

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

THE ANDREW GOODMAN FOUNDATION
and AMANDA SCOTT,

Plaintiffs,

v.

MARGE BOSTELMANN, JULIE M. GLANCEY,
ANN S. JACOBS, DEAN KNUDSON, ROBERT
F. SPINDELL, JR., and MARK L. THOMSEN, in
their official capacities as Wisconsin Elections
Commissioners,

Defendants.

Civil Action No. 19-cv-955

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Pursuant to Federal Rule of Civil Procedure 65(a), Plaintiffs THE ANDREW GOODMAN FOUNDATION and AMANDA SCOTT, for the reasons set forth herein and in the memorandum of law and statement of facts filed concurrently with this Motion as supported by the exhibits and declarations submitted therewith, respectfully move for an order preliminarily enjoining the Commissioners of the Wisconsin Elections Commission and their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, from implementing, enforcing, or giving any effect to Wisc. Stat. § 5.02(6m)(f) in any way that prohibits or discourages the use of an identification card issued by an accredited university, college, or technical college in Wisconsin for the purpose of voting. Specifically, Plaintiffs seek to enjoin the enforcement of the following restrictions on the use of identification cards issued by an accredited university, college, or technical college in Wisconsin for the purpose of voting: (1) that all student IDs contain an issuance date, (2) that all student IDs contain an expiration date within two years of issuance, (3) that all student IDs contain a signature, and (4) that the student present an

accompanying document establishing that he or she is currently enrolled in the college, university, or technical institution (“Student Voter ID Restrictions” or “Restrictions”).

Plaintiffs are entitled to a preliminary injunction because they are substantially likely to succeed on the merits of their claim that the Student Voter ID Restrictions were enacted with the discriminatory purpose of burdening young voters on account of their age and in violation of the Twenty-Sixth Amendment. Plaintiffs will also suffer irreparable harm absent relief as the Student Voter ID Restrictions will burden Plaintiff Scott’s and the Andrew Goodman Foundation’s (“AGF”) constituents’ right to vote in advance of the 2020 General Election and will force AGF to expend and divert resources to assist young voters in overcoming the burdens imposed by the Restrictions. Moreover, traditional legal remedies will not adequately protect their rights; the harm they will suffer absent a preliminary injunction outweighs harm the State will suffer because of one; and a preliminary injunction is in the public interest. *See Girl Scouts of Manitou Council, Inc. v. Girl Scouts of the U.S.A., Inc.*, 549 F.3d 1079, 1086 (7th Cir. 2008).

Accordingly, for the reasons stated herein as well as in the supporting pleadings, Plaintiffs respectfully request that this Court preliminarily enjoin the Student Voter ID Restrictions in advance of the 2020 General Election.

Dated this 22nd day of January, 2020.

Respectfully submitted,

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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

TABLE OF CONTENTS

I. INTRODUCTION 1

II. BACKGROUND 3

 A. History of Election Administration, Voter Turnout, and Youth Voting in Wisconsin..... 3

 B. Increased Republican Political Power and the Enactment of Act 23 and the Student Voter ID Restrictions. 4

 C. Impact of the Student Voter ID Restrictions..... 10

III. ARGUMENT..... 18

 A. Plaintiffs are Likely to Succeed on the Merits. 18

 1. The Student Voter ID Restrictions’ Discriminatory Purpose Is Evident on the Face of Act 23. 20

 2. The Student Voter ID Restrictions are Intentionally Discriminatory. 24

 B. Plaintiffs Will Suffer Irreparable Injury..... 29

 C. Traditional Legal Remedies Will Not Adequately Protect Plaintiffs’ Rights..... 32

 D. The Harm Plaintiffs Will Suffer Absent a Preliminary Injunction Outweighs Harm the State Will Suffer Because of One. 32

IV. CONCLUSION 35

TABLE OF AUTHORITIES

Cases	Page
<i>Am. Amusement Mach. Ass'n v. Kendrick</i> , 244 F.3d 572 (7th Cir. 2001)	33
<i>Anderson v. Martin</i> , 375 U.S. 399 (1964).....	29
<i>Christian Legal Soc'y v. Walker</i> , 453 F.3d 853 (7th Cir. 2006)	32
<i>Common Cause Georgia v. Billups</i> , 439 F. Supp. 2d 1294 (N.D. Ga. 2006).....	30
<i>Frank v. Walker</i> , 196 F. Supp. 3d 893 (E.D. Wis. 2016).....	30, 32, 33, 34
<i>Georgia Coal. for People's Agenda, Inc. v. Kemp</i> , 347 F. Supp. 3d 1251 (N.D. Ga. 2018).....	30, 32
<i>Girl Scouts of Manitou Council, Inc. v. Girl Scouts of the U.S.A., Inc.</i> , 549 F.3d 1079 (7th Cir. 2008)	18
<i>Gresham v. Windrush Partners, Ltd.</i> , 730 F.2d 1417 (11th Cir. 1984)	29
<i>Hayden v. Paterson</i> , 594 F.3d 150 (2d Cir. 2010).....	27
<i>Joelner v. Vill. of Washington Park, Ill.</i> , 378 F.3d 613 (7th Cir. 2004)	34
<i>League of Women Voters of Fla., Inc., v. Detzner</i> , 314 F. Supp. 3d 1205 (N.D. Fla. 2018).....	19, 20, 21, 22
<i>League of Women Voters of Fla. v. Cobb</i> , 447 F.Supp. 2d 1314 (S.D. Fla. 2006)	32
<i>League of Women Voters of N.C. v. North Carolina</i> , 769 F.3d 224 (4th Cir. 2014)	30
<i>N. Carolina State Conference of NAACP v. Cooper</i> , No. 18-CV-1034, 2019 WL 7372980 (M.D.N.C. Dec. 31, 2019)	27, 30
<i>N. Carolina State Conference of NAACP v. McCrory</i> , 831 F.3d 204 (4th Cir. 2016)	26, 29, 30
<i>Newsom v. Albemarle Cty Sch. Bd.</i> , 354 F.3d 249 (4th Cir. 2003)	34

TABLE OF AUTHORITIES

Cases	Page
<i>Ownby v. Dies</i> , 337 F. Supp. 38 (E.D. Tex. 1971).....	19
<i>U.S. v. Texas</i> , 445 F. Supp. 1245 (S.D. Tex. 1978), <i>aff'd sub nom. Symm v. United States</i> , 439 U.S. 1105 (1979).....	19
<i>Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.</i> , 429 U.S. 252 (1977).....	24, 25, 26
<i>Walgren v. Bd. of Selectmen of Town of Amherst</i> , 519 F.2d 1364 (1st Cir. 1975).....	20
<i>Worden v. Mercer Cty. Bd. of Elections</i> , 294 A.2d 233 (N.J. 1972).....	19
 STATUTES	
Const. L. 1105, 1123-1134 (2019).....	19, 20
Wis. Stat. § 5.02(6m)	9
Wis. Stat. § 5.02(6m)(f)	9, 21
Wis. Stat. § 6.79(2)(a).....	22
Wisconsin Statute 5.02(6m)(f).....	15

I. INTRODUCTION

Buoyed by significant gains in the state legislature and executive office, in 2011 the new majority-Republican Wisconsin State Legislature and then-Governor Scott Walker enacted Wisconsin Act 23, a strict photo voter ID law that included the harshest restrictions in the country on using student IDs for voting. The purported justifications for the law were to ward off voter fraud, increase confidence in Wisconsin's election system, and to conform Wisconsin's voting requirements to requirements in other states. The targeted set of restrictions on the use of student IDs—and only student IDs—for voting required that all student IDs contain an issuance date, an expiration date within two years of issuance, a signature, and an accompanying document establishing that the student is currently enrolled in a college, university, or technical institution (“Student Voter ID Restrictions” or “Restrictions”). These Restrictions target the very type of photo IDs that Wisconsin's newest and youngest voters are most likely to present to vote, and, in doing so, erect barriers to voting that no other segment of the voting population faces. Significantly, the majority of the student IDs issued in Wisconsin do not meet the requirements imposed by the Student Voter ID Restrictions and, tellingly, *none* of the student IDs issued in Wisconsin met those requirements at the time Act 23 became law. As a result, the Restrictions have had a severe impact on student voter turnout and registration in Wisconsin. Thousands of young Wisconsin voters, including Plaintiff Amanda Scott and constituents of Plaintiff Andrew Goodman Foundation (“AGF”), must overcome the obstacles to voting erected by Act 23, and many young voters have been—and will continue to be—deterred from voting altogether. Turnout among young Wisconsin voters has declined markedly relative to the rest of the country and student voter registration has declined relative to enrollment, which is precisely what the sponsors of Act 23 should have expected and no doubt intended when the legislature enacted the Student Voter ID Restrictions.

The history underlying Act 23 shines a bright light on the fact that the law was not designed to address voter fraud, confidence, or conformity but instead was designed for the cynical purpose of securing electoral advantage by suppressing Wisconsin's newest and youngest voters who, as a general population, tend to strongly support Democratic candidates. Indeed, not only was the desire for partisan gain at the expense of Wisconsin's youngest voters publicly expressed by Republican sponsors and supporters of the law, but it is also the only logical explanation for the imposition of the Student Voter ID Restrictions. Voting fraud has long been virtually non-existent in Wisconsin, and there has never been any pattern of wrongful voting implicating students. Likewise, prior to Act 23's passage, voters expressed confidence, not concern, about Wisconsin's election system. And the harsh Restrictions on student voting IDs do not bring Wisconsin into conformity with other states, but rather make it a national outlier. Equally revealing of Act 23's true purpose, the Restrictions do not apply to any other authorized form of ID for voting and are indisputably unnecessary to determine the identity of voters. Absent intervention from this Court, the discriminatory Student Voter ID Restrictions will continue to harm Wisconsin's young voters and Plaintiffs in the upcoming 2020 General Election, place severe burdens on the right of young Wisconsin citizens to vote, and distort the outcomes of elections throughout the state. All of this will occur without advancing any legitimate state interest. Because the Student Voter ID Restrictions are motivated, at least in part, by discriminatory animus to burden the right to vote of young voters, Plaintiffs and thousands of young voters face irreparable harm. There is no adequate remedy at law, the harm to Plaintiffs absent a preliminary injunction outweighs any conceivable harm to Defendants, and a preliminary injunction is in the public interest. Accordingly, Plaintiffs respectfully request that the Court enjoin the State from enforcing the Student Voter ID Restrictions in advance of the upcoming

November general election.

II. BACKGROUND

A. History of Election Administration, Voter Turnout, and Youth Voting in Wisconsin.

Prior to 2011, Wisconsin was a national leader in voting. The state had exceptional overall voter turnout, one of the highest turnout rates for young voters in the country, and a largely unblemished history of administering elections effectively and fairly. The voting regime in Wisconsin inspired such a high level of voter confidence that the state ranked among the top three states in voter turnout nationally in each presidential general election year from 2000 to 2008. Ex. 1 at 11 (Expert Rpt. of Dr. A. Lichtman).¹ And, at least 90 percent of Wisconsin voters reported being “very satisfied” with their voting experience, with Wisconsin consistently ranking in the top five states for electoral performance in one of the leading measures of election administration, the Pew Charitable Trust’s electoral performance index. *Id.* The State’s success in generating high voter turnout was exemplified by its turnout averages for young voters, which far exceeded national averages from 2000 to 2008. *Id.* at 11, 14-15.

While youth voting in Wisconsin was strong, it was not equally divided between Republican and Democratic candidates. Consistent with national trends, young voters in Wisconsin were also voting increasingly more Democratic. *Id.* at 11-13; Decl. of Sen. Cullen ¶ 7 (“Cullen Decl.”) (“young people and individuals with experience in higher education tend to vote for Democratic candidates”); Decl. of Sen. Jauch ¶ 6 (“Jauch Decl.”) (same); Decl. of Sen. Miller ¶ 8 (Miller Decl.) (same). In the 2000 presidential election, for example, 46 percent of voters ages 18 to 29 supported Al Gore, compared to 42 percent who voted for Republican candidate George W. Bush. Ex. 1 at 11-13. Similarly, in 2004, 57 percent of young voters voted for Democrat John

¹ All citations to Exhibits are materials attached to the Declaration of Amanda R. Callais.

Kerry, compared to 41 percent who supported George W. Bush. *Id.* In 2008, the presidential election immediately preceding the passage of Act 23, 61 percent of young voters supported Barack Obama, with just 38 percent supporting John McCain. *Id.* That same year, for the first time since 1993, the Democratic Party gained control of the Wisconsin State Legislature. Ex. 4 at 1 (Wisconsin Policy Forum Research Report).

