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**

PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants have failed to identify rational, legitimate, and important state regulatory interests that justify the burdens imposed by the challenged requirements for college and university student photo IDs to be used to establish a voter's identity. Following this Court's and the Seventh Circuit's rulings that permit the use of expired college IDs, Defendants can no longer point to any functional purpose for the issuance and expiration dates or the two-year expiration window, and they never used any signature on any form of voter ID for anything. Defendants' brief conspicuously omits

any explanation of what Wisconsin election officials or poll workers are actually using the issuance date, expiration date, two-year expiration window, and signature for in their election procedures. The answer, of course, is nothing, and Defendants' silence confirms that.

Nonetheless, scrambling to rationalize the irrational and legitimize the illegitimate, Defendants scrape together a few abstract, purported interests divorced from any actual function or use in Wisconsin elections. They argue that the state has an interest in uniformity and consistency across IDs but there is no uniformity or consistency in the required information, features, or life spans across categories of accepted voter IDs in Wisconsin. They argue that the voter ID law as a whole promotes election integrity and voter confidence, but that does not mean specific requirements within the ID law do the same. Absent a rational, legitimate, and important state interest at a bare minimum, the burdens imposed on college student voters necessitate enjoining the challenged requirements. They argue that requiring students to sign their college student IDs would add an element of "solemnity," but fail to explain how that is rationally connected to safeguarding election integrity.

On all fronts, Defendants have failed to justify the challenged requirements.

1. *Luft* does not foreclose or undermine this action.

This case picks up where *One Wisconsin Institute, Inc. v. Thomsen*, 198 F. Supp. 3d 896, 961–62 (W.D. Wis. 2016), and *Luft v. Evers*, 963 F.3d 665 (7th Cir. 2020) left off. *One Wisconsin Institute* held and *Luft* affirmed that college students can use expired student IDs to establish the voter's identity if the student shows proof of current enrollment, and

neither reached the question of whether issuance and expiration date requirements are constitutional. This Court explicitly stated that that question was not before it in *One Wisconsin Institute*. 198 F. Supp. 3d at 962. And the Seventh Circuit implied as much in its Order on the Motion for Clarification, when it declined to articulate which elements of student IDs Defendants could continue to enforce, as Defendants requested. Even after the Defendant-Appellants in *Luft* moved for "clarification on which elements of the student ID statute will be enforceable" going forward, *see* Case No. 16-3003, dkt. 101 at 6, the Seventh Circuit replied:

> Our opinion holds that the state may not require student IDs to be unexpired, when the student provides some other document demonstrating current enrollment. The point of our decision is that requiring two documents from students, but not other voters, needs justification, which has not been supplied. But 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.

See dkt. 102 at 2.

Defendants misread *Luft*, contending it "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." *See* dkt. 48 at 16. But in reality, *Luft* ordered the exact opposite as to student IDs—that, under the current formulation of the voter ID statute, state and local election officials could ***not*** lawfully require that they be unexpired. Although the Seventh Circuit panel noted in the abstract that a state may require that voter IDs be unexpired, it found that students could not be singled out for differential treatment and, therefore, ordered that, *with respect to college student IDs*, the state could only require *either* an unexpired ID *or* an expired ID accompanied by proof of

current enrollment. Which is to say, the statutory requirement that college student IDs be unexpired is not a requirement, but purely optional.

Because *Luft* only decided that an expired college student ID may be used if proof of current enrollment is also presented or submitted, the Court did not reach—let alone foreclose—Plaintiffs' challenge to the technical requirements that a student ID card bear an issuance date, an expiration date not more than two years after the issuance date, and a signature to establish a student voter's identity.

2. *Anderson-Burdick* governs challenges to voting regulations that impose burdens on the right to vote.

The Seventh Circuit has made clear that the *Anderson-Burdick* test "applies to *all* First and Fourteenth Amendment challenges to state election laws." *Acevedo v. Cook Cty. Officers Electoral Bd.*, 925 F.3d 944, 948 (7th Cir. 2019) (emphasis in original); *see also Harlan v. Scholz*, 866 F.3d 754, 759 (7th Cir. 2017) (holding *Anderson-Burdick* framework addresses "constitutional rules that apply to state election regulations" and applying this balancing analysis to challenge to Illinois's Election Day registration law). The *Anderson/Burdick* standard is set forth in Plaintiffs' First Amended Complaint and Brief in Support of their Motion for Summary Judgment. *See* dkt. 37 at 24-28. The Supreme Court has developed 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). The U.S. Supreme Court noted that this test applies to any "state election law." *Id*. "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).

In *Harlan v. Scholz*, the plaintiffs brought a challenge to an Illinois law that required populous counties to provide same-day registration on the theory that it would disadvantage less populous, more rural counties. 866 F.3d 754, 760 (7th Cir. 2017). The district court granted a preliminary injunction, finding there was a likelihood of success under *Anderson-Burdick* using strict scrutiny. *Id*. The Seventh Circuit reviewed this decision and articulated the *Anderson-Burdick* test, implying that it was the correct standard, but found that the district court incorrectly applied strict scrutiny and vacated the preliminary injunction. *Id*. at 761. The Court articulated the test as follows:

> When an election law severely burdens voters' constitutional rights, that law must be narrowly drawn to advance a compelling state interest. But when the law "imposes only reasonable, nondiscriminatory restrictions upon the rights of voters, the State's important regulatory interests are generally sufficient to justify the restrictions." Regulations falling somewhere between those extremes—i.e. those that impose more than a minimal, but less than a severe, burden on voting—are evaluated by comparing the burden on the voters with the state's interest and the means it has chosen to advance that interest.

Id. at 760 (citing *Burdick*, 504 U.S. at 433–34).

As is clear from the above, a voting requirement that imposes a burden on voters must be "reasonable"; an irrational law is per se *unreasonable*. As Defendants note, "the relevant 'constitutional question is whether the restriction and resulting exclusion are *reasonable* given the interest the restriction serves.'" *Griffin v. Roupas*, 385 F.3d 1128, 1130 (7th Cir. 2004) (emphasis added); *see* dkt. 48 at 26-27. A voting requirement that imposes a burden on voters "must be justified by relevant and legitimate state interests." *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 191 (2008) (citing *Norman v. Reed*, 502 U.S. 279, 288-89 (1992)). An *irrational* requirement is per se unjustified by relevant and legitimate state interests. Reasonable restrictions must be justified by pointing to "important regulatory interests." *Harlan*, 866 F.3d at 760. That is why Plaintiffs have repeatedly argued that Defendants lack a rational, legitimate, *and* important state interest to justify the enforcement of the challenged requirements.

