U.S. Department of Defense, including a verification process to prevent fraud and protect the security of the nation. (Dkt. 43:8–9.) Some identification cards

issued by the U.S. Uniformed Services contain an expiration date, with the expiration varying depending a cardholder's status in the military. (Dkt. 43:8–9.)

For veterans, there are currently two versions of ID cards: the Veteran Health ID Card (VHIC) and the older Veteran ID Card (VIC). (Dkt. 43:9.) Some VIC cards do not expire and are therefore valid for voting indefinitely. (Dkt. 43:9.) The newer VHIC card contains expiration dates and will first begin to expire in 2023.

Passports must contain a date of issuance and date of expiration, along with other requirements. (Dkt. 43:8.) A U.S. passport book (but not the passport card) also must contain a signature. 22 C.F.R. § 51.4(a); *see also* Dkt. 43:8. Both the book and the card are valid for 10 years for adults. 22 U.S.C § 217a; 22 C.F.R. § 51.4(b)(1).

A certificate of U.S. naturalization must include the date of issuance, the person's signature, along with other requirements. (*See* Dkt. 43:11.) Policy Manual, U.S. Citizenship and Immigration Services, Vol. 12, Part K, ch. 3, found at https://www.uscis.gov/policy-manual/volume-12-part-k-chapter-3.

Tribal identification also is governed by multiple sources of law. Membership in a federally recognized Native American tribe is generally

determined by parentage.[1] (Dkt. 43:9–10.) For example, under the Constitution and Bylaws of the Lac de Flambeau Band of Lake Superior Chippewa Indians of Wisconsin, Art. II § 2.a., "[a]ny child of one-fourth (1/4) degree or more Lac du Flambeau Chippewa Indian Blood born to any member of the Tribe shall be entitled to membership." (Dkt. 43:10.) The Menominee Indian Tribe of Wisconsin has a similar requirement for tribal membership. (Dkt. 43:10.)

Some tribal IDs have an expiration date. (Dkt. 43:9–10.) For example, tribal IDs for the Ho-Chunk Nation of Wisconsin have a 5-year expiration period. (Dkt. 43:9.) Also, to receive a Ho-Chunk Nation tribal ID card, members must provide either a valid driver's license, valid state ID card, temporary driver's licenses, military ID card, U.S. passport, or a certified birth certificate. (Dkt. 43:9–10.)

C. Nearly every college and university in Wisconsin offers voting-compliant student IDs.

There are 73 colleges and universities in Wisconsin, including 2- and 4-year state institutions, technical colleges, and private colleges and universities. Of these, 68 offer a voting-compliant student ID, either through

[1] There are currently 11 federally recognized Native American tribes in Wisconsin: (1) Bad River Band of the Lake Superior Tribe of Chippewa Indians; (2) Forest County Potawatomi Community; (3) Ho-Chunk Nation of Wisconsin; (4) Lac Courte Oreilles Band of Ojibwe; (5) Lac du Flambeau Band of Lake Superior Chippewa; (6) Menominee Indian Tribe; (7) Oneida Tribe of Indians; (8) Red Cliff Band of Lake Superior Chippewa Indians; (9) Sokaogon Chippewa Community; (10) Stockbridge Munsee Community; and (11) St. Croix Chippewa Indians. (Dkt. 43:10.)

their primary student ID or as a separate, voting-compliant ID available on request. (Dkt. 43:20–22.) This includes all 13 of the University of Wisconsin 4-year schools and all 13 of University of Wisconsin 2-year schools. Also, 14 of the 17 Wisconsin technical colleges offer a compliant student ID, along with 21 of the 27 private universities and colleges for which information is available. (Dkt. 43:20–22.)

At the five institutions that do not offer any form of voting-compliant student ID, only about 2,000 students are from outside Wisconsin (and would thus be less likely to already possess a Wisconsin driver's license or state ID card). (Dkt. 43:24–26; *see also N. Carolina State Conference of the NAACP v. McCrory*, 182 F. Supp. 3d 320, 512 n.231 (M.D.N.C.) (recognizing that "out-of-State college students might seem more at risk because they are unlikely to have a North Carolina driver's license), *rev'd on other grounds and remanded*, 831 F.3d 204 (4th Cir. 2016).) This includes, for example, 89 students at Waukesha County Technical College (~1% of the student body); roughly 1,700 students across Herzing University's three campuses (~58% of Herzing's student body); and 51 students at Bellin College of Nursing (~14% of the student body). (Dkt. 43:24–26.)

And of course, if a Wisconsin college or university does not offer an ID that complies with the requirements of Wis. Stat. § 5.02(6m)(f), students can

use any of the other forms of acceptable voter ID as set forth in Wis. Stat. § 5.02(6m). (Dkt. 43:2–3.)

D. Any qualified voter, including college students, can easily get a qualifying ID from the DMV.

Wisconsin law includes at least two methods by which an individual may obtain a voting-eligible ID free of charge. These methods are open to students, just as they are open to any other voter. First, Wisconsin state ID cards are issued free of charge to individuals if they will be at least 18 years of age on the date of the next election and the applicant requests that the identification card be provided free of charge for purposes of voting. Wis. Stat. § 343.50(5)(a)(3). Second, if the individual is not able to provide the documents required to obtain the Wisconsin state ID card, the individual can utilize the ID Petition Process (IDPP). *See* Wis. Stat. § 343.165(8).