B. Increased Republican Political Power and the Enactment of Act 23 and the Student Voter ID Restrictions.

Across the country, the 2010 midterm elections brought success for large numbers of Republican candidates in state and federal elections. Ex. 1 at 17 (discussing national Republican gains and Republican success in Wisconsin); Ex. 5 (Why Democrats Lost the House to Republicans – CBS News). Wisconsin was no exception, as Republicans regained control of the state legislature and maintained control of the governor’s office. Ex. 1 at 17. With Republicans now holding the reins of power in the state, they were eager to protect against a repeat of the 2008 elections when, driven by record turnout among young voters, Democrats took control of the legislature. *See id.* That very recent memory gave Republican members of the legislature a strong incentive to decrease young voter participation. Cullen Decl. ¶ 7; Jauch Decl. ¶ 6; *see also* Ex. 1 at 3-4, 6-17. Within six months of the change in party control, citing voter fraud, voter confidence, and conformity as justifications, the legislature promptly enacted Act 23, a photo voter ID law that also included sweeping changes to Wisconsin’s early voting laws, registration requirements, and straight-ticket voting. Ex. 1 at 16-17, 22.

Act 23 was not the legislature’s first attempt to pass a voter ID law. *Id.* at 16. Under the auspices of voter fraud, Republicans in the legislature had attempted to pass a photo voter ID bill in 2005 after John Kerry defeated George W. Bush in the 2004 presidential election in Wisconsin. *Id.* The bill was vetoed by Democratic Governor Jim Doyle, and the U.S. Attorney’s Office and

the FBI investigated at length the underlying voter fraud claims, including claims of voter impersonation. *Id.* By the end of 2005, all claims of voter fraud had been debunked and no cases of voter impersonation were uncovered. *Id.* In the intervening years between 2005 and 2011, several more studies and investigations of voter fraud were conducted, including one by the conservative Heritage Foundation. *Id.* at 18. None of them found any evidence of voter impersonation by a student or anyone else. *Id.* By the time Act 23 was proposed, it was well-established that “[t]here [were] few states in which allegations of voter fraud ha[d] received greater scrutiny than Wisconsin—and few municipalities in which they ha[d] received greater attention than the City of Milwaukee.” *Id.* at 18 (quoting Steven H. Huefner et al., *From Registration to Recounts: The Election Ecosystems of Five Midwestern States*, 118 *The Ohio State University Moritz College of Law* (2007)). The upshot of the attention and scrutiny was a general recognition that little evidence of voter fraud and no evidence of voter impersonation had emerged in Wisconsin. *Id.*

Notwithstanding the absence of any evidence of voter fraud and the high level of confidence that Wisconsinites had in the state’s electoral system, the Republican majority introduced Act 23 as Senate Bill 6 on January 14, 2011, and replaced it by Substitute Amendment 1 on February 24, 2011. Ex. 6 at 1-15 (Legislative History). A parallel bill, Assembly Bill 7, was introduced in the General Assembly on January 27, 2011. Ex. 1 at 22; Ex. 6 at 16-17. The assembly bill, as amended, was eventually codified as Act 23 after its passage on May 19, 2011. Ex. 1 at 22; Ex. 6 at 16. While the original senate and house bills created a new, unnecessary barrier to voting for all voters, the barrier was highest for students, as the bills did not authorize any kind of student ID for voting. As a result, the bills were strongly opposed by the Board of Regents of the University of Wisconsin System. Ex. 1 at 22; Ex. 7 at 5-9 (Feb. 11, 2011 meeting), 34-36 (Mar. 10, 2011

meeting) (Board of Regents Meeting Minutes); *see also* Ex. 8 at 2-3 (Remarks by Kevin Kennedy, Director and General Counsel of Wisconsin's non-partisan Government Accountability Board ("GAB") to Wisconsin Senate Committee on Transportation and Elections, dated Jan. 26, 2011) (discussing problems with bills generally and problems related to students specifically); Ex. 9 at 2 (letter from Kevin Kennedy, Director and General Counsel of GAB, to the General Assembly Committee on Elections and Campaign Reform, dated May 3, 2011) (describing the photo voter ID law as creating "artificial barriers" for students). On February 11, 2011, during a meeting of the Board of Regents, President Charles Pruitt noted that the Board had a "clear position" on Act 23: "The failure to include student IDs as an acceptable form of identification would have a serious and deleterious effect on the right of students to vote." Ex. 7 at 5 (Feb. 11, 2011 meeting). For that reason, the Board "call[ed] on the authors to amend the legislation to allow student IDs to be one of the permitted forms of voter identification at the polling place." *Id.* On March 10, 2011, the Board then adopted a resolution opposing the legislation without a student ID provision because the requirements were "likely to disproportionately disenfranchise certain populations which may lack valid identification, including college students, who research has shown are unlikely to obtain new drivers licenses or photo IDs with their university address, or who may have recently relocated to a campus community prior to an election." *Id.* at 36 (Mar. 10, 2011 meeting); Ex. 1 at 22.

On May 3, 2011, student IDs were included in Assembly Bill 7 through a substitute amendment, but in a form that ensured students would continue to face the highest barriers to voting. Ex. 1 at 22; Ex. 6 at 18-19. Specifically, the amendment that established student IDs as an acceptable form of photo ID included enough restrictions on the acceptable types of student IDs as to make the amendment little more than an empty, cynical gesture. The amendment provided that a student could use a student ID to vote only if the ID: (1) was issued by an accredited college

or university in Wisconsin, (2) was currently unexpired, (3) had an expiration date no more than four years after the date of the election, (4) contained the student's date of birth and current address, and (5) was signed by the student. Ex. 1 at 23-14; Ex. 6 at 18-19. The utter impracticality of these restrictions was explained by the Director and General Counsel of GAB, Kevin Kennedy, who said in a May 3, 2011 letter to the General Assembly Committee on Elections and Campaign Reform, "[p]resently no student identification card meets the standards proposed in the bill: current address, date of birth and signature of the student. It is highly unlikely that universities and colleges will adopt these standards because of student security concerns." Ex. 1 at 23; Ex. 9 at 1. Director Kennedy also explained to the Committee that "[t]his is a demographic that has the lowest voter participation rate of all age groups. In order to cultivate engaged, active citizens, we need to facilitate voting among our youth rather than imposing artificial barriers to participation." Ex. 1 at 23; Ex. 9 at 2.

On May 9, 2011, Republicans in the state legislature offered a second amendment to Assembly Bill 7. Although this amendment dropped the birth date and current address requirements, it retained the signature requirement despite Director Kennedy's warning that colleges and universities were unlikely to include student signatures on IDs for security reasons. Ex. 6 at 20-21. Further, the amendment included additional and redundant requirements, including requiring students to prove current enrollment by providing a tuition fee receipt or letter from their school, even though the bill already required the ID to be unexpired. *Id.* at 21. Likewise, the amendment added a requirement that the ID list the card's issuance date and shrunk the four-year expiration window to two years. *Id.* Of all the restrictions on student IDs, this latter one may be the most egregious, as Republicans in the legislature knew full well that the colleges and universities that issue student IDs typically use expiration dates in excess of two years. Jauch

Decl. ¶ 6. As Representative Jauch explained to the Joint Committee on Finance, “[t]here is a two-year limit here. . . . It is the only place in this bill and the only group of citizens in the state of Wisconsin that have to actually go through another process if they are in school for four years in order to exercise their right to vote. . . . Why can’t we accept the fact that the university is issuing a four-year card?” Ex. 10 at 13:21-22, 14:1-4, 10-11 (May 9, 2011 Joint Committee on Finance Meeting Transcript). Ultimately, of course, these Restrictions meant that most student photo IDs would be useless for voting purposes.

Serious consideration of Assembly Bill 7 began on May 11, with the bill passing just over a week later. Ex. 1 at 24. As a result, there was little time for debate, discussion, and analysis of the final bill, despite its obvious implications for Wisconsin’s fundamental right to vote. In particular, the General Assembly held only two public hearings for Assembly Bill 7, a sharp contrast to earlier attempts to pass a photo voter ID law in 2005. Ex. 1 at 24 (noting that the General Assembly held five public hearings in conjunction with the 2005 attempt to pass a voter ID bill); Jauch Decl. ¶ 4; Miller Decl. ¶ 5. The inadequacy of the overall procedure was flagged contemporaneously, to no avail, in GAB Director Kennedy’s letter to the Committee on Elections and Campaign Reform:

There has been no time for the careful evaluation and vetting needed to ensure the best options for voters and election officials is enacted. There are numerous other provisions in the bill which will significantly alter the administration of elections and put additional stress on an already overburdened system. I urge you to give careful consideration to my suggestions and seek additional input from the public and local election officials before proceeding with this legislation.

Ex. 1 at 24; Ex. 9 at 2.

The legislature also voted down (along party lines) several amendments designed to ease Act 23’s burdens on students specifically and Wisconsin voters generally, with no explanation.

Ex. 1 at 25 - 27; Ex. 6 at 22-62. Notably, the legislature refused to authorize mobile DMV stations to assist with the issuance of compliant state IDs on college and university campuses, a substitute amendment for student IDs that would have authorized any unexpired student ID card with no additional restrictions for use in voting, and an affidavit of identity. Ex. 1 at 25-26; Ex. 6 at 22-62.

The final version of the bill limits the photo IDs accepted for voting to a list of ten: a Wisconsin state driver's license, Wisconsin state identification card, U.S. uniformed service ID card, a U.S. passport (either unexpired or expired after the date of the most recent general election), U.S. naturalization certificate issued not earlier than two years before the current election, an unexpired Wisconsin driving receipt, an unexpired Wisconsin state identification card receipt, an ID card issued by a federally recognized Indian tribe in Wisconsin, or a student ID from an accredited university or college in Wisconsin, or a technical college in Wisconsin that is a member of the technical college system. Wis. Stat. § 5.02(6m). While Act 23 recognizes student IDs from certain institutions as an acceptable form of photo ID, it places severe restrictions on the type of student IDs that are accepted; no similar restrictions are placed on the other forms of identification. Specifically, unlike the other acceptable forms of photo ID, a student ID can be used to vote only if it contains the issuance date, an expiration date no more than two years after the issuance date, and the holder's signature. Wis. Stat. § 5.02(6m)(f). And, even if the student ID complies with the statutory requirements, the student ID will be accepted only if the holder can affirmatively prove through other documentation that he or she is currently enrolled in the school. *Id.* At the time Act 23 was passed, the Student Voter ID Restrictions were the most stringent restrictions on student IDs of any photo voter ID law in the country, and they continue to be to this day. Ex. 1 at 3, 6-8.

C. Impact of the Student Voter ID Restrictions.

Act 23 and the Student Voter ID Restrictions first took effect in the 2016 presidential election, and the results were striking. Young voter turnout plummeted from 2012, with turnout for voters ages 18 to 24 declining by 8.9 percentage points and 15.9 percent. Ex. 1 at 30; Ex. 2 at 10 (Expert Rpt. of Dr. B. C. Burden); *see also* Ex. 3 at 6 (Expert Rpt. of Dr. K. R. Mayer). This was in sharp contrast to the decline in turnout among persons age 25 or greater, which declined by only 2.4 percentage points and 3.2 percent. Wisconsin's decline in young voter turnout is even more striking because national turnout among young voters *increased* by 1.8 percentage points and 4.3 percent. Ex. 1 at 30; Ex. 2 at 9-10; Ex. 3 at 6.

The decline in turnout among Wisconsin students was particularly concerning and demonstrated that the sponsors of Act 23 had achieved their real objective. While student turnout rose nationally between 2012 and 2016 by 3.2 percentage points, all sixteen of the Wisconsin institutions surveyed had changes in turnout that were below the national median. Ex. 1 at 31; Ex. 2 at 10; Ex. 3 at 6-7. Indeed, twelve of fifteen institutions of higher education experienced turnout declines from 2012 to 2016, ranging from -0.6 percent to -11.0 percent, with a mean of -3.6 percent, compared to a nationwide mean of +3.5 percent. Ex. 1 at 30; Ex. 2 at 10. Student turnout at UW-Madison dropped by 4.3 percentage points, UW-Superior fell by 6.6 points, UW-Parkside fell by 4.1 points, and UW-Whitewater fell by 9.4 points. Ex. 2 at 10. Private colleges around the state also saw declines. Turnout among students at St. Norbert College, for example, fell by 8.0 points, Madison Area Technical College fell by 3.9 points, and Edgewood College dropped 7.3 points. *Id.* at 10. In contrast, nationally student voter turnout at 4-year public institutions rose by 3.8 percent, and at 4-year private institutions it rose by 5.6 percent. Ex. 3 at 6. Overall, Wisconsin was one of three states that had the largest decreases, on average, in young-voter turnout, ranking 38th out of 39 states in the median institutional turnout change between 2012 and 2016. Ex. 1 at

30; Ex. 3 at 6.