Defendants seek to recast Plaintiffs' *Anderson-Burdick* challenges under the First and Fourteenth Amendments as rational basis challenges governed by *McDonald v. Board of Election Commissioners*, 394 U.S. 802 (1969). However, as established by precedent and as the original Complaint and First Amended Complaint make plain, Plaintiffs' constitutional challenges must be assessed under the *Anderson-Burdick* line of precedent, which governs challenges to voting regulations and requirements.

Plaintiffs have argued that there is not even a rational or legitimate basis or state interest to justify the challenged requirements, but that does not mean that Plaintiffs' claims are to be analyzed under rational basis review. This was simply a recognition that there is some overlap between the *Anderson-Burdick* analysis and rational basis review. A

law that cannot pass the latter test necessarily will fail the former, but that does not mean that rational basis scrutiny displaces *Anderson-Burdick* scrutiny.

Indeed, the *Anderson-Burdick* line of precedent grew out of cases like *McDonald* and, accordingly, there is naturally some overlap between *Anderson-Burdick* and rational basis review. *See, e.g.*, *Burdick*, 504 U.S. at 433-34 (citing *McDonald v. Bd. of Election Comm'rs*, 394 U.S. 802 (1969)); *Kusper v. Pontikes*, 414 U.S. 51, 62 (1973) ("The mere fact that a state statute lightly brushes upon the right to vote and the right of association, important as these are, should not automatically result in invalidation." (citing *See McDonald v. Board of Election Comm'rs*, 394 U.S. 802, 89 S.Ct. 1404, 22 L.Ed.2d 739 (1969)); *Bullock v. Carter*, 405 U.S. 134, 143 (1972) ("[N]ot every limitation or incidental burden on the exercise of voting rights is subject to a stringent standard of review. *McDonald v. Board of Election [Commissioners]*, 394 U.S. 802, 89 S.Ct. 1404, 22 L.Ed.2d 739 (1969). . . . [T]he Texas system creates barriers to candidate access to the primary ballot, thereby tending to limit the field of candidates from which voters might choose. The existence of such barriers does not of itself compel close scrutiny. . . In approaching candidate restrictions, it is essential to examine in a realistic light the extent and nature of their impact on voters."). Additionally, some courts have noted that the lower end of the burden spectrum in *Anderson-Burdick* cases triggers "a 'less-searching examination closer to rational basis.'" *Ohio Democratic Party v. Husted*, 834 F.3d 620, 627 (6th Cir. 2016) (citation omitted). The key words are "closer to." *Anderson-Burdick* analysis for First and Fourteenth Amendment challenges to laws that impose a lesser burden and rational basis scrutiny are not identical and cannot be treated as such. In order to survive the *Anderson-*

Burdick test, a law must be minimally rational and reasonable, but it must be supported by an important regulatory interest.

Nevertheless, Defendants seek to persuade this Court to adopt a radical and unprecedented expansion of the Supreme Court's decision in *McDonald*. *McDonald* of course precedes the formulation of the *Anderson-Burdick* framework, and a limited number of courts, such as the Firth Circuit in *Texas Democratic Party v. Abbott*, 961 F.3d 389 (5th Cir. 2020), have held that because voters have no constitutional right to vote ***by mail***, regulations of mail-in voting do not trigger the constitutional balancing test subsequently developed in the *Anderson-Burdick* line of cases. *Id*. at 403-04. But, crucially, ***all*** of the cases applying *McDonald* concern requirements or regulations that exclusively govern voting by mail, not in-person voting or voting generally. Defendants have not cited to any case challenging a regulation implicating the right to cast a vote that applies *McDonald* outside of the mail voting context. *See* dkt. 48 at 19-20 & note 2. In *Texas Democratic Party*, the Court rejected a challenge to the excuse requirement for mail-in absentee voting. 961 F.3d at 403–04. *Mays v. LaRose*, 951 F.3d 775 (6th Cir. 2020) involved pretrial detainees' challenge to the deadline to request an absentee ballot. Defendants cite to a footnote, *id*. at 783 n. 4, but conveniently omit the sentence associated with that footnote, which is relevant here: "[W]hen a 'plaintiff alleges that a state has burdened voting rights through the disparate treatment of voters,' this court's precedent requires us to apply the *Anderson-Burdick* framework." *Id*. at 783 (quoting *Obama for Am. v. Husted*, 697 F.3d 423, 429 (6th Cir. 2012)). The *Mays* panel's criticism of binding precedent in dicta notwithstanding, *Anderson-Burdick* is the law that applies to such challenges in the Sixth

Circuit. Finally, *Arizona Libertarian Party v. Reagan* only concerned a third-party ballot access issue, *not* a regulation or requirement infringing or burdening the right to cast a ballot, 798 F.3d 723, 732 (9th Cir. 2015), and *Frank v. Forest County*, a challenge to malapportionment in redistricting, has zero application here. 336 F.3d 570, 574 (7th Cir. 2003).

By contrast, because this case does not concern a requirement or regulation that exclusively governs mail-in voting, *McDonald* has no application here. Almost all voters cannot cast a ballot in person or by mail unless they comply with Wisconsin's strict voter ID requirement. WIS. STAT. §§ 5.02(6m), 6.79(2)(a), 6.86(1)(ar), and 6.87(1). There are no alternatives such as an identity affidavit, a reasonable impediment affidavit, an indigency affidavit, or vouching by poll workers or other voters. *See, e.g.*, Idaho Code § 34-1114 (identity affidavit); La. Stat. Ann. § 18:562(A)(2)(b) (identity affidavit); Mich. Comp. Laws. Serv. § 168.523(2) (identity affidavit); N.H. Rev. Stat. Ann. § 659:13(I)(c) (identity affidavit); South Dakota Codified Laws § 12-18-6.2 (identity affidavit); S.C. Code Ann. § 7-13-710 (reasonable impediment affidavit); Tex. Elec. Code § 63.001 (reasonable impediment affidavit accompanied by non-photo ID); Ind. Code Ann. § 3-11.7-5-2.5 (indigency affidavit); Tenn. §2-7-112(f) (indigency affidavit); Ala. Code § 17-9-30 (voter identification requirement satisfied if voter recognized by two election officials). Generally, if a person cannot present or submit voter ID, they cannot vote. Defendants argue that the law makes it easier to vote by affording students an *additional* form of identification, and therefore *Anderson-Burdick* does not apply. *See* dkt. 48 at 17. That wrongly presumes that students are equally likely to have any of the other forms of ID as

other adults across the spectrum. Plaintiffs have established this is not necessarily so. *See* infra at 15-16; dkt. 43, JSOF ¶¶ 91, 100. 2011 Act 23 did not make it easier for anyone to vote; rather, it imposed a photo ID requirement making it harder to vote.