To receive a receipt valid for voting through the IDPP, an applicant need only fill out the one-page application to get a free voting ID, along with an MV3012 form. Wis. Stat. § 343.165(8). Filling out the MV3012 form enters a person into the IDPP. Upon completing that form, each applicant gets a photo receipt that is a voting-qualified ID within seven days, or within 24 hours of filling out the application near an election. Wis. Stat. § 343.50(1)(c). That receipt is automatically renewed for the entire time the application is pending. Wis. Stat. § 343.50(1)(c). The application can be denied only if it is fraudulent,

if DMV is unable to contact the applicant after multiple attempts, or if the applicant fails to act in good faith and use "reasonable efforts" to provide information. Wis. Stat. § 343.165(8)(b)(3).

II. Background of Wisconsin's student ID litigation.

A. *One Wisconsin Institute v. Thomsen*

In *One Wisconsin Inst., Inc. v. Thomsen*, 198 F. Supp. 3d 896, 927 (W.D. Wis. 2016), this Court addressed a challenge to Wis. Stat. § 5.02(6m)(f)'s requirement that student IDs be unexpired. The Court concluded that while the statute does not discriminate on the basis of age, *see id.*, the statute's requirement that a student ID be unexpired violates the Fourteenth Amendment. *See id.* at 962. The Court reasoned that the state's interest in "ensuring that only current students vote" is adequately addressed by requiring student to present proof of enrollment with the student ID. *Id.* The Court held that also requiring that the ID be unexpired "does not provide any additional protection against fraudulent voting." *Id.* Given this perceived redundancy, the Court held that "the state has failed to justify its disparate treatment of [student] voters with expired IDs," thus violating the Equal Protection Clause of the Fourteenth Amendment. *Id.*

Other than the requirement that a student ID be unexpired, *One Wisconsin* did not involve any challenges to the statute's other requirements. This Court explained that,

> [t]o be clear, the court is not concluding that voters have carte blanche to use expired college or university IDs at the polls; they must still comply with the other requirements of Wis. Stat. § 5.02(6m)(f). Plaintiffs have not directed their rational basis challenge to the requirement that a voter with a college or university ID also present proof of enrollment at the issuing institution. Nor have plaintiffs challenged the rational basis for permitting only IDs that expire no more than two years after issuance. These requirements still apply. The only thing that will change is that the ID card that a college or university student actually presents at the polls can be expired.

Id. at 962.

That decision was subsequently appealed, and this case was stayed pending resolution of the appeal. (*See* Dkt. 24.)

B. *Luft v. Evers*

In *Luft v. Evers*, 963 F.3d 665 (7th Cir. 2020), the Seventh Circuit found it "hard to accept" the *One Wisconsin* court's conclusion that requiring student IDs to be unexpired "violates the Equal Protection Clause," concluding instead that there is "nothing wrong with a requirement that IDs be current." *Luft*, 963 F.3d at 677.

But, the court held, "[t]here is still a problem." *Id.* The problem was that Wisconsin law also required a redundancy for student IDs that was not required of any other form of ID: "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.* The restriction failed constitutional scrutiny because "[t]he statute sets students apart in this respect, and the state has not tried to justify this distinction." *Id.*

Nonetheless, *Luft* made clear that the guarantee of Equal Protection does not forbid redundancies, recognizing that "many a lawyer prefers a belt-and-suspenders approach." *Id.* Instead, the sole problem was that the statute treats "students . . . differently from other potential voters." *Id.*

The Seventh Circuit subsequently issued a clarification order, explaining that the upshot of its decision on student IDs "is that requiring *two documents* from students, *but not other voters*, needs justification, which has not been supplied." (*Luft*, 7th Cir. Dkt. 102, July 22, 2020 (emphasis added).) But the court also confirmed that "a student who appears at the polls with an expired student ID card, and without proof of current enrollment, need not be allowed to vote." *Id.*

The opinion and clarification in *Luft* mean that a student ID conforming to the statutory requirements must be accepted without "also show[ing] proof of enrollment," *see Luft* at 677, and that an expired student ID may be used for voting if accompanied by proof of current enrollment. (*See Luft*, 7th Cir. Dkt. 102, July 22, 2020.)

III. Plaintiffs' challenges to the student ID requirements.

In this case, Plaintiffs challenge the requirements that student IDs include an issuance date, an expiration date not later than 2 years after the date of issuance, and a signature, alleging that these elements are

"unnecessary, useless, and irrational." (*See* Dkt. 37:25, 28.) They challenge these requirements on both constitutional and statutory grounds.

In their constitutional challenge, Plaintiffs first allege that *Luft* "struck down the requirement that college and university ID cards be unexpired" and that the "issuance date and expiration date requirements will no longer be used for any purpose set forth in Wisconsin law and are therefore unconstitutionally irrational." (Dkt. 37:25.) Plaintiffs similarly allege that the two-year requirement is unconstitutionally irrational because expired student IDs can be used as proof of identification when presented with separate proof of current enrollment. (Dkt. 37:27.) Plaintiffs further allege that the signature requirement for student IDs is "unnecessary, useless, and irrational" because poll workers are not required to "review or compare the voter ID signature, if any is present, to any other signature for that voter." (Dkt. 37:28.)

For their statutory challenge, Plaintiffs allege that the issuance date, expiration date not more than two years after issuance, and signature requirements also violate 52 U.S.C. § 10101(a)(2)(B). That section 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[.]

Plaintiffs allege that student IDs are "record[s] or paper[s]" under this statute, and that the omission of the challenged requirements from student IDs are not "material" under the statute because "clerks and poll workers are not comparing or verifying signatures on any voter ID used in Wisconsin in any way." (Dkt. 37:29.)

For relief, Plaintiffs seek a declaration that the challenged requirements in Wisconsin law are "useless and irrational" and therefore unenforceable, as well as an injunction against their enforcement. (Dkt. 37:30.)