To be sure, not all decreases in turnout can be attributed exclusively to the Student Voter ID Restrictions, but experts who have analyzed the issue agree that at least part of this decline cannot be explained by any factor other than the Student Voter ID Restrictions.² Ex. 1 at 31; Ex. 2 at 10-11; Ex. 3 at 1, 9. The depressive trends from 2016 continued in Wisconsin in 2018 despite differences in the competitiveness and mobilization efforts of campaigns. “Nationwide turnout among all eligible voters in 2018 was 50.3%, the highest rate in a midterm election in more than a century and the highest rate since constitutional amendments provided for the direct election of U.S. Senators and women’s suffrage.” Ex. 2 at 11. Nationally this resulted in an increase of 19.4 percentage points in youth voting in 2018 compared to the previous 2014 midterm election. Ex. 2 at 11. In contrast, Wisconsin colleges saw some of the smallest increases in the nation with Wisconsin institutions ranking 37th out of 42 states between 2014 and 2018 for student turnout. Ex. 2 at 11; Ex. 3 at 8 (noting that, in addition to overall decreases, turnout rates of on-campus student voters in Wisconsin increased well below national rates).

Likewise, the impact of the Student Voter ID Restrictions was present in student voter registrations, with on-campus student registrations in 2016 dropping by 10.1 percent from 2012 and 19.4 percent from 2014 to 2018. Ex. 3 at 5. Between 2012 and 2018, student registrations in Wisconsin declined 28.2 percent. *Id.* These decreases are far larger than the decline in enrollments over the same time period and are consistent with well-accepted political science theories that more difficult voting processes such as the Student Voter ID Restrictions deter otherwise eligible individuals from registering as well as voting. *Id.* Similar disparities were also visible on the

² Other factors such as the competitiveness of campaigns and mobilization efforts, for example, also impact turnout. Ex. 2 at 10-11.

ground in the 2016 and 2018 elections. Specifically, Dr. Mayer analyzed the rates of provisional ballots cast for lack of ID in 2016 and 2018 and found that student wards are disproportionately overrepresented in provisional vote counts. Ex. 3 at 10. Indeed, in 2016, 4.5 percent of provisional ballots were cast in student wards although these wards comprise only 2 percent of the total number of registrants in the state. *Id.* This demonstrated over-reliance on provisional ballots by youth voters is further problematic because provisional ballots cast by young people are rejected at higher rates than other voters. In 2018, this disparity was even more pronounced as 11.2 percent of provisional ballots were cast in student wards even though the wards held only 1.6 percent of registrants. *Id.* This is consistent with a report compiling observations from non-partisan poll observers in the 2018 midterm election, in which the League of Women Voters of Wisconsin reported that polling locations “with student populations were more than twice as likely to report voters having difficulty producing a photo ID than sites without such populations.” Ex. 11 at 19 (League of Women Voters Report). Additionally, none of these figures captures the individuals who are deterred or prevented from voting as a result of Act 23. In two counties alone—Dane and Milwaukee, both of which are home to over a dozen colleges and universities including the University of Wisconsin-Madison, University of Wisconsin-Milwaukee, and Marquette University—up to 21,800 individuals were deterred or prevented from voting as a result of Act 23. Ex. 12 (Voter Identification and Nonvoting in Wisconsin – Election Law Journal).

The declines and disparities in young-voter and student-voter registration, turnout, and provisional voting are unsurprising. Approximately 300,000 students are enrolled in Wisconsin colleges, with approximately 59.4% of individuals who complete high school enrolling in a college immediately after graduation and 67.9% enrolling at some point after graduating from high school. Ex. 2 at 7; *see also* Ex. 3 at 2 (estimating at least 230,000 students enrolled at 4-year accredited

public or private colleges). “Because such a large share of young adults are enrolled in postsecondary educational institutions, any voting requirements that affect college students in Wisconsin have immediate implications for young voters (i.e., voters ages 18 to 29).” Ex. 2 at 7. And, as the legislature was well-aware prior to Act 23’s passage, young adults are disproportionately less likely to have any compliant ID to vote outside of a student ID. *Id.* at 8 (explaining that research linking records from Wisconsin’s statewide voter registration database with information on cardholders from the Department of Transportation limited to student wards suggests that 21 percent of Wisconsin college students do not have a Wisconsin driver’s license; in contrast, only 8 percent of all Wisconsin voters lack a Wisconsin license); Ex. 3 at 3; *see also* Ex. 1 at 23; Ex. 7 at 36 (Mar. 10, 2011 meeting); Decl. of D. Goodman ¶ 11 (“Goodman Decl.”) (noting that many students do not have compliant photo ID); Decl. of B. Canup ¶ 8 (“Canup Decl.”) (explaining that thousands of out-of-state students did not have compliant photo ID); Decl. of C. Attaway ¶ 8 (“Attaway Decl.”) (explaining that many students, particularly out-of-state students, reported not having compliant forms of voting ID when registering to vote in 2018); Decl. of E. Locke ¶¶ 3, 9 (Locke Decl.”) (reporting that as an out-of-state student voter, she did not have a Wisconsin driver’s license or accessible passport to vote in Wisconsin elections). This deficiency is especially true for out-of-state students, who numbered 37,735 in the University of Wisconsin System in the 2017-2018 academic year and 33,033 at the time of Act 23’s passage. Ex. 1 at 27-28; *see also* Ex. 3 at 3. These students are, of course, much less likely to possess Wisconsin driver’s licenses or other state issued Wisconsin photo identification than in-state students. Ex. 1 at 27-28; Ex. 3 at 3; *see also* Ex. 2 at 8-9; Goodman Decl. ¶ 11; Attaway Decl. ¶ 8; Locke Decl. ¶¶ 3, 9. To put these numbers in context, the Wisconsin election margin in the 2016 presidential election was razor-thin: less than 23,000 votes. *See* Ex. 19 (Voter ID Study Shows Turnout Effects in 2016

Wisconsin Presidential Election). The number of students directly impacted by Act 23 is thus clearly outcome-determinative and their disenfranchisement is a threat to election integrity and public confidence in elections.

Before Act 23 was passed, the GAB Director explicitly told the legislature that the Student Voter ID Restrictions were “barriers to participation,” Ex. 9 at 2, and the Lead Election Specialist at GAB explained that “the legislature deliberately placed an extra burden on college, university, and tech school students.” Ex. 1 at 28. Senator Jauch explained to the Joint Committee on Finance that, as a result of the Student Voter ID Restrictions, students would “have to take another step more than anybody else,” Ex. 10 at 13:19-21, while Senator Hansen made clear that “[i]t’s going to very, very difficult for our college students.” Ex. 13 at 9:14-16, 12:19-22, 13:1-8 (May 17, 2011 Floor Session Transcript). And there is little question why the Student Voter ID Restrictions present a barrier to voting: only four of the thirteen four-year University of Wisconsin System institutions uniformly provide student IDs that are compliant with the Student Voter ID Restrictions.³ Ex. 2 at 12 (“A key reason why young people have difficulty overcoming the costs of the voter ID law and, more specifically, the student ID requirements, is that only some of the ID cards provided to students enrolled in Wisconsin colleges are compliant with Act 23.”); Ex. 14 (Common Cause study); *see also* Ex. 1 at 29 (citing study from Wisconsin Center for Investigative Journalism which notes that as late as October 2018 “[o]f the 13 University of Wisconsin four-year campuses, only four provide campus-issued student IDs that are compliant for voting” and “[t]he other nine campuses, including UW-Madison and UW-Milwaukee, failed to qualify under

³ This number also remains in flux as the University of Wisconsin System recently restructured its two and four-year college institution system, which had the impact of requiring that two-year institutions in the UW-system which had issued a compliant ID at the time that the Common Cause study was conducted, adopt the four-year institution ID, most of which are not compliant with the Student Voter ID Restrictions. Ex. 2 at 12.

the guidelines set by the voter ID law”); Ex. 3 at 2 (noting that only four UW campuses’ standard IDs are qualifying student IDs). Similarly, only eight of the twenty-three private colleges and universities issue compliant student IDs. Ex. 2 at 12; Ex 3 at 2. At least two of Wisconsin’s fifteen technical colleges do not provide student IDs that comply with Act 23’s requirement. Ex. 15 (Non-compliant Technical College IDs). Demonstrating the severity of the problem, Waukesha County Technical College does not even inform students that they cannot rely on their student IDs to vote and it also does not provide a second, compliant ID upon request. Ex. 16 (Letter from Jane Kittel, Vice President of Finance of Waukesha County Technical College) (stating that Waukesha County Technical College “do[es] not have any documents to show whether there is a process in place for students to obtain a student ID that is compliant with Wisconsin Statute 5.02(6m)(f)”). All told, students in approximately half of the colleges, universities, and technical colleges in the state are issued student IDs that do not comply with the Student Voter ID Restrictions and cannot be used to vote.

The fact that some of the institutions without compliant IDs issue a second, compliant ID upon necessity and request does not overcome the burdens of the Student Voter ID Restrictions. As an initial matter, many students are unaware that their student IDs do not comply with Act 23, which makes the availability of a second, compliant ID meaningless because students, thinking that their non-compliant ID is sufficient, unwittingly show up to vote without having obtained a second, compliant ID. Ex. 2 at 13 (“Because of the . . . lack of knowledge students may possess about what is needed to vote, many students are likely to be unpleasantly surprised when they attempt to vote but lack an acceptable ID that includes a signature and appropriate issuance and expiration dates.”); Locke Decl. ¶ 14 (explaining that “[m]ost students . . . were not aware that their Wiscards did not qualify as photo identification under Act 23”); Rohrer Decl. ¶¶ 8, 12 (“UW

Madison students did not know that they could not vote with their Wiscard.”); *see also* Ex. 11 at 19-20 (“At a polling site in the City of Madison, voters thought they could use their Wiscard student IDs to vote.”); Ex. 3 at 2-3 (discussing informational burdens on students); Canup Decl. ¶ 10 (“Students were consistently confused with what they could use to vote. . . . It was [] common to meet students who did not have a compliant photo ID for voting purposes and believed they could vote using their Wiscard.”). At that point it is often too late or impractical to obtain a second, compliant ID. For those students who are aware that their student IDs are non-compliant, the barriers to obtaining a compliant ID are compounded because these young voters lack the experience and resources to navigate all aspects of the voting process. Ex. 2 at 7 (“For young people who are in the midst of establishing a voting habit, costs loom larger than for older individuals.”). Indeed, the Student Voter ID Restrictions and the necessity of obtaining a second, compliant ID have “created confusion among students,” Decl. of N. Elmikashfi ¶ 16 (“Elmikashfi Decl.”); *see also* Canup Decl. ¶ 11; Attaway Decl. ¶¶ 7-11, and discouraged others from voting, *see* Elmikashfi Decl. ¶ 17; Decl. of J. Gutman ¶ 7 (“Gutman Decl.”). The reason for this is plain: even when schools issue a second, compliant ID, “students must typically make a separate trip to an ID office on campus to acquire the second form of ID.” Ex. 2 at 12; Ex. 3 at 2-3; Elmikashfi Decl. ¶ 13; Locke Decl. ¶ 9; Attaway Decl. ¶ 11; Rohrer Decl. ¶ 14. This trip often requires significant time and effort, making students less likely to timely complete it prior to voting. Ex. 2 at 13 (“Because of the extra administrative steps required to acquire the second ID . . . many students are likely to be unpleasantly surprised when they attempt to vote but lack an acceptable ID that includes a signature and appropriate issuance and expiration dates.”); Locke Decl. ¶¶ 9, 10 (explaining that she had “to walk 45 minutes each way to obtain this second compliant ID”); Elmikashfi Decl. ¶ 13 (explaining that, even when students walked to the student ID office, there

were “frequently long lines”); Canup Decl. ¶ 10 (explaining that “class schedules, homework, jobs, extracurriculars, and social engagements” make it difficult for students to obtain the second, complaint student ID). Moreover, because this ID serves a single purpose—proof of identity for voting—it is, at most, used only bi-annually by students. As a result, students often have difficulty keeping track of the ID, forget to bring it to vote, or lose it altogether and have to obtain a new compliant ID to vote. Locke Decl. ¶ 10; Canup Decl. ¶ 11. Others struggle to understand or remember that this voting-compliant, single-purpose, second student ID expires—by design—every two years. Rohrer Decl. ¶ 12. Students who are able to obtain the ID every two years are still not out of the woods, as they must also know of the need to obtain proof of current enrollment at their school and actually go about obtaining that proof. Elmikashfi Decl. ¶ 17.