Defendants nevertheless contend that because the voter ID law enumerates alternative photo IDs that can be used and because Plaintiffs have challenged restrictions on just one of those alternatives, this Court need not evaluate the burdens on student voters or seek to balance those burdens against the state's important regulatory interests under the *Anderson-Burdick* inquiry. In their view, only rational basis scrutiny applies. Dkt. 48 at 17. But no court has ever invoked *McDonald* to hold that a restriction or barrier imposed upon the use of one amongst several alternatives to comply with a voting requirement is only subject to rational basis scrutiny. That restriction on a form of ID that is widely held by Wisconsin voters ***forces*** those voters to obtain an additional, separate valid voter ID either through their college or university's ID card office, the DMV, or a passport office. *See* dkt. 43, JSOF ¶¶ 1, 4, 7, 19, 55. Evaluating how difficult it is for students to obtain a valid voter ID through these alternative means—because their regularly-issued student ID cannot be used to vote as is—and whether a rational, legitimate, and important regulatory interest justifies compelling the voter to secure another form of photo ID is governed by the *Anderson-Burdick* framework that balances voter burdens against state interests.

Under Defendants' theory, a voter with no photo IDs whatsoever would have their claim evaluated under *Anderson-Burdick*, but a voter with a photo ID that would qualify as accepted ID but for the fact that it does not meet certain specifications—such as a

Wisconsin driver's license or U.S. passport that expired *before* the last general election or a college ID that lacks a signature—would have their challenge evaluated under rational basis review. That would make no sense because in both scenarios the voter who lacks valid voter ID is subject to exactly the same set of burdens, issuance requirements and procedures, alternatives, and restrictions. Defendants fail to cite authority for this absurd result and fail to otherwise explain such an illogical discrepancy.

According to Defendants, whenever there is a potential alternative or work-around, no matter how burdensome or unreasonable, the challenged voting regulation that is blocking the voter from casting a ballot and forcing the voter to pursue those alternatives or work-arounds cannot be evaluated under the *Anderson-Burdick* burdens-versus-interests balancing test. However, *Luft* itself demonstrates the fallacy in this argument. There, the Seventh Circuit evaluated "the one-location rule and the restrictions on both the number of hours per day and number of days for in-person absentee voting" using the *Anderson-Burdick* test. *Luft*, 963 F.3d at 675. These restrictions on in-person absentee voting before Election Day do not deny the right to vote; voters still have options and alternatives to vote both in person and by mail. But the regulations could impose an unjustified burden and thereby be invalidated on *Anderson-Burdick* grounds. So too in this case. A restriction on the use of one form of accepted voter ID imposes unjustified burdens on college student voters, notwithstanding any (theoretical) availability of alternative photo IDs from other entities.

Many cases around the country have also applied the *Anderson-Burdick* balancing inquiry even where voters have potential alternatives or work-arounds for the challenged

requirement. *See, e.g.*, *Lee v. Va. St. Bd. of Elections*, 843 F.3d 592, 606 (4th Cir. 2016) (applying *Anderson-Burdick* analysis to challenge against Virginia's voter ID law under First and Fourteenth Amendments); *A. Philip Randolph Inst. v. Johnson*, 749 F. App'x 342, 349 (6th Cir. 2018) (applying *Anderson-Burdick* analysis to challenge against Michigan law eliminating straight-ticket voting, even though ban did not deny anyone right to vote); *Ohio Dem. Party v. Husted*, 834 F.3d 620, 626 (6th Cir. 2016) (applying *Anderson-Burdick* analysis to challenge against Ohio law shortening the state's early voting period to 29 days before Election Day under the Fourteenth Amendment); *Ne. Ohio Coal. for the Homeless v. Husted*, 837 F.3d 612 (6th Cir. 2016) (applying *Anderson-Burdick* analysis to challenge against laws requiring technical perfection of address and birth date on absentee-ballot identification envelope, limit on poll-worker assistance, and cure-period reduction); *Fish v. Schwab*, 957 F.3d 1105 (10th Cir. 2020) (applying *Anderson-Burdick* analysis to suit against documentary proof of citizenship requirement for voter registration where voters have potential ways to obtain documentation and comply); *Fla. St. Conf. of NAACP v. Browning*, 522 F.3d 1153, 1186–87 (11th Cir. 2008) (applying *Anderson-Burdick* balancing analysis in constitutional challenge to Florida law requiring a voter's driver's license number or Social Security number be matched to a record in order for the voter to register to vote); *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1318 (11th Cir. 2019) (applying *Anderson-Burdick* analysis to challenge against signature match scheme).

Plaintiffs believe the burden the challenged requirements impose upon college and university student voters is real and substantial, particularly during this pandemic,

and, at a minimum, actual and not insignificant. But even if this Court finds that rational basis review controls, Defendants have failed to articulate rational bases for enforcing the challenged requirements and, therefore, Plaintiffs still prevail. Rational basis scrutiny is no rubber stamp for legislation; it still requires the articulation of a coherent, legitimate, and rational interest. *See Gault v. Garrison*, 569 F.2d 993, 996 (7th Cir. 1977), *cert. denied*, 440 U.S. 945 (1979) ("We cannot uphold as constitutionally valid a classification of public school teachers based upon age without a showing that it rationally furthers some identifiable and articulable state purpose."); *Quinn v. Millsap*, 491 U.S. 95, 109 (1989) (using rational basis to determine that a provision that allowed local governments to be organized by a board of freeholders violated non-landowners' equal protection rights); *Plyler v. Doe*, 457 U.S. 202, 230 (1982) (holding that the denial of public education to children of undocumented immigrants did not further a substantial government interest); *United States Dep't of Agric. v. Moreno*, 413 U.S. 528, 538 (1973) (holding that limiting food stamp benefits to related persons in a household is "wholly without any rational basis"); *Weber v. Aetna Cas. & Sur. Co.*, 406 U.S. 164, 176 (1972) (holding that a law denying workers' compensation recovery rights to unacknowledged illegitimate children is justified by "no legitimate state interest, compelling or otherwise"). In *Luft* itself, even under the less stringent rational basis test, the differential treatment of student IDs in requiring proof of "ongoing affiliation" was struck down as irrational. *Luft*, 963 F.3d at 677. The Court ruled in this way despite its holistic evaluation of the Wisconsin election code, including all opportunities to register and vote.