STANDARDS GOVERNING SUMMARY JUDGMENT AND INJUNCTIVE RELIEF

I. Summary judgment.

Federal Rule of Civil Procedure 56 provides that "[t]he court shall grant summary judgment if the movant 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). Rule 56 "mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celetox Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986).

In deciding a motion for summary judgment, courts do not "make credibility determinations, weigh the evidence, or decide which inferences to

draw from the facts; these are jobs for a factfinder." *Johnson v. Rimmer*, 936 F.3d 695, 705–06 (7th Cir. 2019), *cert. denied*, 140 S. Ct. 1294 (2020) (quoting *Payne v. Pauley*, 337 F.3d 767, 770 (7th Cir. 2003). Inferences that are supported by nothing more than speculation or conjecture, however, will not defeat summary judgment. *Id.* (quoting *Carmody v. Bd. of Trs. of Univ. of Ill.*, 893 F.3d 397, 401 (7th Cir. 2018), *cert. denied sub nom.*, 139 S. Ct. 798 (2019), *reh'g denied sub nom.*, 139 S. Ct. 1288 (2019)).

II. Injunctive relief.

Plaintiffs are seeking permanent injunctive relief. (Dkt. 37:30.) Since a permanent injunction is a form of relief on the merits, the plaintiff must show "not just a probability of success on the merits but actual success." *Vaughn v. Walthall*, 968 F.3d 814, 824–25 (7th Cir. 2020). Further, they must demonstrate: (1) that they have has suffered an irreparable injury; (2) that remedies available at law are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiffs and defendants, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction. *eBay Inc. v. MercExchange, LLC*, 547 U.S. 388, 391 (2006).

An important factor courts consider in the context of injunctions regarding election laws "is the confusion that can result from last-minute orders affecting elections." *Democratic Nat'l Comm. v. Bostelmann*, 447 F.

Supp. 3d 757, 765 (W.D. Wis. 2020) (citing *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006). "Such confusion can undermine confidence in our electoral processes, which itself is integral to our system of democracy." *Id.*

ARGUMENT

The student-ID portion of Wisconsin's voting ID law serves important state interests and imposes no burdens on voting. Plaintiffs' constitutional claims therefore fail whether analyzed under rational-basis review or *Anderson/Burdick*. And the statute they rely on does not apply here. But even if it did, their challenge would fail because showing a qualifying ID is a material requirement of voting in Wisconsin.

I. Requiring that qualifying student IDs include an issuance date, an expiration date not more than two years after issuance, and a signature does not violate the Constitution.

The central premise of Plaintiffs' case is that the challenged student-ID requirements do not further *any* legitimate State interest—i.e., that those requirements fail rational-basis review. *Luft* directly forecloses Plaintiffs' challenge to the issuance date and expiration date provisions because the court expressly confirmed that the state may require that voting IDs be unexpired.

And as to the remaining components, Wisconsin's student-ID requirements easily pass rational-basis review. As has been confirmed time and again, Wisconsin's voter-ID law—in its entirety—serves important state interests including promoting confidence in the integrity of elections and

preventing fraud. The challenged student-ID requirements serve those interests by promoting consistency across *all* IDs used for voting; mandating uniformity within student IDs that will be used for voting; imposing a reasonable, two-year expiration period; and, through the signature requirement, incorporating a measure of solemnity into a document that otherwise might not be considered as official as other forms of voting identification. Given the various ways that Wisconsin's student ID provisions serve the State's important interests, Plaintiffs' rational-basis challenge fails.

Despite hanging their hats squarely on the alleged "irrationality" of the student ID provisions, Plaintiffs also suggest that their claims "shade into" the balancing of burdens on voters and state interests under the *Anderson/Burdick* rubric. This framing, however, fails at the outset. As multiple courts have recognized, *Anderson/Burdick* only applies where plaintiffs can actually point to a "burden" on voting. Here, Plaintiffs cannot show that students face any burden since the challenged provisions afford students an *additional* form of identification to the many other forms that can be used by all other voters. Indeed, courts have specifically rejected *Anderson/Burdick* challenges asserting claims like Plaintiffs' here, where the challenged law *expands* the ability to vote beyond what is available to other voters. *Anderson/Burdick* does not apply here.

But even if that framework did apply, Plaintiffs' challenge fails. They cannot point to any burden on students (or voters in general), much less the substantial burden that would trigger heightened scrutiny under *Anderson/Burdick*. With no real burden to speak of, Wisconsin's interests in promoting voter confidence and deterring fraud easily prevail.

A. Wisconsin's recognized interests in promoting voter confidence and deterring fraud easily defeat Plaintiffs' rational-basis challenge.

1. Legal principles governing rational-basis review.

Courts accord a "strong presumption of validity" to laws that do not involve fundamental rights or implicate suspect classifications. *Heller v. Doe by Doe*, 509 U.S. 312, 319 (1993). The proper standard for reviewing such laws is rational basis, which asks only whether the challenged laws are rationally related to some legitimate governmental interest. *Box v. Planned Parenthood of Ind. & Ky., Inc.*, 139 S. Ct. 1780, 1782 (2019).

This standard is "not demanding." *Luft*, 963 F.3d at 677. A law will be upheld on rational-basis review "if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *Heller*, 509 U.S. at 319 (quoting *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 313 (1993)). Conversely, to prove a law is unconstitutional on rational-basis review, a challenger bears the burden to "negative every conceivable basis which might

support it." *Box*, 139 S. Ct. at 1782 (quoting *Armour v. Indianapolis*, 566 U.S. 673, 685 (2012)).