The insufficiency of a second, compliant ID on campuses is further evidenced by what happened when UW-Madison attempted to mitigate the burdens of the Student Voter ID Restrictions in the 2016 and 2018 elections by providing computers and paper printers at seven on-campus voting sites to provide temporary paper IDs for students who arrived at the polls and discovered they lacked ID for voting. Ex. 2 at 13-14; Canup Decl. ¶ 8; Locke Decl. ¶ 16; Rohrer Decl. ¶ 14. UW-Madison issued a total of 989 IDs on election day in 2016 and 1,189 on election day in 2018. Ex. 2 at 13-14. Only 345 and 322 of these were plastic cards issued in the student ID office. *Id.* at 13. The majority of students who arrived at polling locations were surprised to realize that their student IDs did not comply with the law and, consequently, they would need to obtain a temporary paper ID. *Id.*; *see also* Ex. 11 at 19-20; Locke Decl. ¶ 14; Rohrer Decl. ¶ 14. Students who learned about the requirements at the polls had to wait in an additional line to receive an ID; because of time constraints and other reasons, some of these students ended up leaving polling places without voting. *See* Ex. 11 at 19, 21.

Given that the number of IDs printed on election day increased between 2016 and 2018, it appears that students' ID needs have not been satisfied over time through the university's or other efforts. Ex. 2 at 14. To put the need in perspective: at least 16,806 UW-Madison students voted in the 2016 election, *id.* at 13-14, which means that the 989 students who were issued voting-compliant IDs on election day represent one out of every seventeen students who voted, *id.* at 14. At least 18,470 UW-Madison students voted in the 2018 election; the 1,189 IDs issued on election day amount to one of every 16 students who voted. *Id.* at 13-14. Without the Student Voter ID Restrictions, these and other students could have simply used their standard campus Wiscards, which they carry with them on a regular basis, to vote. *Id.* at 14.

It is evident that the Student Voter ID Restrictions were not only intended to burden young voters, but they have done so in every election since the effective date of Act 23.

III. ARGUMENT

Plaintiffs are entitled to a preliminary injunction because (1) they are substantially likely to succeed on the merits; (2) they will suffer irreparable harm absent relief; (3) traditional legal remedies will not adequately protect their rights; (4) the harm they will suffer absent a preliminary injunction outweighs harm the State will suffer because of one; and (5) a preliminary injunction is in the public interest. *See Girl Scouts of Manitou Council, Inc. v. Girl Scouts of the U.S.A., Inc.*, 549 F.3d 1079, 1086 (7th Cir. 2008).

A. Plaintiffs are Likely to Succeed on the Merits.

Plaintiffs are likely to prevail on their claim that the Student Voter ID Restrictions discriminate against young voters on account of age, in violation of the Twenty-Sixth Amendment. As an initial matter, the intent to discriminate is evident on the face of Act 23 because the Student Voter ID Restrictions target only the ID that young voters are disproportionately likely to have and use to vote, a student ID. Moreover, the Student Voter ID

Restrictions (1) serve no discernible purpose, other than to suppress the youth vote, and, as intended, (2) have depressed young voter participation in multiple Wisconsin elections, and further, (3) were enacted as a result of procedural abnormalities and substantive deviations that demonstrate the State's intent to burden young voters.

The Twenty-Sixth Amendment forbids abridging or denying the voting rights of young voters by singling them out for disparate treatment. *See League of Women Voters of Fla., Inc., v. Detzner*, 314 F. Supp. 3d 1205, 1222 (N.D. Fla. 2018); *see also Ownby v. Dies*, 337 F. Supp. 38, 39 (E.D. Tex. 1971) (holding Twenty-Sixth Amendment violated by statute that required heightened standard for individuals under 21 to establish residency for voting); *U.S. v. Texas*, 445 F. Supp. 1245, 1257 (S.D. Tex. 1978), *aff'd sub nom. Symm v. United States*, 439 U.S. 1105 (1979) (same); *Worden v. Mercer Cty. Bd. of Elections*, 294 A.2d 233, 245 (N.J. 1972) (same).

Although commonly known as the Amendment that lowered the voting age to 18, its text is far more expansive and reflects that its goal “was not merely to empower voting by our youths but . . . affirmatively to encourage their voting, through the elimination of unnecessary burdens and barriers, so that their vigor and idealism could be brought within rather than remain outside lawfully constituted institutions.” *Worden*, 294 A.2d at 243. For example, consistent with this history, the Twenty-Sixth Amendment tracks the language of the Fifteenth Amendment, which forbids intentional efforts to deny or abridge the right to vote on account of race. *Id.*; compare U.S. Const. amend. XXVI, with U.S. Const. amend. XV; *see also* Yael Bromberg, *Youth Voting Rights and the Unfulfilled Promise of the Twenty-Sixth Amendment*, 21 U. Pa. J. Const. L. 1105, 1123-1134 (2019) (explaining the legislative history of the Twenty-Sixth Amendment). Moreover, the Senate Report referring the Twenty-Sixth Amendment to the states for ratification, explained:

[F]orcing young voters to undertake special burdens – obtaining absentee ballots, or traveling to one location in each city, for example – in order to exercise their right to vote might well serve to dissuade them from participating in the election. This result, and the election procedures that create it, are at least inconsistent with the purpose of the Voting Rights Act, which sought to encourage greater political participation on the part of the young; such segregation might even amount to a denial of their 14th Amendment right to equal protection of the laws in the exercise of the franchise.

S. REP. NO. 92-26, at 14 (1971) (emphasis added) (accompanying S.J. Res. 7, 92d Cong. (1971)).

Thus, a state similarly cannot constitutionally target young voters with special burdens that make it harder for them to access the franchise, which is precisely what the State has done here with the enactment of the Student Voter ID Restrictions.

1. The Student Voter ID Restrictions’ Discriminatory Purpose Is Evident on the Face of Act 23.

The discriminatory purpose of the Student Voter ID Restrictions is plain on the face of Act 23 because the Restrictions target only the ID that young voters are disproportionately likely to use to vote—a student ID—and serve no discernible purpose other than to suppress the youth vote. Indeed, when a law is “unexplainable on grounds other than age, because it bears so heavily on younger voters than all other voters,” and the justifications for the law “reek of pretext,” the law is “intentionally and facially discriminatory” in violation of the Twenty-Sixth Amendment. *League of Women Voters of Fla., Inc.*, 314 F. Supp. 3d at 1222; *see also Walgren v. Bd. of Selectmen of Town of Amherst*, 519 F.2d 1364, 1367 (1st Cir. 1975) (finding that where a law is “imposed solely or with marked disproportion on the exercise of the franchise by the benefactors of [a particular] amendment,” it is likely unexplainable on other grounds and is discriminatory). That is precisely the case with the Student Voter ID Restrictions.

The Student Voter ID Restrictions single out student IDs for different treatment than all other types of acceptable IDs under Act 23. Ex. 10 at 13:22 - 14:3 (Sen. Jauch) (“It is the only

place in this bill and the only group of citizens in the state of Wisconsin that have to actually go through another process if they are in school for four years.”). Specifically, the issuance date, expiration date, signature, and proof of enrollment requirements apply only to identification cards issued by “a university or college . . . or by a technical college” and do not apply to any other type of identification authorized by Act 23. Wis. Stat. § 5.02(6m)(f). As the legislature was undoubtedly aware, student IDs are disproportionately likely to be held by young voters. As explained, “[b]ecause such a large share of young adults are enrolled in postsecondary educational institutions, any voting requirements that affect college students in Wisconsin have immediate implications for young voters (i.e., voters ages 18 to-29).” Ex. 2 at 7; *see also* Jauch Decl. ¶ 6; Cullen Decl. ¶ 7. Critically, the legislature was also well-aware that student IDs are the only type of authorized voting ID that young voters were (and are) disproportionately likely to possess. *See* discussion *supra* Part II, B; *see also* Ex. 7 at 36 (Mar. 10, 2011 meeting) (explaining that the Board of Regents would not support the voter ID law without the addition of student IDs because without them it was “likely to disproportionately disenfranchise certain populations which may lack valid identification, including college students, who research has shown are unlikely to obtain new drivers licenses or photo IDs with their university address, or who may have recently relocated to a campus community prior to an election.”); *see also* Ex. 2 at 8 (noting that likely more than 21 percent of student voters in Wisconsin do not have a Wisconsin driver’s license and student voters are also less likely than other voters to possess other kinds of compliant IDs, such as U.S. Passports, veterans IDs, and military IDs). Thus, the Student Voter ID Restrictions can rationally be understood only as a proxy for targeting young voters, violating the Twenty-Sixth Amendment on its face. *See League of Women Voters of Fla., Inc.*, 314 F. Supp. 3d at 1222 (“It is unexplainable on grounds other than age because it bears so heavily on younger voters than all

other voters.”).

This is particularly true here because, as the legislature was also aware, the Student Voter ID Restrictions ensured that no student in Wisconsin could actually use a student ID to vote at the time Act 23 was passed since no college, university, or technical college issued student IDs meeting the criteria included in the Student Voter ID Restrictions. *See* discussion *supra* Part II.B. As such, the Restrictions effectively nullified any benefit young voters would experience by adding student IDs to the list of acceptable identification, ensuring that young voters would be in the same place as they were prior to adding student IDs to Act 23—disproportionately burdened and disenfranchised by the photo voter ID law. *See* discussion *supra* Part II.B. Moreover, given that the Restrictions rendered null the addition of student IDs to the list of authorized IDs, there can be no rational reason that explains their purpose, and it is plain that the Student Voter ID Restrictions are a proxy for targeting young voters.

In particular, the purpose of the photo voter ID law is to ensure that poll workers are able to verify the identity of the individual presenting the ID. Wisconsin law requires a voter to present his or her photo ID to vote and then requires officials to “verify that the *name* on the [ID] conforms to the name on the poll list or separate list” and “that any *photograph* appearing on [the ID] reasonably resembles the elector.” Wis. Stat. § 6.79(2)(a) (emphasis added). Whether a student ID is scheduled to expire within two years of issuance, is signed, or the voter has proven current enrollment in a college has nothing to do with verifying the voter’s name and photograph. Ex. 1 at 40-41; Ex. 2 at 5; Elmikashfi Decl. ¶ 9; Miller Decl. ¶ 7. As a result, an election official could verify the voter’s name and photograph and still be forced to turn the voter away if the student ID is missing the other information. Ex. 2 at 5. Moreover, if an issuance date, expiration date, or signature were required to correctly identify someone, then it would follow that every form of

identification on the authorized list of photo IDs would be required to have such information. That, however, is not the case. Ex. 2 at 4-5.

For example, while the Student Voter ID Restrictions require that an expiration date be present on the ID, presumably to comply with Act 23's requirement that the voting ID be unexpired or expire after the date of the most recent general election, tribal IDs, naturalization certificates, and Veteran ID Cards—all of which are accepted as forms of identification under Act 23—do not contain expiration dates, and Act 23 does not require that those IDs contain them to be accepted. Ex. 2. at 4-5. Similarly, for voting purposes, being a current military service member is akin to being a currently enrolled student as, in both cases, a person is issued an ID when they join the organization. *Id.* at 4. Thus, it would be reasonable to expect proof of current membership or enrollment for both military IDs and student IDs. *Id.* This is not the case, however, and only student IDs require separate proof of enrollment. *Id.*

And, in practice, poll workers are able to identify students—just like the law requires them to do for every other type of identification—by the picture and name on the student ID. Ex. 1 at 40-41; Ex. 2 at 5; Elmikashfi Decl. ¶ 9; Miller Decl. ¶ 7; *see also* Ex. 3 at 3. *Cf.* Ex. 17 (Open Letter from a Poll Worker to the UW Student Who Tried to Vote Yesterday – Isthmus). Thus, there was no reason to lodge additional requirements on students. Further, there was and is no evidence that students are more likely than any other population to commit voter impersonation that would justify additional restrictions solely on student IDs. Ex. 1 at 28; Cullen Decl. ¶ 5; Jauch Decl. ¶ 4; Miller Decl. ¶ 7. As explained, allegations of voter fraud and voter impersonation were intensely investigated for at least six years prior to Act 23 and the Student Voter ID Restrictions' passage. *See* discussion *supra* at II, B. Nevertheless, not one incident of student voter impersonation or any other type of voter impersonation was uncovered amidst that scrutiny. *Id.*

Similarly, justifications of voter confidence and conformity also fall flat. Prior to Act 23's passage, Wisconsin boasted some of the highest voter turnout in the country. *See* discussion *supra* Part II.A. Voter turnout is a common proxy for gauging confidence in elections and high voter turnout reflects high, not low, confidence in Wisconsin's election system. *See* discussion *supra* Part II.A. Likewise, the state repeatedly ranked highly on surveys of voter satisfaction and election performance. *See* discussion *supra* Part II.A. Moreover, the Student Voter ID Restrictions, which are the harshest restrictions on student IDs for voting in the country, did not bring Wisconsin into conformity with other states. Ex. 1 at 46-47. And neither the Restrictions nor Act 23 generally brought voting in line with other activities that require a photo ID, as numerous activities such as checking a book out at the library or flying on an airplane can be executed without a photo ID. Ex. 1 at 42-44. Similarly, students use their student IDs for virtually all functions on campus—entering classrooms, dormitories, libraries, recreational facilities, laboratories, and parking structures, as well as riding the bus and accessing money—making the refusal to accept a standard student ID glaringly out of line with typical practice and inconsistent with students' reasonable expectations. Ex. 2 at 8.