In this case, there is no rational basis for prohibiting the use of student IDs as proof of identity merely because the ID may lack the challenged elements. Plaintiffs need not recapitulate all of their arguments here but will instead incorporate their arguments from pages 22 through 32 of their opening brief. *See* dkt. 46 at 22-32.

3. Student voters without a valid ID face burdens in complying with the voter ID law.

In *Luft v. Evers*, 963 F.3d 655, the Seventh Circuit applied and elaborated on the *Anderson-Burdick* merits test. "Fundamentally, the *Luft* court cautioned that the burden of a specifically challenged election provision must be considered against 'the state's election code as a whole' – that is, by 'looking at the whole electoral system,' rather than "evaluat[ing] each clause in isolation.'" *Democratic Nat'l Comm. v. Bostelmann*, No. 3:20-cv-00249, slip op. at *34 (W.D. Wis. Sept. 21, 2020) (citing *Luft*, 963 F.3d at 671). Although the *Luft* Court "stressed that Wisconsin's system as a whole is accommodating," the court "reaffirmed its earlier holding that the right to vote is personal and, therefore, the state must accommodate voters who cannot meet the state's voting requirements with reasonable effort." *Id.* at 34 (internal punctuation omitted) (quoting *Luft,* 963 F.3d at 674, 669).

Notably, the *Luft* court considered the Wisconsin election system, yet struck down the specific requirement that college students had to both present an unexpired student ID and proof of current enrollment. *Luft*, 963 F.3d at 677. This makes it clear that burdens on the use of student IDs are not exempt from review merely because there may be other forms of IDs available to students for voting. In other words, despite the fact that some voters may possess other photo IDs that may be used for voting, the inability to use a

student ID because of limits set forth in Wis. Stat. § 5.02(6m)(f), may be found to be unconstitutional.

The student ID provisions impose a burden. Not being able to use their regularly issued student ID as proof of identity for voting imposes an actual burden on Wisconsin students. Defendants apparently want to convince this Court that the burden is not real because it does not impact *all* student voters. But that is not the test. The test is whether or not there is a burden on the affected voters; and there is. *See Mays*, 951 F.3d at 785 (holding that "[a]ll binding authority to consider the burdensome effects of disparate treatment on the right to vote has done so from the perspective of only affected electors—not the perspective of the electorate as a whole").

To be clear, for a variety of reasons, students are not in "exactly the same position as every other non-student voter in Wisconsin," as asserted by Defendants. *See* dkt. 48 at 30. There are numerous differences:

- Students who move away from their homes to live on campus are likely new to the community and may be new to the state. JSOF ¶¶ 47, 49, 51. This means they need to learn where the nearest DMV is located, figure out how to travel there, and obtain any necessary documents.
- Because they may still have their parents' home as their "home base," students may leave their important documents, such as a U.S. passport or birth certificate, at their parents' home—and not have them readily available on campus. JSOF ¶¶ 91, 100.

- Some colleges discourage students from bringing vehicles to campus.[1] Hence, students without a vehicle may have a more difficult time getting to the DMV than non-student voters. Out-of-state students—even those who do not plan to drive in Wisconsin—would have to turn in their out-of-state driver's license in order to obtain a Wisconsin driver's license or state ID.
- College and university students have class schedules, work schedules, or both, that may not accommodate the limited hours that some DMV offices are open or the limited hours that campus ID offices are open.
- The congregate living setting of university housing has forced students to quarantine for weeks at a time.[2] This type of quarantine limits the residents from going to the campus ID office, the DMV, or elsewhere. Plaintiffs are

[1] *E.g.*, At the University of Wisconsin-Madison, "The best advice to students regarding parking on campus is **don't bring a car**." University of Wisconsin-Madison Transportation Services, Student Parking, https://transportation.wisc.edu/permits/student-parking/ (last visited Sept. 22, 2020). Lawrence University conducts a lottery at the beginning of each term for parking. Lawrence University, Vehicle Registration and Parking, https://www.lawrence.edu/students/services/vehicles (last visited Sept. 22, 2020). UW-Milwaukee notes that parking is expensive, and most on-campus students use public transportation. University of Wisconsin-Milwaukee, Is a car necessary on campus?, https://uwm.edu/housing/qa_faqs/is-a-car-necessary-on-campus/ (last visited Sept. 22, 2020).

[2] *See, e.g., UW-L orders two-week COVID quarantine*, LaCrosse Tribune (Sept. 14, 2020) available at: https://lacrossetribune.com/news/local/education/uw-l-orders-two-week-covid-quarantine/article_53687b9f-ea41-5031-a303-eb9e6663285f.html; *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-direct-schroeder-hall-residents-to-quarantine-for-two-weeks/.

unaware of any non-student apartment complex or community that has faced similar quarantines or restrictions on their movement.

Finally, Defendants wrongly seek to shift the blame to the colleges that do not offer a qualifying student ID. The state-imposed burden stems from that fact that it was the state that required student IDs to contain elements that are wholly unnecessary for use on campus. This meant that the IDs typically issued by universities would not satisfy the requirements of the voter ID law. *See, e.g.,* JSOF ¶¶ 52-57.

4. The challenged student ID requirements remain unjustified by a rational, legitimate and important state interest.

No one disputes that "Wisconsin's voter-ID law on the whole serves important state interests"; that question has already been resolved by the courts. *See* dkt. 48 at 16. Defendants' argument that the Wisconsin voter ID law *as a whole* "serves multiple important interests, including promoting confidence in the electoral system and deterring fraud," *id*. at 21, is completely beside the point. What *is* in dispute is whether the challenged requirements for student IDs presented as proof of identity to vote, serve important state interests.

Most importantly, Defendants' brief is utterly devoid of any explanation regarding what state and local election officials or poll workers are actually using the issuance date, expiration date, two-year expiration window, and signature for in election administration procedures. The answer is, of course, nothing. A legal requirement to provide information that the government is not using and does not require for any rational, legitimate, and important purpose is constitutionally invalid. *See, e.g., Pilcher v. Rains*, 853 F.2d 334, 336–37 (5th Cir. 1988) (applying *Anderson-Burdick* and holding that requirement

to put a voter ID number on a petition in order to have it counted violated the First Amendment ballot access rights, affirming district court's finding that voter registration numbers were unnecessary to the state's asserted purpose) ("The State showed that it sought to further a legitimate state interest through the requirement, but it utterly failed to present evidence on the third step of the test, the necessity of the requirement.").