In fact, a State "has no obligation to produce evidence to sustain the rationality of a statutory classification." *Heller*, 509 U.S. at 320. Because legislative choices are "not subject to courtroom factfinding," the law may be sustained "based on rational speculation unsupported by evidence or empirical data." *Id.* (quoting *FCC*, 508 U.S. at 315); *see also Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 194–97 (2008) (opinion of Stevens, J.); *Tripp v. Scholz*, 872 F.3d 857, 866 (7th Cir. 2017); *Frank I*, 768 F.3d at 750.

In addition, a challenged law need not address all aspects of an issue to survive rational basis review. *See Minerva Dairy, Inc. v. Harsdorf*, 905 F.3d 1047, 1057 (7th Cir. 2018), *cert. denied sub nom. Minerva Dairy, Inc. v. Pfaff*, 139 S. Ct. 2746, 204 L. Ed. 2d 1134 (2019). That a particular "line might have been drawn differently . . . is a matter for legislative, rather than judicial, consideration." *Fitzgerald v. Racing Ass'n of Cent. Iowa*, 539 U.S. 103, 108 (2003). Similarly, a law's inclusion of arguably redundant components (the proverbial "belt-and-suspenders approach") does not render the law unconstitutionally irrational. *See Luft*, 963 F.3d at 977.

Courts apply this straightforward rational-basis standard—not *Anderson/Burdick*—when evaluating challenges to election laws where there is no evidence that the challenged law actually burdens voting. *See, e.g.*,

McDonald v. Bd. of Election Comm'rs, 394 U.S. 802, 807–10 (1969) (applying rational-basis review to reject pre-sentence detainees' challenge to Illinois's absentee ballot laws because "the absentee statutes, which are designed to make voting more available to some groups . . . do not themselves deny [detainees] the exercise of the franchise"); *Frank v. Forest Cty.*, 336 F.3d 570, 574 (7th Cir. 2003) (applying rational-basis standard in challenge to redistricting laws where alleged malapportionment was perceived as "trivial").[2]

2. The challenged student ID provisions serve Wisconsin's recognized state interests in multiple ways.

Multiple times now, both the Supreme Court and the Seventh Circuit have confirmed that voter ID laws—including Wisconsin's—serve multiple important state interests related to "protecting the integrity and reliability of the electoral process." *Crawford*, 553 U.S. at 197 (opinion of Stevens, J.); *Frank*

[2] Many cases in other circuits hold the same. *See, e.g.*, *Texas Democratic Party v. Abbott*, 961 F.3d 389, 403–04 (5th Cir. 2020) (rejecting *Anderson/Burdick* framework and applying rational-basis review in a challenge to vote-by-mail laws "designed to make voting more available to some" but which did not impose relative burden on challengers' ability to vote (quoting *McDonald*, 394 U.S. at 807–08); *Mays v. LaRose*, 951 F.3d 775, 783 n.4 (6th Cir. 2020) (noting apparent inapplicability of *Anderson-Burdick* inquiry where challenged law does not in fact impose burden on voting and instead affords some voters additional procedure not available to others); *see also Arizona Libertarian Party v. Reagan*, 798 F.3d 723, 732 (9th Cir. 2015) (recognizing that where state election law imposes only de minimis burden on right to vote, State "need demonstrate only that [the challenged law] is rationally related to a legitimate state interest" (quoting *Cronin*, 620 F.3d at 1218)).

I, 768 F.3d at 745–46 (recognizing that Court's analysis in *Crawford* "hold[s] for Wisconsin as well as for Indiana"). The laws afford "substantial benefits," including promoting public perception that "elections [are] cleaner," thus making people "more likely to vote or, if they stay home, to place more confidence in the outcomes." *Frank I*, 768 F.3d at 751. Voter ID laws—including Wisconsin's—have thus been upheld against constitutional challenge "even though persons who do not already have government-issued photo IDs must spend time to acquire necessary documents (such as birth certificates) and stand in line at a public agency to get one." *Id.* at 745 (discussing *Crawford*); *see also id.* at 751.

Wisconsin's voter ID law—including the parts related to student IDs—thus serves multiple important interests, including promoting confidence in the electoral system and deterring fraud. *Frank I*, 768 F.3d at 750. Indeed, as "legislative facts," the importance of these state interests is beyond dispute, as the Seventh Circuit held in *Frank I*, 768 F.3d at 750–51, reaffirmed in *Frank II*, 819 F.3d at 386, and confirmed yet again in *Luft*, 963 F.3d at 679–80.

Plaintiffs therefore cannot show that the challenged student ID provisions lack any rational basis. Indeed, the Seventh Circuit explicitly rejected almost all of their claims when it held that "[t]here's nothing wrong with a requirement that IDs be current." *Luft*, 963 F.3d at 677. This recognizes that the state may, consistent with the Constitution, require that an ID to be

used for voting include information to ascertain whether the ID is "current" (i.e., issuance and expiration date). This also undercuts any notion that a state violates the Constitution by regulating the length of time an ID may be valid if it will be used for voting, thus defeating Plaintiffs' challenge to the two-year provision. And more broadly, *Luft*'s strong disapproval of piecemeal attacks on elements of election laws seems to foreclose Plaintiffs' student-ID challenge in its entirety.

Even putting aside these strong implications of *Luft*, the student-ID requirements that Plaintiffs challenge serve legitimate state interests in multiple ways. Perhaps most important, it is reasonable to require that student IDs contain issuance date, an expiration date not more than two years after issuance, and a signature because those same elements (or very similar ones) are required on nearly every other form of ID accepted for voting in Wisconsin. *See supra* at 4–7; *see also* Wis. Stat. § 5.02(6m). Requiring these same elements on nearly all of the IDs used for voting (including all IDs within Wisconsin's power to control) promotes uniformity across all voting IDs, which in turn promotes confidence in Wisconsin's electoral system.