Accordingly, it is plain on the face of the law that young voters were targeted by the Student Voter ID Restrictions, which serve no legitimate (or even remotely rational) purpose, and violate the Twenty-Sixth Amendment.

2. The Student Voter ID Restrictions are Intentionally Discriminatory.

Even if the legislature's discriminatory purpose were not evident on the face of the Student Voter ID Restrictions, Plaintiffs would still be likely to succeed on the merits because the record surrounding Act 23's passage makes it clear that the State intentionally discriminated against young voters. Determining intentional discrimination "demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." *Vill. of Arlington Heights v.*

Metro. Hous. Dev. Corp., 429 U.S. 252, 266 (1977). While not exclusive, the U.S. Supreme Court has explained that evidence of (1) “the impact of the official action whether it bears more heavily on one [group] than another,” (2) “historical background of the decision,” (3) “the specific sequence of events leading up to the challenged decision,” and (4) legislative history, including contemporary statements as well as history reflecting procedural and substantive deviations, are “subjects of proper inquiry in determining whether [] discriminatory intent existed.” *Id.* at 266-68. To establish intentional discrimination, a plaintiff need not show that the challenged act was motivated *solely* by discriminatory purpose. *Id.* at 265 (“Rarely can it be said that a legislature or administrative body operating under a broad mandate made a decision motivated solely by a single concern, or even that a particular purpose was the ‘dominant’ or ‘primary’ one.”). “[L]egislators and administrators are properly concerned with balancing numerous competing considerations.” *Arlington Heights*, 429 U.S. at 265. But discrimination cannot be one of them. *Id.*

The State’s discriminatory intent is clear here because (1) the impact of the Restrictions “bears more heavily” on young voters, (2) the legislature departed from its normal procedures and substantive conclusions in enacting the Restrictions, and (3) the historical background, contemporary statements, legislative history, and specific sequence of events leading up to the enactment of the Restrictions “reveal[] a series of official actions taken for invidious purposes.” *Arlington Heights*, 429 U.S. at 266-68.

a. The Student Voter ID Restrictions Have a Disparate Impact on Young Voters.

The burden imposed by the Student Voter ID Restrictions has been disparate and significant across elections. As noted, it is uncontroverted that young voters in Wisconsin are less likely to have IDs that are compliant with Act 23 and, as a result, more likely to rely on student

IDs to vote. *See* discussion *supra* at II, B (discussing data from the University of Wisconsin System Board of Regents, former-GAB Director, experts, non-partisan voting organizations, community organizers, and students). Importantly, these disparities have been consequential in practice as young and student voter turnout decreased in 2016 in the wake of the Student Voter ID Restrictions and was markedly low compared to national young voter turnout in 2018. *See* discussion *supra* at II, C; *see also* *N. Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204, 231 (4th Cir. 2016) (finding that disproportionate reliance on a type of ID that a voter ID law does not accept coupled with evidence that such disparities are consequential “establishes sufficient disproportionate impact for an *Arlington Heights* analysis”). Moreover, student ID needs are not being satisfied over time through third-party and university efforts to educate students as the ratio of students seeking second, compliant IDs on election day appears to be growing rather than diminishing. *See* discussion *supra* at II, C. Thus, it appears that not only have a disproportionate number of young voters had to undertake additional steps that no other “group of citizens in the state of Wisconsin” have to go through, Ex. 10 at 14:1-2, but those steps are accomplishing precisely what the legislature intended upon passing the Student Voter ID Restrictions: diminished young voter participation in elections. Together, these facts establish that the Student Voter ID Restrictions have a disproportionate impact on young voters that is consequential and weighs in favor of finding a discriminatory purpose.

b. The Historical Background, Legislative History, and Specific Sequence of Events Leading up to the Enactment of the Student Voter ID Restrictions Reveal the Legislature’s Discriminatory Motivation.

For over a decade, young voter turnout in Wisconsin was not only rising, but it was increasingly Democratic. *See* discussion *supra* at II, A. Thus, when the Republicans regained legislative power in 2011, motivated by a desire to sustain their hold on the government, they acted swiftly to limit the voting power of these young Democratic voters by enacting Act 23 with

the Student Voter ID Restrictions which, as demonstrated, sharply diminished young voters' ability to vote. *See* discussion *supra* at II, B. *Cf. N. Carolina State Conference of NAACP v. Cooper*, No. 18-CV-1034, 2019 WL 7372980, at *24–25 (M.D.N.C. Dec. 31, 2019) (considering polarization of voting in determining that the historical context of the challenged voter ID law weighed in favor of a finding of discriminatory intent). The State's discriminatory motivations are more than just inference. They are confirmed by rare, contemporaneous statements of legislators and Republican elected officials in Wisconsin. *See, e.g., Hayden v. Paterson*, 594 F.3d 150, 163 (2d Cir. 2010) (noting that discriminatory intent is "rarely susceptible to direct proof").

For example, prior to Act 23's passage Republican Senator Mary Lazich and a who sponsor of Act 23, implored her reticent colleagues to support the bill because of what it "would mean for the neighborhoods around Milwaukee and the college campuses" across this state. Ex. 1 at 39-40. Then-Republican Senator Grothman joined in, stating, "What I'm concerned about here is winning, and that's what really matters here. . . . We better get this done quickly while we have the opportunity." Ex. 1 at 39-40. Likewise, Senate Majority Leader Scott Fitzgerald stated that, "[i]f we win this battle, certainly what you're going to find is that President Obama will have a much more difficult time winning the state of Wisconsin." Ex. 1 at 39. After Act 23's passage, prior to the 2016 elections, now-U.S. Representative and former state senator Grothman admitted that, "now [Wisconsin has] photo ID, and I think photo ID is going to make a little bit of a difference as well [in the election of President Trump]." Ex. 1 at 40. And, former-Republican Wisconsin Attorney General Brad Schimel made similar statements after President Trump's victory. *Id.* ("We battled to get voter ID on the ballot for the November '16 election. How many of your listeners really honestly are sure that Sen. [Ron] Johnson was going to win reelection or President Trump was going to win Wisconsin if we didn't have voter ID to keep Wisconsin's

elections clean and honest and have integrity?”).

Even without these statements, the procedural abnormalities, substantive deviations, and historical context of Act 23 also make it clear that suppressing the vote of young voters to secure and maintain political power is the only plausible explanation for the Student Voter ID Restrictions. Indeed, if their intentions were pure, as they did with previous versions of voter ID bills, the legislature could have opened Act 23 and Student Voter ID Restrictions to extensive public comment and debate. But it did not. *See* discussion *supra* at II, B. Likewise, the legislature could have responded meaningfully to the concerns about disparate impact expressed by the Board of Regents, GAB, or Democratic colleagues by eliminating the Restrictions or implementing any number of amendments that would have ameliorated the burdens on young voters, while still passing a photo voter ID law. But, again, it did not. *See* discussion *supra* at II, B. Instead, the General Assembly paid lip-service to the Board of Regents by allowing student IDs to be added, but wholly gutted the benefit of that amendment by adding the Restrictions which nullified the law. *See* discussion *supra* at II, B. It also voted down every ameliorative amendment aimed at students and voters generally. *See* discussion *supra* at II, B. More to the point, it could have—and should have—presented evidence of the alleged crisis of confidence, voter fraud, and need for conformity facing Wisconsin which served as the primary stated basis for the bill, a practice that was standard in the legislature. *See* discussion *supra* at II, B; *see also* Cullen Decl. ¶ 5; Jauch Decl. ¶ 4; Miller Decl. ¶¶ 5-6. Nevertheless, not only did the legislature fail to do so, but it could not have done so had it wanted to. Decades of investigations and intense scrutiny had revealed that no evidence of voter impersonation generally, much less student voter impersonation specifically, existed in Wisconsin. *See* discussion *supra* at II, B. Likewise, years of high voter turnout and positive performance reviews had established that Wisconsin voters

were also confident in the state's election system. *See* discussion *supra* at II, A. And the addition of the Student Voter ID Restrictions made Wisconsin's photo voter ID law a national outlier. *See* discussion *supra* at III, A, 1.

Thus, the stark differential treatment of students IDs, the Student Voter ID Restrictions' irrational basis, demonstrated disparate impact, historical context, and the presence procedural and substantive deviations as well as the contemporary discriminatory statements of supporters of bill in the legislative history makes it clear that the most logical explanation for the Student Voter ID Restrictions is that they were intended to make it more difficult for young voters to vote. As such, Plaintiffs are likely to succeed on their Twenty-Sixth Amendment claim.

B. Plaintiffs Will Suffer Irreparable Injury.

Absent an order enjoining the enforcement of the Student Voter ID Restrictions, Plaintiffs will suffer irreparable injury. As a threshold matter, the harm to Plaintiffs is presumptively established because the State acted with discriminatory intent. *See Anderson v. Martin*, 375 U.S. 399, 400-04 (1964); *see also McCrory*, 831 F.3d at 238 (“When discriminatory intent impermissibly motivates the passage of a law, a court may remedy the injury—the impact of the legislation—by invalidating the law.”); *cf. Gresham v. Windrush Partners, Ltd.*, 730 F.2d 1417, 1424 (11th Cir. 1984) (holding “because of the subtle, pervasive, and essentially irremediable nature of racial discrimination, proof of the existence of discriminatory housing practices is sufficient to permit a court to presume irreparable injury”). Even if the injury was not presumptively established, however, continued enforcement of the Student Voter ID Restrictions would irreparably injure Plaintiff Scott and Plaintiff AGF's constituents because it will burden their constitutional right to vote in the 2020 general election. Consequently, AGF will also be irreparably injured because it will have to divert time and resources to counteract the burden on its constituents.

The deprivation of the right to vote constitutes irreparable injury. *See League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) (“Courts routinely deem restrictions on fundamental voting rights irreparable injury.”) (citations omitted). *See, e.g., McCrory*, 831 F.3d at 238 (citing *Hunter v. Underwood*, 471 U.S. 222, 231 (1985)). And, several courts have specifically found that plaintiffs challenging voter ID laws would suffer irreparable injury absent a preliminary injunction. *See, e.g., Frank v. Walker*, 196 F. Supp. 3d 893, 904 (E.D. Wis. 2016) (finding, where “[t]hose who cannot with reasonable effort obtain qualifying ID [would] be unable to vote in any elections that occur between now and when their claims are finally resolved,” a showing of irreparable injury was “clearly satisfied”); *Cooper*, No. 18-CV-1034, 2019 WL 7372980, at *24–25 (finding irreparable injury in a voter ID challenge because the challenged law would “wrongfully depriv[e] at least some North Carolinians of the right to vote”); *Common Cause Georgia v. Billups*, 439 F. Supp. 2d 1294, 1359 (N.D. Ga. 2006) (same). *Cf. Georgia Coal. for People’s Agenda, Inc. v. Kemp*, 347 F. Supp. 3d 1251, 1268 (N.D. Ga. 2018) (finding irreparable harm when considering a law requiring that voters present proof of citizenship).

There is no question that Plaintiff Scott, a young, out-of-state student at the University of Madison-Wisconsin who does not have a compliant ID is burdened by the Student Voter ID Restrictions and will be irreparably harmed if the Court does not enjoin them. *See* Scott Decl. ¶ 5. Indeed, absent action from this Court, Scott will be forced to take additional steps to obtain a compliant ID so that she can exercise her right to vote. *Id.* ¶¶ 6-7. And, as with many young voters, there is no guarantee that she will be able to take those steps, or that those additional steps will ensure that she has her second, compliant ID with her when she attempts to vote. *See, e.g.,*

Canup Decl. ¶ 11. Thus, as her right to vote is burdened, her constitutional injury is clear and irreparable.

