No. 16-3003 [Consolidated with No. 16-3052]

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

RUTHELLE FRANK, et al.,

Plaintiffs-Appellees-Cross-Appellants,

v.

SCOTT WALKER, et al.,

Defendants-Appellants-Cross-Appellees.

On Appeal from the United States District Court for the
Eastern District of Wisconsin, No. 2:11-cv-01128-LA
The Honorable Lynn S. Adelman, Presiding

EMERGENCY PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC OF PANEL ORDER GRANTING MOTION TO STAY

SEAN J. YOUNG (*Counsel of Record*)
DALE E. HO
SOPHIA LIN LAKIN
American Civil Liberties Union Foundation, Inc.
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2693
syoung@aclu.org
dale.ho@aclu.org
slakin@aclu.org

KARYN L. ROTKER
State Bar No. 1007719
LAURENCE J. DUPUIS
State Bar No. 1029261
American Civil Liberties Union of Wisconsin Foundation, Inc.
207 East Buffalo Street, Suite 325
Milwaukee, WI 53202
(414) 272-4032
krotker@aclu-wi.org
ldupuis@aclu-wi.org

Attorneys for Plaintiffs-Appellees-Cross-Appellants

(ADDITIONAL COUNSEL LISTED ON REVERSE SIDE)

NEIL A. STEINER
Dechert LLP
1095 Avenue of the Americas
New York, NY 10036
(212) 698-3822
neil.steiner@dechert.com

CRAIG G. FALLS
Dechert LLP
1900 K Street NW
Washington, DC 20006
(202) 261-3373
craig.falls@dechert.com

ANGELA M. LIU
Dechert LLP
35 West Wacker Drive, Suite 3400
Chicago, IL 60601
(312) 646-5816
angela.liu@dechert.com

M. LAUGHLIN MCDONALD
American Civil Liberties Union
Foundation, Inc.
230 Peachtree Street, Suite 1440
Atlanta, GA 30303
(404) 523-2721
lmcdonald@aclu.org

TRISTIA BAUMAN
National Law Center on Homelessness
& Poverty
2000 M Street NW, Suite 210
Washington, DC 20036
(202) 638-2535
tbauman@nlchp.org
State Bar No. 1007719

Attorneys for Plaintiffs-Appellees-Cross-Appellants

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 16-3003

Short Caption: Frank v. Walker

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

[ ] PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

Ruthelle Frank, Justin Luft, Dartric Davis, Barbara Oden, Sandra Jashinski, Anthony Sharp, Pamela Dukes, Anthony Judd, Anna Shea, Max Kligman, Steve Kvasnicka, Sarah Lahti, Edward Hogan, Shirley Brown, Nancy Lea Wilde, Eddie Holloway, Jr., Mariannis Ginorio, Frank Ybarra, Dewayne Smith, (cont'd on next page)

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

American Civil Liberties Union of Wisconsin Foundation, Inc.; American Civil Liberties Union Foundation, Inc.; National Law Center on Homelessness and Poverty; Dechert LLP

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

not applicable

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

not applicable

Attorney's Signature: s/ Sean J. Young Date: August 11, 2016

Attorney's Printed Name: Sean J. Young

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** X **No** ____

Address: ACLU Voting Rights Project, 125 Broad Street, 18th Floor
New York, NY 10004

Phone Number: 212-284-7359 Fax Number: 212-549-2649

E-Mail Address: syoung@aclu.org; dale.ho@aclu.org; lcarpenter@aclu.org

(cont'd from previous page) Melvin Robertson, Leroy Switlick, and James Green.

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 16-3003

Short Caption: Frank v. Walker

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

[ ] **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

Ruthelle Frank, Justin Luft, Dartric Davis, Barbara Oden, Sandra Jashinski, Anthony Sharp, Pamela Dukes, Anthony Judd, Anna Shea, Max Kligman, Steve Kvasnicka, Sarah Lahti, Edward Hogan, Shirley Brown, Nancy Lea Wilde, Eddie Holloway, Jr., Mariannis Ginorio, Frank Ybarra, Dewayne Smith, (cont'd on next page)

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

American Civil Liberties Union of Wisconsin Foundation, Inc.; American Civil Liberties Union Foundation, Inc.; National Law Center on Homelessness and Poverty; Dechert LLP

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

not applicable

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

not applicable

Attorney's Signature: s/ Tristia Bauman Date: August 11, 2016

Attorney's Printed Name: Tristia Bauman

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ____ **No** X

Address: National Law Center on Homelessness & Poverty
2000 M Street NW, Suite 210, Washington DC 20036

Phone Number: 202-638-2535 ext. 102 Fax Number: 202-628-2737

E-Mail Address: tbauman@nlchp.org

rev. 01/08 AK

(cont'd from previous page) Melvin Robertson, Leroy Switlick, and James Green.