The challenged requirements are also reasonable because they promote uniformity *within* student IDs that will be used for voting. Without the challenged provisions in Wis. Stat. § 5.02(6m)(f), each school in Wisconsin would decide which elements are acceptable for student IDs used for voting

because the schools determine what is included on their IDs. As just one example of how that might unfold to diminish confidence in elections, one school whose IDs are *not* voting compliant encourages students to select and upload a picture of their choice to include on their student ID. (Dkt. 43:26.) It takes little imagination to envision how such a practice would affect confidence in Wisconsin elections, particularly if it were allowed across *all* IDs. As it stands, Wis. Stat. § 5.02(6m)(f) provides a baseline of required information, thus signaling to schools and students the importance of both the ID document and the voting process for which it will be used.[3]

Next, both the two-year expiration period and the signature requirement independently serve Wisconsin's interests in voter confidence and fraud deterrence. The two-year expiration facilitates uniformity among all student IDs that will be used for voting by recognizing that many post-secondary institutions and programs only last two-years. (*See* Dkt. 43:20, 21–22.). It is settled law that some expiration period is valid. *See Luft*, 963 F.3d at 977. It would be nonsensical for that period to be set for longer than many institutions ever plan for students to attend. Keying the statewide expiration to this

[3] Notably, the lack of uniformity motivated the North Carolina Legislature to decline to allow student IDs to be used for voting at all, and provided a sufficient basis for the court there to reject the challenge that that exclusion was unconstitutional. *See N. Carolina State Conference of the NAACP v. McCrory*, 182 F. Supp. 3d 320, 523 (M.D.N.C.), *rev'd on other grounds*, 831 F.3d 204 (4th Cir. 2016).

shorter period facilitates uniformity across student IDs while avoiding the absurdity of a statutorily mandated period of validity lasting longer than the time many students plan to attend college or university.

The two-year expiration also promotes confidence in elections and deters fraud by seeking to limit the use of student IDs to individuals actually enrolled in school. This is far from unreasonable. Indeed, the two-year expiration requirement takes on additional importance in serving this goal after *Luft* eliminated the separate proof of enrollment that previously needed to be shown with an unexpired ID.

The signature requirement serves additional interests, including requiring an element of formality in a document that might otherwise be used more often to buy pizzas and access the campus gym. A signature requires the student to pause, confirm, and sign the document that will qualify as identification for voting. This adds a meaningful measure of solemnity to a document that is otherwise handed out as a matter of course on orientation day. *Cf. Miller v. Thurston*, 967 F.3d 727, 740 (8th Cir. 2020) (recognizing important state interest in requiring signatures on ballot-initiative petitions, tied to promoting integrity in process, deterring fraud, and preventing mistakes in petition circulation process); *cf. also United States v. Dercacz*, 530 F. Supp. 1348, 1352–53 (E.D.N.Y. 1982) ("[I]n a procedure as solemn and significant as application for entry into the United States, defendant's

signature must suffice to hold him responsible for the accuracy of the represented facts.").

In light of the unquestionable interests Wisconsin's voter-ID laws serve, as well as the numerous ways that the student ID provisions serve those interests, Plaintiffs' rational-basis challenge fails.

Notably, another district court reached this conclusion in a similar challenge to provisions of Tennessee's voter ID law, which did not allow students to use IDs to vote at all, but did allow faculty and staff at public colleges and universities to use theirs. *See Nashville Student Org. Comm. v. Hargett*, 155 F. Supp. 3d 749, 754 (M.D. Tenn. 2015). On rational-basis review, the court found multiple bases to uphold the state's total exclusion of student IDs from the list of voting-eligible IDs, even while allowing staff to use similar IDs for voting. *See id.* at 755–56. Wisconsin's decision to allow students to use their IDs to vote, dependent only on compliance with a few reasonable, nondiscriminatory requirements, is far from unreasonable.

B. The challenged student-ID provisions benefit rather than burden students, and thus Plaintiffs' claims fare no better under an *Anderson/Burdick* analysis.

That the challenged provisions pass rational basis review should end the analysis. Plaintiffs have framed their challenge as based squarely on the alleged irrationality of Wisconsin's student ID provisions. (*See, e.g.*, Dkt. 37:15–16, 25, 28.) They assert that "[t]his lawsuit picks up where *One*

Wisconsin Institute left off." (Dkt. 37:17). *One Wisconsin*'s student-ID analysis involved only the alleged irrationality of duplicative requirements for student IDs, not any alleged "burdens" under *Anderson/Burdick*. *See One Wisconsin Inst.*, 198 F. Supp. 3d at 961.

Despite this clear framing, Plaintiffs also pointed to *Anderson/Burdick* in their complaint and have suggested that their claims might "shade" into *Anderson/Burdick*'s balancing analysis. (Hearing, Aug. 25, 2020.) This framing, however, does not save their claims. Plaintiffs will not be able to show any burden imposed by the student-ID provision, meaning the *Anderson/Burdick* test does not even apply. But even if they could, any burdens would fall far short of what is needed to trigger heightened scrutiny. Given the minimal-to-nonexistent burdens, the State's important interests, discussed above, are more than adequate to sustain the law.

1. Legal principles governing *Anderson/Burdick* balancing.

States possess "broad authority to regulate the conduct of elections, including federal ones." *Griffin*, 385 F.3d at 1130; *accord Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 357 (1997) ("States may, and inevitably must, enact reasonable [election-related] regulations . . . to reduce election-and campaign-related disorder.") To evaluate whether a law may "impose some burden upon individual voters," *Burdick*, 504 U.S. at 433, the relevant

"constitutional question is whether the restriction and resulting exclusion are reasonable given the interest the restriction serves." *Griffin*, 385 F.3d at 1130. This balancing analysis is referred to as the *Anderson/Burdick* test, and involves two steps; three if the lawsuit asserts a facial challenge to election laws, as here.