The irreparable injury that AGF will suffer is also well supported. AGF's mission is to make young voices and votes a powerful force in democracy, and it works directly on behalf of this constituency of voters. Goodman Decl. ¶¶ 3, 5, 8. The Student Voter ID Restrictions directly inhibit AGF from accomplishing its mission, by deterring young Wisconsin voters from voting and otherwise burdening their right to vote. In every election since the Student Voter ID Restrictions have been in place, thousands of young voters have had to take additional steps to vote, and, in some instances, have not been able to vote at because they did not have a compliant ID. *See* Goodman Decl. ¶¶ 13, 14; Canup Decl. ¶¶ 10-11; *see also* discussion *supra* at II, C. There is no reason to believe that young voters will not experience these same burdens in the upcoming 2020 general election—a consequential election in which young people are expected to continue to participate at unprecedented rates. Ex. 18 (More young people likely to vote in 2020 than 2016, Harvard poll shows – USA Today). As a result, as it has had to do in previous elections, AGF will have to expend additional time and volunteer resources through its Campus Champion and AGF Student Ambassadors educating voters about the Student Voter ID Restrictions to help its young constituents overcome these burdens and to accomplish its mission. Goodman Decl. ¶¶ 13, 16, 17. These are resources that AGF would otherwise utilize on increasing voter engagement and get-out-the-vote activities so that it can advance its core mission. Goodman Decl. ¶¶ 16, 17; *see also* Canup Decl. ¶¶ 8-9, 12 (discussing efforts in 2018 by the AGF team to lobby UW-Madison for student IDs that would comply with the Student Voter ID Restrictions instead of engaging in other voter engagement and get-out-the-vote activities that advance AGF's core mission). It is well-established that the expenditure of such resources is irreparable. *See, e.g.,*

Georgia Coal. for People’s Agenda, Inc., 347 F. Supp. 3d at 1268 (finding irreparable harm where plaintiff’s organizational mission would be harmed and it would have to engage in additional voter registration and mobilization efforts); *League of Women Voters of Fla. v. Cobb*, 447 F.Supp. 2d 1314, 1339 (S.D. Fla. 2006) (finding irreparable harm to organizations engaged in collecting and submitting voter registration applications, where their voter registration operations had been interrupted and they were losing valuable time to engage in core political speech and association and to add new registrants to the election rolls). Thus, AGF has also demonstrated irreparable injury and this factor favors granting a preliminary injunction.

C. Traditional Legal Remedies Will Not Adequately Protect Plaintiffs’ Rights.

Because Plaintiff Scott and Plaintiff AGF’s constituents as well as young voters across Wisconsin face the inability to vote in elections likely to occur before their claims are resolved, traditional legal remedies are inadequate. The Seventh Circuit has presumed that money damages cannot adequately remedy a constitutional violation. *Christian Legal Soc’y v. Walker*, 453 F.3d 853, 859 (7th Cir. 2006) (reversing denial of preliminary injunction on complaint alleging First Amendment claims). More specifically, money damages cannot cure disenfranchisement post hoc. *Cf. Frank*, 196 F. Supp. 3d at 904 (finding, where the plaintiffs faced violations of their rights to vote in elections that might occur before the resolution of their claims, “traditional legal remedies, such as monetary damages, would be inadequate”). Given the close proximity of the 2020 General Election, it is certain that an election will occur, necessitating action from this Court to ensure that Plaintiffs’ constitutional rights are not violated.

D. The Harm Plaintiffs Will Suffer Absent a Preliminary Injunction Outweighs Harm the State Will Suffer Because of One.

The harm to Plaintiffs outweighs the harm to the State because, while Plaintiffs face the deprivation of the constitutional right to vote, direct harm to their mission, and the diversion and

exertion of their resources absent a preliminary injunction, the harm to the State is entirely speculative. When the benefit of enforcing a governmental act is conjectural, the harm of granting a preliminary injunction must be considered slight. *Am. Amusement Mach. Ass'n v. Kendrick*, 244 F.3d 572, 580 (7th Cir. 2001) (“[G]iven the entirely conjectural nature of the benefits of the ordinance to the people of Indianapolis, the harm of a preliminary injunction to the City must be reckoned slight, and outweighed by the harm that denying the injection would impose on the plaintiffs.”); *see also Frank*, 196 F. Supp. 3d at 916 (noting that “there is virtually no voter-impersonation fraud in Wisconsin,” and concluding “the state’s interests in requiring photo ID do not justify disenfranchising the plaintiffs while this litigation is pending.”).

The only stated benefits of enforcing the Student Voter ID Restrictions are to protect against voter fraud, increase voter confidence, and conformity. But as explained, the Student Voter ID Restrictions not only fail to accomplish these goals but, in most instances, directly undermine them. *See* discussion *supra* at II, A-B. Likewise, allowing poll workers to accept student voter IDs as proof of identity would not be difficult to implement. Indeed, if anything it would decrease the burden on poll workers and election officials who check voters in on election day. Rather than having to check for one set of requirements for all identification and another set of requirements for student IDs, poll workers would now have one uniform set of information to review on all IDs placed before them.

In contrast, as discussed at length, the burden on the right to vote without intervention from this Court is significant as thousands of young voters, including Plaintiff Scott and AGF’s constituents, are likely to be burdened, deterred, and disenfranchised in the upcoming 2020 general election. *See* discussion *supra* at II, C. Moreover, the burden on AGF is also significant as the continued existence of the Student Voter ID Restrictions ensures that AGF will be unable

to fully effectuate its mission and will require it to divert resources to help its young voter constituents overcome the burdens the Restrictions place on them. *See* discussion *supra* at II, C. Accordingly, the concrete harm to Plaintiffs outweighs the hypothetical harm to the State, and this factor also weighs in Plaintiffs' favor.

E. Enjoining the Student Voter ID Restrictions is in the Public Interest.

Protecting constitutional rights is always in the public interest. *See Joelner v. Vill. of Washington Park, Ill.*, 378 F.3d 613, 620 (7th Cir. 2004); *see also Newsom v. Albemarle Cty Sch. Bd.*, 354 F.3d 249, 261 (4th Cir. 2003) (“Surely, upholding constitutional rights serves the public interest.”). No opposing interest outweighs that here. Moreover, enjoining the enforcement of the Student Voter ID Restrictions will have incidental public benefits. Colleges and universities will not have to spend money printing additional IDs for students who require it, easing financial burdens on universities and reducing expenses associated with compliance with the Student Voter ID Restrictions. *See, e.g.*, Ex. 2 at 13-14 (discussing printing of IDs); Canup Decl. ¶ 8 (discussing costs of complying with Student Voter ID Restrictions). Likewise, these institutions will not be forced to choose between ameliorating Act 23’s burden on their students’ voting rights by conforming their student IDs to the Restrictions and risking their students’ safety and security by doing so. Ex. 1 at 23; Ex. 9 at 1 (“It is highly unlikely that universities and colleges will adopt these standards because of student security concerns.”); Canup Decl. ¶ 8 (discussing security concerns). Finally, removing the Student Voter ID Restrictions and simply accepting a valid student ID will reduce confusion about acceptable IDs as students and poll workers alike will no longer have to navigate two student ID regimes, but can simply present the ID that they use for all other purposes in their student life. *See* discussion *supra* at II, C. Thus, this factor also weighs in Plaintiffs' favor.

IV. CONCLUSION

For the reasons stated above, Plaintiffs respectfully request that the Court issue the requested preliminary injunction.

Dated this 22nd day of January, 2020.

Respectfully submitted,

/s/ Amanda R. Callais

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

THE ANDREW GOODMAN FOUNDATION
and AMANDA SCOTT,

Plaintiffs,

v.

MARGE BOSTELMANN, JULIE M. GLANCEY,
ANN S. JACOBS, DEAN KNUDSON, ROBERT
F. SPINDELL, JR., and MARK L. THOMSEN, in
their official capacities as Wisconsin Elections
Commissioners,

Defendants.

Civil Action No. 19-cv-955

**PLAINTIFFS' STATEMENT OF PROPOSED FACTS IN SUPPORT OF THEIR
MOTION FOR PRELIMINARY INJUNCTION**

Pursuant to the Procedure to be Followed on Motions for Injunctive Relief, Plaintiffs, THE ANDREW GOODMAN FOUNDATION and AMANDA SCOTT, set forth facts necessary to a decision on Plaintiffs' Motion for a Preliminary Injunction. The facts are supported by the exhibits and declarations submitted therewith.

JURISDICTION AND VENUE

1. Plaintiffs bring this action under 42 U.S.C. §§ 1983 and 1988 to redress the deprivation, under color of state law, of a right secured by the United States Constitution.
2. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1343 because the matters in controversy arise under the Constitution and laws of the United States.
3. This Court has personal jurisdiction over the Defendants, the Commissioners of the Wisconsin Elections Commission, who are sued in their official capacities only.

4. Venue is proper in the U.S. District Court for the Western District of Wisconsin pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events that gave rise to Plaintiffs' claim occurred there.

5. This Court has the authority to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.

PARTIES

6. Plaintiff, THE ANDREW GOODMAN FOUNDATION, INC. ("AGF"), is a nonpartisan, nonprofit organization with the mission of making young voices and votes a powerful force in democracy. Decl. of D. Goodman ¶ 3 ("Goodman Decl.").

7. In the summer of 1964, Andrew Goodman, AGF's namesake, participated in Freedom Summer, a voter registration project aimed at registering African-American voters in Mississippi. Goodman Decl. ¶ 4. On Andrew Goodman's first day working on that project, June 21, 1964, he and his fellow civil rights advocates James Chaney and Michael Schwerner were kidnapped and murdered by members of the Ku Klux Klan. *Id.*

8. Today, AGF supports youth leadership development, voting accessibility, and social justice initiatives on campuses across the country with training, mentoring, and mini-grants to select institutions as well as providing other financial assistance to students. Goodman Decl. ¶ 5. AGF's Vote Everywhere initiative is a national, nonpartisan, civic engagement movement of student leaders and university partners. *Id.* at ¶ 6. The program provides extensive training, resources, as well as a peer network to support its Student Ambassadors while they work to register voters, remove voting barriers, organize get out the vote activities, and tackle important social justice issues on their college campuses. *Id.* Vote Everywhere is located on 56 campuses in 24 states plus Washington D.C., including the University of Wisconsin-Madison. *Id.*

9. To achieve its mission, AGF devotes substantial time, effort, and resources to training and supporting Student Ambassadors who work with their home campuses to encourage voting, register voters, and advocate for the voting rights of their communities. *Id.* ¶¶ 7-8. The Student Voter ID Restrictions directly impact AGF's organizational mission of making young

voices and votes a powerful force in democracy as they deter student participation and turnout in elections. *Id.* ¶ 16. As a result, AGF has had to and will continue to divert resources it could use on other campus activities and initiatives to educate students about the Student Voter ID Restrictions and to help them overcome the burdens it places on their ability to vote. *Id.* at ¶¶ 16-17. Consequently, AGF has suffered and will continue to suffer injury, as will the voting rights of the student voters that AGF serves to champion and protect. *Id.*

10. Plaintiff AMANDA SCOTT is a young, registered Wisconsin voter. Decl. of A. Scott ¶ 1 (“Scott Decl.”). She moved to Madison, Wisconsin from Detroit, Michigan to attend the University of Wisconsin-Madison law school. *Id.* at ¶ 2. Scott intends to vote in the 2020 General Election in Wisconsin, but she does not have a form of photo identification she can use to vote in the state: she only has a Michigan driver’s license, her U.S. passport was stolen while she was traveling last summer, and she does not qualify for any other photo identification allowed under Act 23. *Id.* at ¶ 5. It would be burdensome for Scott to obtain a new U.S. passport, a Wisconsin driver’s license or state ID, or a student voting ID issued by UW-Madison. *Id.* at ¶¶ 6-7. To obtain any of those, she would have to spend time at the expense of her responsibilities as a law student. *Id.*

11. Defendants MARGE BOSTELMANN, JULIE M. GLANCEY, ANN S. JACOBS, DEAN KNUDSON, ROBERT F. SPINDELL, Jr., and MARK L. THOMSEN are the six Commissioners of the Wisconsin Elections Commission and are named as Defendants in their official capacities. Together, they comprise the Wisconsin Elections Commission, the body that administers and enforces Wisconsin’s election laws, including the Student Voter ID Restrictions. *See* Wisconsin Statute § 5.05. Defendants acted under color of state law at all times relevant to this action.

BACKGROUND

A. Historical Context, Sequence of Events, and Legislative History Surrounding the Student Voter ID Restrictions

12. Prior to 2011, the voting regime in Wisconsin induced such a high level of voter confidence that the state ranked among the top three states in voter turnout nationally in each presidential general election year from 2000 to 2008. Ex. 1 at 11 (Expert Rpt. of Dr. A. Lichtman).¹

13. At least 90 percent of Wisconsin voters reported being “very satisfied” with their voting experience, with Wisconsin consistently ranking in the top five states for electoral performance in one of the leading measures of election administration, the Pew Charitable Trust’s electoral performance index. *Id.* The State’s success in generating high voter turnout was exemplified by its turnout averages for young voters, which exceeded national averages from 2000 to 2008. *Id.* at 11, 14-15.