Defendants appear to misunderstand the distinction between ID features that the voter ID law mandates and ID elements found on an accepted form of voter ID that are not required by Wisconsin's voter ID law. The Wisconsin Legislature could amend state law to drop information from Wisconsin driver's licenses, and Congress could drop requirements that certain information be present on a U.S. Passport or military ID—and those changes would have zero effect on any Wisconsin voter's ability to vote because that information has never been required by the voter ID statute. By contrast, third-party college or university administrators' decisions as to whether or not issuance and expiration dates and signatures appear on student IDs and whether or not the expiration window must be two years have a direct impact on whether many college students have a compliant photo ID they can use to vote or whether they must jump through hoops to obtain a compliant one—from their school, the DMV, or some other entity. Wisconsin law permits the use of all other forms of accepted voter ID ***as issued***—but not so for student IDs, where the Legislature manufactured required elements that were not previously on the IDs, are not needed to establish identity, and do nothing to safeguard electoral integrity.

The challenged student ID requirements in the Wisconsin voter ID law are anomalous, both when compared to all other states' voter ID laws and when compared to other enumerated, accepted IDs accepted in Wisconsin. And they lack any constitutionally valid justification. Thirty-five states have enacted voter identification requirements—some with strict photographic identification requirements, others with more expansive lists that include non-photo forms of ID.[3] Twenty-eight of these states' voter ID laws permit college and university students to use their campus photo IDs as a voter ID. Wisconsin's is the only voter ID law on that list that (1) requires a student ID to have only a two-year life span, even if it is issued by a four-year institution, (2) requires students to show separate proof of current enrollment along with their college or university photo ID card,[4] and (3) rejects college or university IDs if they lack a signature. The nationwide absence of such restrictive requirements for the use of college and university IDs as voter ID is compelling evidence that in fact Defendants do not have a legitimate need or even a rational basis for enforcing the challenged requirements.

[3] ALA. CODE § 17-9-30; ALASKA STAT. § 15.15.225; ARIZ. REV. STAT. § 16-579; ARK. CONST. amend. 51, § 13; ARK. CODE ANN. §§ 7-5-305, 7-5-324; COLO. REV. STAT. ANN. §§ 1-1-104(19.5)(a), 1-7-110; CONN. GEN. STAT. ANN. § 9-261; DEL. CODE ANN. tit. 15, § 4937; FLA. STAT. ANN. § 101.043; GA. CODE ANN. §§ 21-2-417, 21-2-417.1; HAW. REV. STAT. § 11-136; IDAHO CODE ANN. §§ 34-1106, 34-1113, 34-1114; IND. CODE. ANN. §§ 3-5-2-40.5, 3-11-8-25.1; IOWA CODE § 48A.7A; KAN. STAT. ANN. §§ 25-2908, 25-1122, 8-1324; KY. REV. STAT. ANN. § 117.227; 31 KY. ADMIN. REGS. 4:010; LA. REV. STAT. ANN. § 18:562; MICH. COMP. LAWS ANN. § 168.523; MISS. CODE ANN. § 23-15-563; MO. REV. STAT. § 115.427; MONT. CODE ANN. § 13-13-114; N.H. REV. STAT. ANN. § 659:13; N.C. GEN. STAT. § 163A-1145.1; N.D. CENT. CODE § 16.1-05-07; OHIO REV. CODE ANN. § 3505.18; OKLA. STAT. ANN. tit. 26, § 7-114; R.I. GEN. LAWS § 17-19-24.2; S.C. CODE ANN. § 7-13-710; S.D. CODIFIED LAWS §§ 12-18-6.1, 12-18-6.2; TENN. CODE ANN. § 2-7-112; TEX. ELEC. CODE ANN. §§ 63.001, 63.0101; UTAH CODE ANN. §§ 20A-1-102, 20A-3-104; VA. CODE ANN. § 24.2-643; WASH. REV. CODE ANN. § 29A.40.160; W. VA. CODE ANN. § 31-3-34; WIS. STAT. §§ 5.02(6m), 6.79(2a).

[4] Per *Luft*, this of course now only applies if the ID is expired.

a. Issuance and Expiration Date Requirements

Defendants fail to articulate what, if anything, state and local election officials or poll workers are using the issuance and expiration dates for in administering elections. These requirements seemingly serve no actual function or purpose.

Defendants maintain that they are not just for show; they now claim an interest in uniformity and consistency across ID categories and within the category of student IDs. However, their claim that "[t]he challenged student-ID requirements serve [the state's proffered] interests by promoting consistency across *all* IDs used for voting" is demonstrably false. *See* dkt. 48 at 17 (emphasis in original). Whereas most accepted IDs enumerated in the law are accepted exactly as issued by the issuing authority, college and university student IDs alone are required to include certain information not typically included by the issuing authority.

Moreover, none of the challenged items are required uniformly for all other voter IDs on the list. Not all accepted IDs have an issuance date; not all have an expiration date. JSOF ¶¶ 20-22, 25; JSOF ¶ 18, n. 7, at 7, 8, 13-14. Not all IDs expire within a specific measure of time. JSOF ¶¶ 13, 15, 18, 20, 21, 22. And finally, not all IDs on the list bear signatures. JSOF ¶¶ 20–22. Both in the Joint Stipulation of Facts and on page 22 of their brief, Defendants have conceded that not all accepted types of ID have the same information that is required to be present on college and university student ID cards. *See* dkt. 48 at 22. Across the enumerated, accepted forms of voter ID, there is no uniformity in terms of the information present on the ID card. If, as Defendants claim, there were a rational, legitimate, and important state regulatory interest to require issuance and

expiration dates on a college ID, it would have required the same of *all* accepted IDs on the list.

The courts rightfully interpret unexplained non-uniformity as irrationality: "Under any standard of review, when Congress provides no justification for enacting a non-uniform law, its decision can only be considered to be irrational and arbitrary." *Growers Coop. v. Layng*, 930 F.3d 844, 856 (7th Cir. 2019) (quoting *St. Angelo v. Victoria Farms, Inc.*, 38 F.3d 1525, 1532 (9th Cir. 1994), *amended*, 46 F.3d 969 (9th Cir. 1995)). And even if the challenged requirements made voter IDs more uniform, this interest in uniformity is insufficient justification for burdening the right to vote. *Ne. Ohio Coal. for the Homeless*, 837 F.3d at 634 (holding that state's interest in uniformity was insufficient to justify technical-perfection requirement for absentee voters).