First, courts must assess any alleged burden on the right to vote, weighing its character and magnitude. *Timmons*, 520 U.S. at 358. Nondiscriminatory laws that impose only slight burdens are generally justified simply "by the need for orderly and fair elections." *Acevedo v. Cook Cty. Officers Electoral Bd.*, 925 F.3d 944, 948 (7th Cir. 2019) (quoting *Libertarian Party of Illinois v. Scholz*, 872 F.3d 518, 523–24 (7th Cir. 2017)). On the other hand, "severe burdens must be 'narrowly tailored to serve a compelling state interest.'" *Id.* (quoting *Scholz*, 872 F.3d at 524). Due to this dichotomy of burdens, "much of the action takes place at the first stage of *Anderson*'s balancing inquiry." *Id.* (quoting *Stone*, 750 F.3d at 681).

Several principles guide the burden inquiry. Importantly, as the court in *Luft* recently reiterated, courts must evaluate a law's impact not in isolation but as a part of "the state's election code as a whole." *Luft v. Evers*, 963 F.3d at 671; *see also Burdick*, 504 U.S. at 441. For example, in *Burdick* the Court recognized that while a Hawaii law that prohibited write-in votes arguably had "severe" impacts when considered alone, the law imposed only a

"limited burden" given the state's overall generous election system. *Burdick*, 504 U.S. at 436–39.

Any burdens imposed must therefore be evaluated against the baseline of "the usual burdens of voting." *Crawford*, 553 U.S. at 198 (opinion of Stevens, J.). Under this approach, for example, "the inconvenience of making a trip to the [D]MV, gathering the required documents, and posing for a photograph surely does not qualify as a substantial burden on the right to vote, or even represent a significant increase over the usual burdens of voting." *Id.* While a challenged law might pose significant burdens for some individuals, federal courts will not invalidate the law based on these particularized "hardship[s]" of certain voters. *Griffin*, 385 F.3d at 1129–30.

Second, after assessing the burden, courts turn to the state's interests. "Lesser burdens . . . trigger less exacting review," *Timmons*, 520 U.S. at 358, and "minimally burdensome and nondiscriminatory regulations" in particular "are subject to a 'less-searching examination closer to rational basis.'" *Ohio Democratic Party v. Husted*, 834 F.3d 620, 627 (6th Cir. 2016) (citation omitted). In fact, if a law's burden is "reasonable" and "nondiscriminatory," the state's "legitimate regulatory interests will generally carry the day." *Stone*, 750 F.3d at 681.

Third, where an election law is challenged in all applications (i.e., a facial challenge), plaintiffs "bear a heavy burden of persuasion" under *Anderson-*

Burdick. *Crawford*, 553 U.S. at 200 (opinion of Stevens, J.). Because "the burden some voters face[ ]" under a challenged law "[can]not prevent the state from applying the law generally," *Frank II*, 819 F.3d at 386, a court presented with such a claim "must consider only the statute's broad application to all voters," and the "facial challenge must fail where the statute has a plainly legitimate sweep." *Crawford*, 553 U.S. at 202–03 (opinion of Stevens, J.); *see also Luft*, 963 F.3d at 671–72, 675. For example, the challenge to Indiana's voter ID law in *Crawford* failed because "[t]he application of the statute to the vast majority of Indiana voters [was] amply justified." *Id*. at 204; *see also Frank II*, 819 F.3d at 386. Likewise, the Court in *Burdick* "upheld Hawaii's prohibition on write-in voting despite the fact that it prevented a significant number of voters from participating in Hawaii elections in a meaningful manner." *Crawford*, 553 U.S. at 190 (opinion of Stevens, J.) (quotation omitted).

2. The student ID provisions do not impose any burden on voters, and, in any event, the State's interests are well established.

Plaintiffs' cannot prevail under the balancing test. Most broadly, their entire argument violates the fundamental tenet that "electoral provisions cannot be assessed in isolation." *Luft*, 963 F.3d at 675. Their micro-granular critique of certain clauses of one subsection dealing with one form of acceptable ID ignores that "Wisconsin has lots of rules that make voting easier." *Luft*,

963 F.3d at 672. When viewed against Wisconsin's electoral system as a whole, the challenged student-ID provisions make it easier, not harder, to vote. Plaintiffs therefore cannot show any burden under *Anderson/Burdick*'s first step.

Based on their allegations and proposed facts, Plaintiffs' seem likely to focus on three hypothetical burdens. One is that because some schools in Wisconsin offer *no* voting-compliant ID, students from those schools would be forced to either use another type of ID to vote or lose the right to vote entirely. (Dkt. 43:20–23.) First, the number of students even potentially affected by these schools' decisions is quite low, as even Plaintiffs concede that only around 2,000 out-of-state students attend all schools that do not offer qualifying ID. (*See* Dkt. 43:20–23.) Further, the decisions of individual schools—all private—about what information to include on their IDs does not constitute a state-imposed burden on voting.

But even putting these points aside, the more important point is that the relatively few students whose schools do not offer a voting-compliant ID are in exactly the same position as every other non-student voter in Wisconsin. These students, like all other voters, can still vote using all the other acceptable forms of ID. Thus, these students do not suffer any additional "burden" than a non-student suffers because she cannot obtain a student ID to vote. "State action making it easier for some electors to vote . . . doesn't make it harder to vote for

electors that don't get the same benefit." *See Mays*, 951 F.3d at 783 n.4. It therefore "takes some legal gymnastics" to accept Plaintiffs' premise that the State's treatment of students imposes any "burden" on them. *Id.*; *see also Texas Democratic Party*, 961 F.3d 403–04.