14. Consistent with national trends, young voters in Wisconsin were also voting increasingly more Democratic. *Id.* at 11-13; Decl. of Sen. Cullen ¶ 7 (“Cullen Decl.”); Decl. of Sen. Jauch ¶ 6 (“Jauch Decl.”); Decl. of Sen. Miller ¶ 8 (“Miller Decl.”).

15. In the 2000 presidential election, for example, 46 percent of voters ages 18 to 29 supported Al Gore, compared to 42 percent who voted for Republican candidate George W. Bush. Ex. 1 at 11-13. In 2004, 57 percent of young voters voted for Democrat John Kerry, compared to 41 percent who supported George W. Bush. *Id.* In 2008, the presidential election proceeding the passage of Act 23, 61 percent of young voters supported Barack Obama, with just 38 percent supporting John McCain. *Id.*

¹ All citations to Exhibits are materials attached to the Declaration of Amanda R. Callais.

16. In 2008, for the first time since 1993, the Democratic Party gained control of the Wisconsin State Legislature. Ex. 4 at 1 (Wisconsin Policy Forum Research Report).

17. Following the 2010 midterm elections, Wisconsin Republicans regained control of the state legislature and maintained control of the governor's office. Ex. 1 at 17.

18. Within six months of the change in party control, citing voter fraud, voter confidence, and conformity as justifications, the Legislature enacted Act 23, a photo voter ID law that also included changes to Wisconsin's early voting laws, registration requirements, and straight-ticket voting. *Id.* at 16-17, 22.

19. Act 23 was not the Legislature's first attempt to pass a voter ID law. *Id.* at 16. Citing voter fraud as a justification, Republicans in the legislature had attempted to pass a photo voter ID bill in 2005. *Id.* The bill was vetoed by Democratic Governor Jim Doyle. *Id.*

20. The voter fraud claims underlying the 2005 voter ID law—including claims of voter impersonation—were investigated at length by the U.S. Attorney's Office and the FBI. *Id.* By the end of 2005 the claims of voter fraud had been debunked and no cases of voter impersonation were uncovered. *Id.*

21. Between 2005 and 2011, several studies and investigations of voter fraud were conducted, including one by the conservative Heritage Foundation. *Id.* at 18. None of them found any evidence of voter impersonation by a student or anyone else. *Id.* A 2007 report by researchers at the Ohio State University Law School that examined voter fraud in Wisconsin and four other states, stated that it was well-established that “[t]here [were] few states in which allegations of voter fraud ha[d] received greater scrutiny than Wisconsin—and few municipalities in which they ha[d] received greater attention than the City of Milwaukee.” *Id.* at 18 (citing Steven H. Huefner,

et al., *From Registration to Recounts: The Election Ecosystems of Five Midwestern States*, 118 The Ohio State University Moritz College of Law).

22. Further, there was and is no evidence that students are more likely than any other population to commit voter impersonation that would justify additional restrictions solely on student IDs. Ex. 1 at 28; Cullen Decl. ¶ 5; Jauch Decl. ¶ 4; Miller Decl. ¶ 7.

23. The Republican majority introduced Act 23 as Senate Bill 6 on January 14, 2011, and replaced it by Substitute Amendment 1 on February 24, 2011. Ex. 6 at 1-15 (Legislative History). A parallel bill, Assembly Bill 7, was introduced in the General Assembly on January 27, 2011. Ex. 1 at 22; Ex. 6 at 16-17. The assembly bill, as amended, eventually became codified as Act 23 after its passage on May 19, 2011. Ex. 1 at 22; Ex. 6 at 16.

24. Senate Bill 6 and Assembly Bill 7 were opposed by the Board of Regents of the University of Wisconsin System. Ex. 1 at 22; Ex. 7 at 5-9 (Feb. 11, 2011 meeting), 34-36 (Mar. 10, 2011 meeting) (Board of Regents Meetings Minutes); *see also* Ex. 8 at 2-3 (Remarks by Kevin Kennedy, Director and General Counsel of Wisconsin's non-partisan Government Accountability Board ("GAB") to Wisconsin Senate Committee on Transportation and Elections, dated Jan. 26, 2011) (discussing problems with bills generally and problems related to students specifically); Ex. 9 at 2 (letter from Kevin Kennedy, Director and General Counsel of GAB, to the General Assembly Committee on Elections and Campaign Reform, dated May 3, 2011) (describing the photo voter ID law as creating "artificial barriers" for students).

25. On February 11, 2011, during a meeting of the Board of Regents, President Charles Pruitt noted that the Board had a "clear position" on Act 23: "The failure to include student IDs as an acceptable form of identification would have a serious and deleterious effect on the right of students to vote." Ex. 7 at 5 (Feb. 11, 2011 meeting). The Board "call[ed] on the authors to amend

the legislation to allow student IDs to be one of the permitted forms of voter identification at the polling place.” *Id.*

26. On March 10, 2011, the Board adopted a resolution opposing the legislation without a student ID provision because the requirements were “likely to disproportionately disenfranchise certain populations which may lack valid identification, including college students, who research has shown are unlikely to obtain new drivers licenses or photo IDs with their university address, or who may have recently relocated to a campus community prior to an election.” *Id.* at 36 (Mar. 10, 2011 meeting); Ex. 1 at 22.

27. On May 3, 2011, student IDs were included in Assembly Bill 7 through a substitute amendment, but the amendment that established student IDs as an acceptable form of photo ID included several restrictions on the acceptable types of student IDs. Ex. 1 at 22; Ex. 6 at 18-19. The amendment provided that a student could use a student ID to vote only if the ID: (1) was issued by an accredited college or university in Wisconsin, (2) was currently unexpired, (3) had an expiration date no more than four years after the date of the election, (4) contained the student’s date of birth and current address, and (5) was signed by the student. Ex. 1 at 23-14; Ex. 6 at 18-19.

28. On May 3, 2011, the Director and General Counsel of Wisconsin’s non-partisan Government Accountability Board (“GAB”), Kevin Kennedy, told the General Assembly Committee on Elections and Campaign Reform, “[p]resently no student identification card meets the standards proposed in the bill: current address, date of birth and signature of the student. It is highly unlikely that universities and colleges will adopt these standards because of student security concerns.” Ex. 1 at 23; Ex. 9 at 1. Director Kennedy also explained to the Committee that “[t]his is a demographic that has the lowest voter participation rate of all age groups. In order to cultivate

engaged, active citizens, we need to facilitate voting among our youth rather than imposing artificial barriers to participation.” Ex. 1 at 23; Ex. 9 at 2.

29. On May 9, 2011, Republicans in the state legislature offered a second amendment to Assembly Bill 7. Ex. 6 at 20-21. Although this amendment dropped the birth date and current address requirements, it retained the signature requirement. *Id.* Further, the amendment included additional and redundant requirements, including requiring students to prove current enrollment by providing a tuition fee receipt or letter from their school, even though the bill already required the ID to be unexpired. *Id.* at 21. Likewise, the amendment added a requirement that the ID list the card’s issuance date and shrunk the four-year expiration window to two years. *Id.*

30. In May 2011, Republicans in the legislature knew that the colleges and universities that issue student IDs typically use expiration dates in excess of two years. Jauch Decl. ¶ 6.

Representative Jauch explained to the Joint Committee on Finance:

There is a two-year limit here. . . . It is the only place in this bill and the only group of citizens in the state of Wisconsin that have to actually go through another process if they are in school for four years in order to exercise their right to vote. . . . Why can’t we accept the fact that the university is issuing a four-year card?

Ex. 10 at 13:21-22, 14:1-4, 10-11 (May 9, 2011 Joint Committee on Finance).

31. Representative Jauch explained to the Joint Committee on Finance that, as a result of the Student Voter ID Restrictions, students would “have to take another step more than anybody else,” Ex. 10 at 13:19-21, while Senator Hansen explained that “[i]t’s going to very, very difficult for our college students.” Ex. 13 at 9:14-15, 12:19-22, 13:1-8 (May 17, 2011 Floor Session).

32. The GAB director explicitly told the Legislature that the Student Voter ID Restrictions were “barriers to participation,” Ex. 9, and the Lead Election Specialist at GAB

explained that “the legislature deliberately placed an extra burden on college, university, and tech school students.” Ex. 1 at 28.

33. Republican Senator Mary Lazich, a sponsor of Act 23, implored her reticent colleagues to support the bill because of what it “would mean for the neighborhoods around Milwaukee and the college campuses” across this state. Ex. 1 at 39-40.

34. Then-Republican Senator Grothman stated, “What I’m concerned about here is winning, and that’s what really matters here. . . . We better get this done quickly while we have the opportunity.” Ex. 1 at 39-40.

35. Senate Majority Leader Scott Fitzgerald stated that, “[i]f we win this battle, certainly what you’re going to find is that President Obama will have a much more difficult time winning the state of Wisconsin.” Ex. 1 at 39.

36. After Act 23’s passage, prior to the 2016 elections, now-U.S. Representative and former state senator Grothman admitted that, “now [Wisconsin has] photo ID, and I think photo ID is going to make a little bit of a difference as well [in the election of President Trump].” Ex. 1 at 40.

37. Former-Republican Wisconsin Attorney General Brad Schimel made similar statements after President Trump’s victory. *Id.* (“We battled to get voter ID on the ballot for the November ’16 election. How many of your listeners really honestly are sure that Sen. [Ron] Johnson was going to win reelection or President Trump was going to win Wisconsin if we didn’t have voter ID to keep Wisconsin’s elections clean and honest and have integrity?”).

38. Serious consideration of Assembly Bill 7 began on May 11, with the bill passing on May 19, 2011. Ex. 1 at 24. During that time, the General Assembly held two public hearings

for Assembly Bill 7, a contrast to earlier attempts to pass a photo voter ID law in 2005 when five public hearings were held. Ex. 1 at 24; Jauch Decl. ¶ 4; Miller Decl. ¶ 5.

39. GAB Director Kennedy sent a letter to the Committee on Elections and Campaign Reform that noted:

There has been no time for the careful evaluation and vetting needed to ensure the best options for voters and election officials is enacted. There are numerous other provisions in the bill which will significantly alter the administration of elections and put additional stress on an already overburdened system. I urge you to give careful consideration to my suggestions and seek additional input from the public and local election officials before proceeding with this legislation.

Ex. 1 at 24; Ex. 9 at 2.

40. The legislature also voted, along party lines, against several amendments to Assembly Bill 7. Ex. 1 at 25 - 27; Ex. 6 at 22-62; *see also* Miller Decl. ¶ 5. Notably, the legislature refused to authorize mobile DMV stations to assist with the issuance of compliant state IDs on college and university campuses, a substitute amendment for student IDs which would have authorized any unexpired student ID card with no additional restrictions for use in voting, and an affidavit of identity. *Id.* at 25-26; Ex. 6 at 22-62. The legislature provided no explanation for rejecting these amendments. Ex. 1 at 25 - 27; Ex. 6 at 22-62.

41. The final version of the bill limits the photo IDs accepted for voting to a list of ten: a Wisconsin state driver's license, Wisconsin state identification card, U.S. uniformed service ID card, a U.S. passport (either unexpired or expired after the date of the most recent general election), U.S. naturalization certificate issued not earlier than two years before the current election, an unexpired Wisconsin driving receipt, an unexpired Wisconsin state identification card receipt, an ID card issued by a federally recognized Indian tribe in Wisconsin, or a student ID from an

accredited university or college in Wisconsin, or a technical college in Wisconsin that is a member of the technical college system. Wis. Stat. § 5.02(6m).

42. Unlike the other acceptable forms of photo ID, a student ID can only be used to vote if it contains the issuance date, an expiration date no more than two years after the issuance date, and the holder's signature. Wis. Stat. § 5.02(6m)(f). And the student ID will only be accepted if the holder can affirmatively prove through other documentation that he or she is currently enrolled in the school. *Id.*

43. Whether a student ID is scheduled to expire within two years of issuance, is signed, or the voter has proven current enrollment in a college has nothing to do with verifying the voter's name and photograph. Ex. 1 at 40-41; Ex. 2 at 5 (Expert Rpt. of Dr. B. C. Burden); Decl. of N. Elmikashfi ¶ 9 ("Elmikashfi Decl."); Poll workers are able to identify students by the picture and name on the student ID. Ex. 1 at 40-41; Ex. 2 at 5; Elmikashfi Decl. ¶ 9; *see also* Ex. 3 at 3 (Expert Rpt. of Dr. K. R. Mayer). *Cf.* Ex. 17 (Open Letter from a Poll Worker to the UW Student Who Tried to Vote Yesterday - Isthmus).