Ultimately, Defendants have failed to explain why these issuance and expiration dates are necessary for college and university IDs but not for *all* other accepted IDs. Taking no position on whether an expiration date is constitutionally valid in the abstract, Plaintiffs submit that here in Wisconsin there is clearly no uniform expiration date requirement, and, per recent rulings by this Court and the Seventh Circuit that expired college and university IDs may be used, issuance and expiration dates serve no functional purpose in Wisconsin.[5] Both of these facts demonstrate that there is no rational, legitimate, and important state interest justifying the continued enforcement of these requirements.

[5] Expiration dates still have some function for Wisconsin driver's licenses presented or submitted as voter ID but not for college IDs.

b. Two-Year Expiration Requirement

Similarly, Defendants do not explain what function or purpose is served by mandating a two-year expiration period for college IDs alone. No regularly-issued IDs on the list besides college and university IDs are required to have a particular expiration window, especially not one that is shorter than the regular life span set by the issuing authority. Wis. Stat. § 5.02(6m). All other forms of voter ID are merely accepted with whatever expiration period is provided by the issuing entity in the normal course. If, as Defendants claim, there were a rational, legitimate, and important state regulatory interest in enforcing a maximum two-year life span before expiration, the Legislature would have required the same of all accepted IDs on the list. It of course did not do that, as there is wide variation in ID card time windows before expiration both within and across ID card categories. This of course is completely arbitrary.

Defendants also argue that a two-year expiration window is necessary to promote uniformity within the category of college and university student IDs. *See* dkt. 48 at 22. However, the law does not require uniformity within other categories of IDs because the state accepts those IDs *as issued*. *See* Wis. Stat. § 5.02(6m)(a)-(e). And there are inherent variances within other categories of regularly issued IDs that are accepted as voter IDs, as evidenced by WEC's Election Day Manual.[6] For example:

- Driver's licenses may expire after two years or eight years. Wis. Stat. §§ 343.20(1)(a), (c); JSOF ¶13.

[6] Wis. Elections Comm'n, Bring It to the Ballot: Voting in Wisconsin and the Voter Photo Identification Law, at 5-25 (updated Sept. 2020), available at https://elections.wi.gov/sites/elections.wi.gov/files/2020-09/Total%20Guide%20numbered-2020a%20updates_1.pdf.

- State-issued IDs may be valid for eight years or indefinitely. Wis. Stat §§ 343.50(5)(b), (d).

- Passports are generally valid for five years or ten years, depending on the individual's age at the time the passport was issued; but passports may be valid for a different period of time for a variety of circumstances set forth in federal law. 22 CFR § 51.4(b), (c)-(f).

- Military IDs do not have a standard length of time before expiration and will vary depending on the cardholder's status in the military. Some forms of military ID do not expire. JSOF ¶ 20.

- Although newer Veteran's Health Information Cards may contain an expiration date, Veteran Identification Cards, also valid as voter ID, do not expire. JSOF ¶ 21.

- Tribal IDs issued by the various tribal nations do not have uniform expiration periods. JSOF ¶ 22.

Deferring to the life span set by the issuing institution is the exact approach that governs the other regularly issued ID cards. The Legislature and Defendants apparently see no issue with this non-uniformity. Accordingly, requiring uniformity just for the category of student ID cards is not rational.

Relatedly, Defendants argue that "[i]t would be nonsensical for that [expiration] period to be set for longer than many institutions ever plan for students to attend." *See* dkt. 48 at 23. This is a very strange argument. Leaving aside the possibility of not requiring issuance and expiration dates at all, as just about every other state that permits college and university IDs does, *see supra* at 19 note 3, Defendants appear to think that the only two options for the Legislature were to order either "a statutorily mandated period of validity," *id*. at 24, that last two years or four years. But the Legislature could have just as easily required the ID be unexpired and omitted any requirement that the card expire within a certain amount of time—the uniformity promoted by this

formulation would be uniform deference to whatever life span the issuing institutions gave it. This would have satisfied the state's purported interest in "promot[ing] confidence in elections and deter[ring] fraud by seeking to limit the use of student IDs to individuals actually enrolled in school." *Id*.

The state's arbitrary approach ignores the reality of student enrollment and time to completion of a degree program. This two-year expiration requirement is wholly unnecessary because proof of current enrollment can now be shown or submitted in full substitution for information showing the ID card is unexpired. Arguing otherwise flies in the face of the Seventh Circuit's ruling in *Luft*, which held that, absent justification, students could not be singled out for application of dual unexpired ID and proof-of-current-enrollment requirements. If expired IDs can be used, an expiration window or time period has no rational, legitimate application.

c. Signature Requirement

First, the role of the photo ID is to verify the identification of the voter, which the photograph and name do. The absence of a signature does not undermine this role. Defendants have done nothing to explain what, if any, purpose or function the signature serves or why the state has a rational, legitimate, and important state interest in enforcing a signature requirement for college and university ID cards, but not for every other ID card used as voter ID in Wisconsin. If, as Defendants claim, there were a rational, legitimate, and important state regulatory interest to require signatures on a college ID, it would have required the same of all accepted IDs on the list. But of course, signatures are not required uniformly because Wisconsin election officials and poll workers are not

using signatures on IDs for any purpose whatsoever, JSOF ¶¶ 35-37; and nothing in Defendants' opening brief contradicts that conclusion.

Second, Defendants fail to articulate any rational connection between protecting election integrity and "solemnity" or "formality" per se. *See* dkt. 48 at 24. The rational, legitimate, and important state regulatory interest in this requirement is exceedingly difficult to perceive, especially in light of the fact that a number of valid IDs lack signatures, including certain forms of Military IDs, Veteran Identification Cards and Veteran Health Identification Cards, and some tribal IDs. JSOF ¶¶ 20, 21, 22. Defendants' assertion that the mere addition of a signature on an ID adds solemnity is flawed. There are numerous cards that are involved in much less serious activities than exercising one's fundamental right to vote, such as credit cards and library cards, that bear signatures. Additionally, it is unclear what work solemnity would be doing: it would not verify or confirm anything about the voter's identity; nor do Defendants assert that it would prevent or deter fraud. The two cases Defendants cite concern signatures on ballot initiative petitions and immigration. *Miller v. Thurston*, 967 F.3d 727, 740 (8th Cir. 2020); *United States v. Dercacz*, 530 F. Supp. 1348, 1352–53 (E.D.N.Y. 1982). That signatures may be justified for ballot initiatives or immigration is irrelevant here.