The second hypothetical burden Plaintiffs may raise is that students from out of state would have to relinquish their home state driver's license to obtain a Wisconsin State ID for voting (although this only applies if their school does not offer voting-compliant student IDs). (*See* Dkt. 43:20–21.) This argument is odd, because it presumes that college students who are living and voting in Wisconsin are already violating driving laws—Wisconsin law requires individuals to apply for a Wisconsin driver license within 60 days of establishing residency in the State. *See* Wis. Admin. Code Trans. § 102.14(4)(b). Any student claiming Wisconsin residency for voting purposes therefore should be obtaining a Wisconsin driver license. As a result, these individuals face no burdens by virtue of the student-ID provisions.

Third and finally, Plaintiffs seem to suggest that some students are burdened by having to obtain a unique, voting-compliant ID in addition to the school's primary ID. But the only difference between this "burden"—which merely requires the student make a trip to a school office—and the "usual burdens of voting" addressed in *Frank* and *Crawford*—is that this "burden" makes it easier to get an ID for voting. While both involve making a trip to an

office to obtain the ID, students can go to a school office on campus, without even needing to undertake "the inconvenience of making a trip to the [DMV]." *Frank I*, 768 F.3d at 745–46 (quoting *Crawford*, 553 U.S. at 198). This, too, is no burden at all for purposes of *Anderson/Burdick*.

Because Plaintiffs cannot establish that the student-ID requirements impose *any* burden, their claims fail under *Anderson/Burdick* just as under rational-basis review. *See Acevedo*, 925 F.3d at 947–48. And even if any balancing were necessary, Wisconsin's important interests, discussed above, "easily justif[y] . . . the requirement[s] here." *Id.* at 947.

II. Plaintiffs' Voting Rights Act claim fails as a matter of law.

In addition to their constitutional claim, Plaintiffs' also recently added a claim that the challenged student-ID requirements violate 52 U.S.C. § 10101(a)(2)(B) (known as the "materiality provision"),[4] which provides that

> (2) No person acting under color of law shall—
> . . .
> (B) 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[.]

[4] The provision was originally enacted as part of the Civil Rights Act of 1964 and was codified at 42 U.S.C. § 1971(a)(2)(B) before being transferred to its current statutory location with Voting Rights Act provisions. *See Condon v. Reno*, 913 F. Supp. 946, 949–50 (D.S.C. 1995). Judicial decisions discussing the materiality provision refer to it in terms of both the Civil Rights and Voting Rights Acts. *Compare, e.g.*, *Fla. State Conference of NAACP. v. Browning*, 522 F.3d 1153, 1172–73 (11th Cir. 2008) (discussing provision as part of Civil Rights Act), *with id.* at 1181 (referring to same provision as part of Voting Rights Act).

Plaintiffs argue that IDs used for voting are "record[s] or paper[s]" under this provision. (Dkt. 37:29.) They then assert that because clerks and poll workers do not verify the challenged elements of student IDs at the polls, those elements are not "material" to determining voting eligibility, and therefore the right to vote cannot be denied based on an ID's omission of these elements. (*See* Dkt. 37:29–30.)

This creative claim fails for two reasons. First, presenting a qualifying ID *is* "material" to voting in Wisconsin, so trying to vote with a document that does not meet the statutory requirements for "proof of identification" is, indeed, a "material" omission. Second, the provision is simply inapplicable in challenges to voter-ID law, given its history and precedent applying the provision to prohibit certain tactics related to voter *registration*.

A. Wisconsin's ID requirements are material.

The question of materiality focuses on whether the sought-after information is required (or prohibited) under other statutes. *See Fla. State Conference of NAACP v. Browning*, 522 F.3d 1153, 1174–75 (11th Cir. 2008). In *Browning*, the Eleventh Circuit held that materiality is best defined by reference to existing legal requirements pertaining to elections. *See id.* Thus, the materiality provision asks "whether, accepting the error [or omission] as true and correct, the information contained in the error [or omission] is

material to determining the eligibility of the applicant." *Browning*, 522 F.3d at 1175 (emphasis omitted). Applying this standard, *Browning* rejected a challenge to the requirement that registrants provide either their driver's license number or last four digits of their Social Security number to register to vote, reasoning that the Help America Vote Act already requires that very same information as a condition of registration. *See id.* at 1174 (discussing 42 U.S.C. § 15483(a)(5)(A)(iii)).

Likewise, an Arizona district court rejected a challenge to the state's requirement that voters provide proof of citizenship, reasoning that because "only citizens may vote," the state could reasonably require proof of citizenship to vote, and that the state's "decision to require more proof than simply affirmation by the voter is not prohibited." *Gonzalez v. Arizona*, No. CV 06-1268-PHX-ROS, 2007 WL 9724581, at *2 (D. Ariz. Aug. 28, 2007). This contrasts with situations where a court has found a violation, such as a Georgia district court's recent injunction of a single county's practice of requiring that voters provide their birth year on absentee ballots. *See Martin v. Crittenden*, 347 F. Supp. 3d 1302, 1309 (N.D. Ga. 2018). In disapproving the county's practice, the court concluded that the requirement could not be "material" because the information was "not uniformly required across the State." *Id.*

Here, Plaintiffs' challenge to specific portions of the student-ID law fails under the materiality provision's terms. First, and most fundamentally, it is

simply incorrect to analyze the "materiality" of individual elements of various IDs—"materiality" here refers to the requirement that each voter "present . . . proof of identification." Wis. Stat. § 6.79(2)(a). Failure to provide qualifying identification *is* a material omission for which a voter may be denied the ability to cast a ballot. *See* Wis. Stat. § 6.79(2)(a), (3)(b). And by presenting identification lacking the components that Plaintiffs challenge, a voter would not be presenting qualifying ID—a material omission.