44. Tribal IDs, naturalization certificates, and Veteran ID Cards do not contain expiration dates, and Act 23 does not require that those IDs contain them to be accepted. Ex. 2. at 4-5.

45. Military IDs, despite the fact that, for voting purposes, being a current military service member is akin to being a currently enrolled student as, in both cases, a person is issued an ID when they join the organization, do not require proof of current membership or enrollment. *Id.* at 4.

46. At the time Act 23 was passed, the Student Voter ID Restrictions were the most stringent restrictions on student IDs of any photo voter ID law in the country, and they continue to be to this day. Ex. 1 at 3, 6-8.

47. Act 23 did not bring voting in line with other activities that require a photo ID, as numerous activities such as checking a book out at the library or flying on an airplane can be executed without a photo ID. Ex. 1 at 42-44.

48. Students use their student IDs for virtually all functions on campus—entering classrooms, dormitories, libraries, recreational facilities, laboratories, and parking structures, as well as riding the bus and accessing money—making the refusal to accept a standard student ID glaringly out of line with typical practice and inconsistent with students’ reasonable expectations. Ex. 2 at 8.

B. Impact of Student Voter ID Restrictions

49. After the Student Voter ID Restrictions first took effect in the 2016 presidential election, young voter turnout declined by 8.9 percentage points and 15.9 percent from 2012. Ex. 1 at 30; Ex. 2 at 10; *see also* Ex. 3 at 6. This was in contrast to the decline in turnout among persons age 25 or greater, which declined by only 2.4 percentage points and 3.2 percent. National turnout among young voters increased by 1.8 percentage points and 4.3 percent. Ex. 1 at 30; Ex. 2 at 9-10; Ex. 3 at 6.

50. While student turnout nationally rose between 2012 and 2016 by 3.2 percentage points, all sixteen of the Wisconsin institutions surveyed by the National Study of Learning, Voting, and Education had changes in turnout that were below the national median. Ex. 1 at 31; Ex. 2 at 10; Ex. 3 at 6-7.

51. Twelve of fifteen public, four-year institutions of higher education experienced turnout declines from 2012 to 2016, ranging from -0.6 percent to -11.0 percent, with a mean of -3.6 percent, compared to a nationwide mean of +3.5 percent. Ex. 1 at 30; Ex. 2 at 10. Student turnout at UW-Madison dropped by 4.3 percentage points, UW-Superior fell by 6.6 points, UW-Parkside fell by 4.1 points, and UW-Whitewater fell by 9.4 points. Ex. 2 at 10.

52. Private colleges around the state also saw declines. Turnout among students at St. Norbert College, for example, fell by 8.0 points, Madison Area Technical College fell by 3.9 points, and Edgewood College dropped 7.3 points. *Id.* at 10.

53. Nationally student voter turnout at 4-year public institutions rose by 3.8 percent, and at 4-year private institutions it rose by 5.6 percent. Ex. 3 at 6. Wisconsin was one of three states that had the largest decreases, on average, in young-voter turnout, ranking 38th out of 39 states in the median institutional turnout change between 2012 and 2016. Ex. 1 at 30; Ex. 3 at 6.

54. The depressive trends from 2016 continued in Wisconsin in 2018. Ex. 2 at 10 (“Nationwide turnout among all eligible voters in 2018 was 50.3%, the highest rate in a midterm election in more than a century and the highest rate since constitutional amendments provided for the direct election of U.S. Senators and women’s suffrage.”). Nationally this resulted in an increase of 19.4 percentage points in youth voting in 2018 compared to the previous 2014 midterm election. Ex. 2 at 11. In contrast, Wisconsin colleges saw some of the smallest increases nationwide with Wisconsin institutions ranking 37 out of 42 states between 2014 and 2018 for student turnout. Ex. 2 at 11; Ex. 3 at 8 (noting that, in addition to overall decreases, turnout rates of on-campus student voters in Wisconsin increased well below national rates).

55. On-campus student registrations dropped in 2016 by 10.1 percent from 2012 and 19.4 percent from 2014 to 2018. Ex. 3 at 5. Between 2012 and 2018, student registrations in

Wisconsin declined 28.2 percent. *Id.* These decreases are far larger than the decline in enrollments over the same time period and are consistent with well-accepted political science theories that more difficult voting processes such as the Student Voter ID Restrictions deter otherwise eligible individuals from registering as well as voting. *Id.*

56. Voters in student wards also cast provisional ballots disproportionately. Ex. 3 at 10. In 2016, 4.5 percent of provisional ballots were cast in student wards despite the fact that these wards comprise only 2 percent of the total number of registrants in the state. *Id.* In 2018, 11.2 percent of provisional ballots were cast in student wards even though the wards held only 1.6 percent of registrants. *Id.*

57. The League of Women Voters of Wisconsin reported that in 2018 polling locations “with student populations were more than twice as likely to report voters having difficulty producing a photo ID than sites without such populations.” Ex. 11 at 19 (League of Women Voters Report).

58. Approximately 300,000 students are enrolled in Wisconsin colleges, with approximately 59.4% of individuals who complete high school enrolling in a college immediately after graduation and 67.9% enrolling at some point after graduating from high school. Ex. 2 at 7; *see also* Ex. 3 at 2 (estimating at least 230,000 students enrolled at 4-year accredited public or private colleges). “Because such a large share of young adults are enrolled in postsecondary educational institutions, any voting requirements that affect college students in Wisconsin have immediate implications for young voters (i.e., voters ages 18 to 29).” *Id.*

59. The Wisconsin election margin in the 2016 presidential election was razor-thin: less than 23,000 votes. See Ex. 19 (Voter ID Study Shows Turnout Effects in 2016 Wisconsin Presidential Election).

60. Young adults are disproportionately less likely to have any compliant ID to vote outside of a student ID. *Id.* at 8 (explaining that research linking records from Wisconsin’s statewide voter registration database with information on cardholders from the Department of Transportation limited to student wards suggests that 21 percent of Wisconsin college students do not have a Wisconsin driver’s license; in contrast, only 8 percent of all Wisconsin voters lack a Wisconsin license); Ex. 3 at 3; *see also* Ex. 1 at 23; Ex. 7 at 36 (Mar. 10, 2011 meeting); Goodman Decl. ¶ 11; Decl. of B. Canup ¶ 8 (“Canup Decl.”); Decl. of C. Attaway ¶ 8 (“Attaway Decl.”); Decl. of E. Locke ¶¶ 3,9 (“Locke Decl.”).

61. Out-of-state students are less likely to possess Wisconsin driver’s licenses or other state issued Wisconsin photo identification than in-state students. Ex. 1 at 27-28; Ex. 3 at 3; *see also* Ex. 2 at 8-9; Goodman Decl. ¶ 11; Attaway Decl. ¶ 8; Locke Decl. ¶¶ 3, 9.

62. There were 37,735 out of state students enrolled in the University of Wisconsin System in the 2017-2018 academic year and 33,033 at the time of Act 23’s passage. Ex. 1 at 27-28; *see also* Ex. 3 at 3.

63. Only four of the thirteen four-year University of Wisconsin System institutions provide student IDs that are compliant with the Student Voter ID Restrictions, which makes it difficult for young people to overcome the costs of the voter ID law and the Student Voter ID Restrictions. Ex. 2 at 12; Ex. 14 (Common Cause study); *see also* Ex. 1 at 29 (citing study from Wisconsin Center for Investigative Journalism which notes that as late as October 2018 “[o]f the 13 University of Wisconsin four-year campuses, only four provide campus-issued student IDs that are compliant for voting” and “[t]he other nine campuses, including UW-Madison and UW-Milwaukee, failed to qualify under the guidelines set by the voter ID law”); Ex. 3 at 2 (noting that only four UW campuses’ standard IDs are qualifying student IDs).

64. Only eight of the twenty-three private colleges and universities issue compliant student IDs. Ex. 2 at 12; Ex 3 at 2.

65. At least two of Wisconsin's fifteen technical colleges do not provide student IDs that comply with Act 23's requirement. Ex. 15 (Non-compliant Technical College IDs).

66. Waukesha County Technical College does not inform students that they cannot rely on their student IDs to vote, and it also does not provide a second, compliant ID upon request. Ex. 16 at 2, 4 (Letter from Waukesha County Technical College) (stating that Waukesha County Technical College "do[es] not have any documents to show whether there is a process in place for students to obtain a student ID that is compliant with Wisconsin Statute 5.02(6m)(f)").

67. It is unlikely, because of student security concerns, that universities and colleges will adopt standards to become compliant with Act 23's voting requirements. Ex. 9 at 1; *see also* Ex. 1 at 23.

68. Without Act 23's Student Voter ID Restrictions, colleges and universities would not have to spend money printing additional IDs for students who require it, easing financial burdens on universities and reducing expenses associated with compliance with the Student Voter ID Restrictions. *See, e.g.*, Ex. 2 at 13-14; Canup Decl. ¶ 8.

69. Many students are unaware that their student IDs do not comply with Act 23. Ex. 2 at 13 ("Because of the . . . lack of knowledge students may possess about what is needed to vote, many students are likely to be unpleasantly surprised when they attempt to vote but lack an acceptable ID that includes a signature and appropriate issuance and expiration dates"); Locke Decl. ¶ 14; Declaration of Sally Rohrer ¶ 8 ("Rohrer Decl."); *see also* Ex. 11 at 19-20 ("At a polling place in the City of Madison, voters thought they could use their Wiscard student IDs to vote."); Ex. 3 at 2-3 (discussing informational burdens on students).

70. For those students who are aware that their student IDs are non-compliant, the barriers to obtaining a compliant ID are compounded because these young voters lack the experience and resources to navigate all aspects of the voting process. Ex. 2 at 7 (“For young people who are in the midst of establishing a voting habit, costs loom larger than for older individuals.”).

71. The Student Voter ID Restrictions and the necessity of obtaining a second, compliant ID have “created confusion among students.” Elmikashfi Decl. ¶ 16; *see also* Canup Decl. ¶ 11; Attaway Decl. ¶¶ 7-11, and discouraged others from voting, *see* Elmikashfi Decl. ¶ 16.

72. When schools issue a second, compliant ID, “students must typically make a separate trip to an ID office on campus to acquire the second form of ID.” Ex. 2 at 12; Ex. 3 at 2-3; Elmikashfi Decl. ¶ 13; Locke Decl. ¶ 9; Attaway Decl. ¶ 11; Rohrer Decl. ¶ 9. This trip often requires significant time and effort, making students less likely to timely complete it prior to voting. Ex. 2 at 13 (“Because of the extra administrative steps required to acquire the second ID . . . many students are likely to be unpleasantly surprised when they attempt to vote but lack an acceptable ID that includes a signature and appropriate issuance and expiration dates”); Locke Decl. ¶¶ 9, 10; Elmikashfi Decl. ¶ 13; Canup Decl. ¶ 11.

73. Because the second, voting-compliant ID that some schools provide is used only for voting, students often have difficulty keeping track of the ID, forget to bring it to vote, or lose it altogether and have to obtain a new compliant ID to vote. Locke Decl. ¶ 10; Canup Decl. ¶ 10. Others struggle to understand or remember that this voting-compliant, single-purpose, second student ID expires—by design—every two years. Rohrer Decl. ¶ 12.

74. Students must also know of the need to obtain proof of current enrollment at their school and actually go about obtaining that proof. Elmikashfi Decl. ¶ 17.

75. In the 2016 and 2018 elections, UW-Madison placed computers and paper printers at seven on-campus voting sites to provide temporary paper IDs for students who arrived at the polls and discovered they lacked ID for voting. Ex. 2 at 13-14; Canup Decl. ¶ 8; Locke Decl. ¶ 16; Rohrer Decl. ¶ 14. UW-Madison issued a total of 989 IDs on election day in 2016 and 1,189 on election day in 2018. Ex. 2 at 14. Only 345 and 322 of these were plastic cards issued in the Wiscard office. *Id.* at 13.

76. In 2018, the majority of students who arrived at polling locations were surprised to realize that their student IDs did not comply with the law and, consequently, they would need to obtain a temporary paper ID. *Id.*; *see also* Ex. 11 at 19-20; Locke Decl. ¶ 14; Rohrer Decl. ¶ 14. Students who learned about the requirements at the polls were subjected to waiting in an additional line to receive an ID; because of time constraints and other reasons, some of these students ended up leaving polling places without voting. *See* Ex. 11 at 19, 21.

77. Absent an injunction, there is no reason to believe that young voters will not experience these same burdens in the upcoming 2020 general election—a consequential election in which young people are expected to continue to participate at unprecedented rates. Ex. 18 (More young people likely to vote in 2020 than 2016, Harvard poll shows – USA Today).

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Respectfully submitted,

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