Third, Defendants fail to provide any limiting principle that might cabin the use of such a vague basis for enacting laws. A state legislature surely could not invoke "solemnity" to enact requirements that voters state a verbal oath, demonstrate an understanding of the U.S. Constitution, or dress formally.

Finally, Defendants' reliance on *Nashville Student Org. Comm. v. Hargett*, 155 F. Supp. 3d 749, 754 (M.D. Tenn. 2015) must be rejected. *See* dkt. 48 at 25. Given the nature of that very different law in Tennessee, which expressly and categorically excludes all college student ID cards, none of the rational bases that the Court cited in that case could possibly justify the four challenged requirements of student IDs in this case. Notably, Defendants do not even try to argue that they do.

d. Defendants' Remaining Arguments

Finally, it is completely unclear what Defendants intend by arguing that allowing students to submit and upload their own photos for their college photo ID cards would undermine election integrity and confidence in elections. *See* dkt. 48 at 23. Whether or not such a practice would pass constitutional scrutiny under any legal standard, that is *not* the reason the identified school's ID card is not valid for voting, as the Wisconsin voter ID law does not mandate that college or university administrators take the photo of the student. Indeed, this is not the only accepted ID on the list where the issuing authority does not take the photo; U.S. passports bear photos taken by the applicant.

Additionally, Defendants' citation to a four-year-old case out of North Carolina is significantly outdated. North Carolina has subsequently passed a new voter ID law, N.C. Gen. Stat. § 163A-1145.1, which permits the use of college and university ID cards upon administrative preapproval, but the law has been enjoined by a federal court. *See* dkt. 48 at 23 note 3; *N. Carolina State Conference of NAACP v. Cooper*, 430 F. Supp. 3d 15, 54 (M.D.N.C. 2019).

5. The immaterial requirements for student IDs fail 52 U.S.C. § 10101(a)(2)(B) claim.

Defendants paint Plaintiffs' Civil Rights Act claims in overly broad strokes, leading to an incorrect conclusion regarding materiality, and misread the plain language of the section at issue as limited to voter registration. Plaintiffs remain entitled to summary judgment on their claim under 52 U.S.C. § 10101(a)(2)(B), because omission of the contested elements from a student ID card is immaterial in determining Wisconsin voters' eligibility.

Contrary to Defendants' assertions, Plaintiffs do not contend that a failure to present a photo ID to establish identity is immaterial to voting in Wisconsin. Rather, Plaintiffs' challenge is narrower and challenges specific requirements imposed upon college and university IDs which are not material to determining the voter's identity or whether the voter is eligible to vote under state law. *See* 52 U.S.C. § 10101(a)(2)(B) ("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[.]").

Defendants posit that the presentation of a qualifying ID, however that is defined under state law, is itself material and, therefore, any individual requirements on the ID cannot be challenged as immaterial. But the statute of course also prohibits immaterial errors and omissions on the ID card itself, the showing of which is an act requisite to voting in Wisconsin.

That becomes clearer considering by analogy to the voter registration context. Defendants readily concede that the statute applies to voter registration; indeed, they contend it is the *only* thing the statute applies to. While this is incorrect, *see infra*, it would obviously be a material omission if a person submitted no registration form at all, because there would be no way to assess the eligibility of the applicant. But if a voter registration form required a voter to state the expiration date of, say, their Amazon Prime membership, there would be no question that was immaterial to their qualifications to vote. It is not the submission of the form itself that the statute is intended to address; otherwise, taking Defendants' arguments seriously, a state could define a "qualifying voter registration form" to include any number of immaterial pieces of information without running afoul of the Civil Rights Act. Such was not the intent of the Act and would effectively write it out of existence.

The challenged requirements applied to student IDs in Wisconsin are thus wholly distinguishable from the voter ID requirement challenged in *Indiana Democratic Party v. Rokita*, 458 F. Supp. 2d 775, 841 (S.D. Ind. 2006), *aff'd sub nom. Crawford v. Marion Cty. Election Bd.*, 472 F.3d 949 (7th Cir. 2007), *aff'd*, 553 U.S. 181 (2008), because it is not the act of showing ID itself that is at issue here. Instead, Plaintiffs focus their narrow and targeted claim on certain elements of the ID which are not related to establishing the identity and eligibility of the voter. In *Fla. State Conference of N.A.A.C.P. v. Browning*, the court determined that errors such as transposed digits causing a mismatch of government databases were material because, assuming the provided information to actually be correct, the provided information—including such information as the name, birthdate,

and ID number of the voter—would be material to voter registration processes under other federal laws. 522 F.3d at 1175. Here, by contrast, whether the student ID contains or omits the information required by the challenged provision has no bearing on the voter's qualifications, because Wisconsin does not actually use any of these elements to make voting eligibility determinations.

Defendants also argue that 52 U.S.C. § 10101(a)(2)(B) is narrowly focused on voter registration. But as a review of the plain language of 52 U.S.C. § 10101(a)(2)(B) demonstrates, Defendants are incorrect. Rather, Congress legislated to prevent immaterial errors and omissions from disenfranchising voters in any "*other act* requisite to voting." 52 U.S.C. § 10101(a)(2)(B) (emphasis added). Defendants impermissibly seek to narrow Congress's chosen language, contending that the phrase "*any* application, registration, or *other act requisite to voting*" has no additional meaning beyond "registration." But reading the statute this way is inconsistent with statutory canons of construction that suggest the phrase "other act requisite to voting" is referring to something more than only "application" or "registration" papers. *See United States v. Carter*, 695 F.3d 690, 695 (7th Cir. 2012) ("Canons of construction ordinarily suggest that terms connected by a disjunctive be given separate meanings, unless the context dictates otherwise.") (quoting *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339, (1979)). Thus, to give the phrase "other act requisite to voting" its own meaning, it must include something different than simply voter registration. By using this language, Congress expressed the intent to anticipate policies that restricted voting by forbidding vote denial based upon

immaterial omissions and errors in any act requisite to voting, of which registration is merely one.

Here, the presentation of a voter ID is an act requisite to voting in Wisconsin, and the omission of the challenged requirements on student IDs is immaterial. The cases cited by Defendants are not to the contrary. For example, *Condon v. Reno*, a decision under the National Voter Registration Act of 1993, 52 U.S.C. 20501 *et seq*., merely recounted the history of Congressional efforts to mitigate use of voter registration as a deterrent to voting. 913 F. Supp. 946, 949-950 (D.S.C. 1995). In including 52 U.S.C. § 10101[7] in this history as mitigating these harmful practices, nowhere does the court suggest that this section is *limited* to combating misconduct in voter registration practices; nor would such a reading be consistent with its plain language.