It is thus a non sequitur to discuss which components of specific IDs are "material" to voting—the Legislature has already defined what is "material" for purposes of identification for voting. *See* Wis. Stat. § 5.02(6m). Thus, just as Congress, in the Help America Vote Act, defined certain requirements that are "material" to voting (and which were therefore permissible to require as part of voter registration), *see Browning*, 522 F.3d at 1174–75; here the Wisconsin Legislature has defined what must be included in the various forms of identification for those documents to qualify as "proof of identification" for purposes of voting. *See* Wis. Stat. § 5.02(6m), (16c). The Legislature's selection of which elements to require as proof of identification "makes that information material." *Browning*, 522 F.3d at 1175; *see also Indiana Democratic Party v. Rokita*, 458 F. Supp. 2d 775, 841 n.111 (S.D. Ind. 2006) (rejecting materiality challenge to Voter ID law because "identification is highly material to proving . . . identity" and holding that "the Indiana General Assembly is entitled to

make its own judgment as to which method(s) it wishes to employ" in defining elements necessary for identification), *aff'd sub nom. Crawford v. Marion Cty. Election Bd.*, 472 F.3d 949 (7th Cir. 2007), *aff'd*, 553 U.S. 181 (2008)).

B. The materiality provision has historically been applied to protect against burdensome registration practices, and courts have not found the provision applicable in challenges to voter-ID laws.

Courts have consistently recognized that the materiality provision was intended to address "tactics" like "burdensome registration requirements" that were historically used to disenfranchise African Americans. *Browning*, 522 F.3d at 1173; *see also Condon v. Reno*, 913 F. Supp. 946, 949–50 (D.S.C. 1995). For example, the provision was directed at practices like "disqualifying an applicant who failed to list the exact number of months and days in his age," recognizing that "[s]uch trivial information served no purpose other than as a means of inducing voter-generated errors that could be used to justify rejecting applicants." *Browning*, 522 F.3d at 1173; *see also Schwier v. Cox*, 340 F.3d 1284, 1294 (11th Cir. 2003).

Courts have thus relied on this provision in striking down local practices that, for example, required voters "to register at a county office for some elections and to register again at a city office in order to vote in municipal elections." *Condon v. Reno*, 913 F. Supp. 946, 966 (D.S.C. 1995) (citing *Mississippi State Chapter, Operation Push, Inc. v. Mabus*, 932 F.2d 400 (5th

Cir. 1991)); *see also Martin*, 347 F. Supp. 3d at 1309 (enjoining county's unique requirement that voters list birth year on absentee ballot envelope).

At least three courts have expressly rejected challenges to voter ID laws under the materiality provision. *See, e.g.*, *Common Cause/Georgia League of Women Voters of Georgia, Inc. v. Billups*, 439 F. Supp. 2d 1294, 1357–58 (N.D. Ga. 2006); *Rokita*, 458 F. Supp. 2d at 841; *Gonzalez v. Arizona*, 2007 WL 9724581, at *2. These courts held that applying the materiality provision to these challenges to voter-ID laws "overstate[s] the reach" of the statute. *Common Cause*, 439 F. Supp. 2d. at 1357 (quoting *Rokita*, 458 F. Supp. 2d at 840). Instead, "the act of presenting photo identification in order to prove one's identity is by definition not an "error or omission on any record or paper" and, therefore, [the materiality provision] does not apply to this case." *Id.* (quoting *Rokita*, 458 F. Supp. 2d at 841); *accord Gonzalez*, 2007 WL 9724581, at *2.

Just as it is an overstatement to apply the materiality provision to voter ID challenges *generally*, the overstatement is only heightened here, where Plaintiffs try to use the provision to chip away at specific legislative provisions governing specific forms of acceptable identification for voting. Under Plaintiffs' proposed application of the materiality provision, no voting-eligible ID could be required to include any information that is not "verified" by poll workers. (*See* Dkt. 37:29.) For example, on Plaintiffs' interpretation of the

materiality provision, a document purporting to be a driver's license but which omits all of the non-voting-related information required under Wis. Stat. § 343.17[5] could nonetheless be used for voting, since poll workers do not "compar[e] or verify[ ]" those elements at the polls. (Dkt. 37:29.) This most certainly "overstates" the sweep of the materiality provision. Thus, just as federal courts recognized in *Common Cause*, *Rokita*, and *Gonzalez*, the materiality provision "does not apply in this case." *Common Cause*, 439 F. Supp. 2d at 1357.

CONCLUSION

Plaintiffs have raised a rational-basis challenge to Wisconsin's student-ID-as-voter-ID law. Not only is their challenge directly foreclosed by *Luft*, but the challenge simply would undercut the multiple important interests—repeatedly recognized by federal courts—that Wisconsin's voter ID law serves. Thus, their rational-basis challenge fails. Reframing the challenge as under *Anderson/Burdick* doesn't help either. They cannot show how anyone is burdened by the student-ID provision, which creates an *additional* way that students can prove their identity for voting. Viewed through either lens, Plaintiffs' constitutional challenge to Wisconsin's student ID provision fails.

[5] This provision establishes the multiple requirements for what must be included on a driver's license.

Their "materiality provision" claim fails, too. Presenting qualifying ID is unquestionably "material" to voting in Wisconsin, and it is for the Legislature to decide what information should be included in IDs used for voting. Moreover, as multiple courts have recognized, the materiality provision simply has no application in challenges to voter-ID laws like this.

This Court should therefore grant the Defendants' motion for summary judgment and enter judgment in Defendants' favor on all claims.

Dated this 18th day of September 2020.

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