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 16-3003

Short Caption: Frank v. Walker

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

[ ] PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

Ruthelle Frank, Justin Luft, Dartric Davis, Barbara Oden, Sandra Jashinski, Anthony Sharp, Pamela Dukes, Anthony Judd, Anna Shea, Max Kligman, Steve Kvasnicka, Sarah Lahti, Edward Hogan, Shirley Brown, Nancy Lea Wilde, Eddie Holloway, Jr., Mariannis Ginorio, Frank Ybarra, Dewayne Smith, (cont'd on next page)

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

American Civil Liberties Union of Wisconsin Foundation, Inc.; American Civil Liberties Union Foundation, Inc.; National Law Center on Homelessness and Poverty; Dechert LLP

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

not applicable

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

not applicable

Attorney's Signature: s/ Laurence J. Dupuis Date: August 11, 2016

Attorney's Printed Name: Laurence J. Dupuis

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ____ **No** X

Address: ACLU of Wisconsin Foundation, 207 E. Buffalo St., #325
Milwaukee, WI 53202

Phone Number: 414-272-4032 x212 Fax Number: 414-272-0182

E-Mail Address: ldupuis@aclu-wi.org

(cont'd from previous page) Melvin Robertson, Leroy Switlick, and James Green.

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 16-3003

Short Caption: Frank v. Walker

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

[ ] **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

Ruthelle Frank, Justin Luft, Dartric Davis, Barbara Oden, Sandra Jashinski, Anthony Sharp, Pamela Dukes, Anthony Judd, Anna Shea, Max Kligman, Steve Kvasnicka, Sarah Lahti, Edward Hogan, Shirley Brown, Nancy Lea Wilde, Eddie Holloway, Jr., Mariannis Ginorio, Frank Ybarra, Dewayne Smith, (cont'd on next page)

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

American Civil Liberties Union of Wisconsin Foundation, Inc.; American Civil Liberties Union Foundation, Inc.; National Law Center on Homelessness and Poverty; Dechert LLP

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

not applicable

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

not applicable

Attorney's Signature: s/ Craig G. Falls Date: August 11, 2016

Attorney's Printed Name: Craig G. Falls

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ____ **No** X

Address: Dechert LLP, 1900 K Street NW
Washington, DC 20006

Phone Number: 202-261-3373 Fax Number: 202-261-3034

E-Mail Address: craig.falls@dechert.com

(cont'd from previous page) Melvin Robertson, Leroy Switlick, and James Green.

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 16-3003

Short Caption: Frank v. Walker

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

[ ] PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

Ruthelle Frank, Justin Luft, Dartric Davis, Barbara Oden, Sandra Jashinski, Anthony Sharp, Pamela Dukes, Anthony Judd, Anna Shea, Max Kligman, Steve Kvasnicka, Sarah Lahti, Edward Hogan, Shirley Brown, Nancy Lea Wilde, Eddie Holloway, Jr., Mariannis Ginorio, Frank Ybarra, Dewayne Smith, (cont'd on next page)

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

American Civil Liberties Union of Wisconsin Foundation, Inc.; American Civil Liberties Union Foundation, Inc.; National Law Center on Homelessness and Poverty; Dechert LLP

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

not applicable

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

not applicable

Attorney's Signature: s/ Dale E. Ho Date: August 11, 2016

Attorney's Printed Name: Dale E. Ho

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ____ **No** X

Address: ACLU Voting Rights Project, 125 Broad Street, 18th Floor
New York, NY 10004

Phone Number: 212-549-2693 Fax Number: 212-549-2649

E-Mail Address: dale.ho@aclu.org; lcarpenter@aclu.org

(cont'd from previous page) Melvin Robertson, Leroy Switlick, and James Green.