6. Based on the equitable factors and *Purcell v. Gonzalez*, this Court should permanently enjoin the challenged requirements.

Plaintiffs request a declaratory judgment and an injunction that permits the use of college and university photo ID cards as voter ID even if they lack an issuance date, an expiration date, an expiration date not more than two years after an issuance date, or a signature. In light of *Luft*, if granted, this injunction should specify that any college and university ID that lacks an expiration date must be accompanied by proof of current enrollment in keeping with the voter ID statute. Wis. Stat. § 5.02(6m)(f).

Plaintiffs have demonstrated: (1) that they have suffered and will continue to suffer irreparable injury; (2) that remedies available at law are inadequate to compensate

[7] Formerly codified at 42 U.S.C. § 1971(a)(2)(B).

for that injury; (3) that, considering the balance of hardships between 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).

Defendants briefly argue that *Purcell v. Gonzalez*, 549 U.S. 1 (2006) instructs this Court to stay its hand this close to an election. Dkt. 48 at 15-16. Though this argument is only mentioned in passing and never fully developed, Plaintiffs will address it here. Defendants' argument is completely divorced from the actual animating concerns in the Supreme Court's original decision in *Purcell*, which directed federal courts to weigh "considerations specific to election cases"—namely the risks of confusing voters, increasing administrative burdens, and suppressing voter turnout—amongst the normal equitable factors for issuance of an injunction. 549 U.S. at 4-5. It did not create a per se rule mandating that courts reject any request for injunctive relief as to voting rules brought within a certain timeframe before an election.

First, *Purcell* does not act as a bar to injunctive relief when voters' rights would be *vindicated* and voter confusion would be *reduced* by the injunctive relief sought. Here, the requested relief will enable voter participation and turnout, not deter it, and reduce voter and administrator confusion because all forms of college student photo ID—regardless of whether they meet the challenged requirements—will be valid as voter ID in Wisconsin. Furthermore, the purported risk of voter confusion cannot be invoked by Defendants as support for rules that *disenfranchise and burden* voters. Any confusion over

an injunction that benefits voters and facilitates their participation hurts ***voters***, not Defendants.

Purcell "demands 'careful consideration' of any legal challenge that involves 'the possibility that qualified voters might be turned away from the polls.'" *U.S. Student Ass'n Fdn. v. Land*, 546 F.3d 373, 387 (6th Cir. 2008) (quoting *Purcell*, 549 U.S. at 4). Accordingly, circuit courts have upheld injunctions issued shortly before an election where the challenged law or rule would have the effect of disenfranchising voters. *See League of Women Voters of the United States v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (issuing injunction related to voter registration form less than two weeks before relevant registration deadlines); *Obama for America*, 697 F.3d at 436–37 (affirming entry of preliminary injunction approximately one month prior to specific early voting days at issue); *Land*, 546 F.3d at 387 (six days before Election Day, denying defendants' motion to stay district court's order granting preliminary injunction, issued twenty-two days before Election Day). *Purcell* should be taken at its word; the Supreme Court was deeply concerned with the risk of suppressing turnout. *See* 549 U.S. at 4-5 (citing the "consequent incentive to remain away from the polls"). But here, the requested injunction will *facilitate and increase* voter turnout.

Second, Defendants themselves state that there is a strong state interest in promoting uniformity. The requested injunction would achieve uniformity—uniform acceptance of all college and university ID cards from accredited postsecondary educational institutions as valid, regardless of whether they have an issuance date, an expiration date not more than two years after the issuance date, and a signature.

Third, Defendants have no basis to claim that these proposed changes come too soon before an election. In April, this Court, the Seventh Circuit, and the U.S. Supreme Court issued rulings days before the April 7 primary election. *See Democratic Nat'l Comm. v. Bostelmann*, No. 20-cv-249, 2020 WL 1638374 (W.D. Wis. Apr. 2, 2020), *stayed in part by Democratic Nat'l Comm. v. Republican Nat'l Comm.*, No. 20-1538 (7th Cir. Apr. 3, 2020), *stayed in part*, 140 S.Ct. 1205 (2020). And just yesterday, this Court issued a ruling enjoining a handful of statutes in Wisconsin's election code, including a registration deadline, the absentee ballot receipt deadline, and a ban on electronic transmission of mail-in absentee ballots. *Democratic Nat'l Comm. v. Bostelmann*, No. 3:20-cv-00249, slip op. at *67-69 (W.D. Wis. Sept. 21, 2020). Further, WEC has continually and successfully issued new guidance, developed new policies, and updated its websites and materials throughout the Covid-19 pandemic, trying to prepare for the November general election. In the run-up to the April 7 election, WEC successfully issued over fifty communications and guidance documents to clerks to keep pace with the unprecedented and rapidly-evolving pandemic. *See* 20-cv-249 (W.D. Wis.), dkt. 446, Declaration of Meagan Wolfe ¶ 23. Such extensive and ever-evolving administrative responses to the pandemic ultimately proved manageable for the WEC and did not unduly confuse voters. The same will hold true here, where the requested relief greatly simplifies a complex set of legal specifications for the use of college photo IDs. This will help student voters, administrators, and poll workers. If more complex relief was successfully implemented and communicated to voters in a matter of days before the April 7 election, then this

much more simplified and clarifying relief will be manageable for WEC and municipal clerks to implement and communicate to poll workers and voters alike.

Fourth and finally, the Supreme Court has soundly rejected arguments that increased administrative burdens override First Amendment rights. *See Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 218 (1986) ("[T]he possibility of future increases in the cost of administering the election system is not a sufficient basis here for infringing appellees' First Amendment rights. Costs of administration would likewise increase if a third major-party should come into existence in Connecticut, thus requiring the State to fund a third major party primary. Additional voting machines, poll workers, and ballot materials would all be necessary under these circumstances as well. But the State could not forever protect the two existing major parties from competition solely on the ground that two major parties are all the public can afford."). This principle should apply with maximum force in a case that concerns voters' rights to cast their ballots and where the requested relief will merely require WEC to communicate with municipal clerks in written or verbal guidance and require municipal clerks to do the same with poll workers. Given the simplification of this part of the ID requirement, the net result will overwhelmingly be less burdensome for administrators and voters alike.

CONCLUSION

As Defendants have failed to advance any rational, legitimate, and important state regulatory interests to justify the challenged requirements, Plaintiffs request that this Court grant summary judgment in Plaintiffs' favor, enter a declaratory judgment, and issue a permanent injunction.

Respectfully submitted this 22nd day of September, 2020.

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