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 16-3003

Short Caption: Frank v. Walker

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

[ ] PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

Ruthelle Frank, Justin Luft, Dartric Davis, Barbara Oden, Sandra Jashinski, Anthony Sharp, Pamela Dukes, Anthony Judd, Anna Shea, Max Kligman, Steve Kvasnicka, Sarah Lahti, Edward Hogan, Shirley Brown, Nancy Lea Wilde, Eddie Holloway, Jr., Mariannis Ginorio, Frank Ybarra, Dewayne Smith, (cont'd on next page)

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

American Civil Liberties Union of Wisconsin Foundation, Inc.; American Civil Liberties Union Foundation, Inc.; National Law Center on Homelessness and Poverty; Dechert LLP

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

not applicable

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

not applicable

Attorney's Signature: s/ Sophia Lin Lakin Date: August 11, 2016

Attorney's Printed Name: Sophia Lin Lakin

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ____ **No** X

Address: ACLU Voting Rights Project, 125 Broad Street, 18th Floor
New York, NY 10004

Phone Number: 212-519-7836 Fax Number: 212-549-2649

E-Mail Address: slakin@aclu.org; lcarpenter@aclu.org

(cont'd from previous page) Melvin Robertson, Leroy Switlick, and James Green.

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 16-3003

Short Caption: Frank v. Walker

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

[ ] PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

Ruthelle Frank, Justin Luft, Dartric Davis, Barbara Oden, Sandra Jashinski, Anthony Sharp, Pamela Dukes, Anthony Judd, Anna Shea, Max Kligman, Steve Kvasnicka, Sarah Lahti, Edward Hogan, Shirley Brown, Nancy Lea Wilde, Eddie Holloway, Jr., Mariannis Ginorio, Frank Ybarra, Dewayne Smith, (cont'd on next page)

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

American Civil Liberties Union of Wisconsin Foundation, Inc.; American Civil Liberties Union Foundation, Inc.; National Law Center on Homelessness and Poverty; Dechert LLP

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

not applicable

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

not applicable

Attorney's Signature: s/ Angela M. Liu Date: August 11, 2016

Attorney's Printed Name: Angela M. Liu

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ____ **No** X

Address: Dechert LLP, 35 W. Wacker Drive, Suite 3400
Chicago, IL 60601

Phone Number: 312-646-5800 Fax Number: 312-646-5858

E-Mail Address: angela.liu@dechert.com

(cont'd from previous page) Melvin Robertson, Leroy Switlick, and James Green.

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 16-3003

Short Caption: Frank v. Walker

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

[ ] PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

Ruthelle Frank, Justin Luft, Dartric Davis, Barbara Oden, Sandra Jashinski, Anthony Sharp, Pamela Dukes, Anthony Judd, Anna Shea, Max Kligman, Steve Kvasnicka, Sarah Lahti, Edward Hogan, Shirley Brown, Nancy Lea Wilde, Eddie Holloway, Jr., Mariannis Ginorio, Frank Ybarra, Dewayne Smith, (cont'd on next page)

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

American Civil Liberties Union of Wisconsin Foundation, Inc.; American Civil Liberties Union Foundation, Inc.; National Law Center on Homelessness and Poverty; Dechert LLP

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

not applicable

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

not applicable

Attorney's Signature: s/ M. Laughlin McDonald Date: August 11, 2016

Attorney's Printed Name: M. Laughlin McDonald

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ____ **No** X

Address: ACLU Voting Rights Project, 2700 International Tower, 229 Peachtree Street NE
Atlanta, GA 30303

Phone Number: 404-523-2721 Fax Number: 404-565-2886

E-Mail Address: lmcdonald@aclu.org; lcarpenter@aclu.org

(cont'd from previous page) Melvin Robertson, Leroy Switlick, and James Green.

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 16-3003

Short Caption: Frank v. Walker

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

[ ] **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

Ruthelle Frank, Justin Luft, Dartric Davis, Barbara Oden, Sandra Jashinski, Anthony Sharp, Pamela Dukes, Anthony Judd, Anna Shea, Max Kligman, Steve Kvasnicka, Sarah Lahti, Edward Hogan, Shirley Brown, Nancy Lea Wilde, Eddie Holloway, Jr., Mariannis Ginorio, Frank Ybarra, Dewayne Smith, (cont'd on next page)

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

American Civil Liberties Union of Wisconsin Foundation, Inc.; American Civil Liberties Union Foundation, Inc.; National Law Center on Homelessness and Poverty; Dechert LLP

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

not applicable

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

not applicable

Attorney's Signature: s/ Karyn L. Rotker Date: August 11, 2016

Attorney's Printed Name: Karyn L. Rotker

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ____ **No** X

Address: ACLU of Wisconsin Foundation, 207 E. Buffalo St., #325
Milwaukee, WI 53202

Phone Number: 414-272-4032 x212 Fax Number: 414-272-0182

E-Mail Address: krotker@aclu-wi.org

rev. 01/08 AK

(cont'd from previous page) Melvin Robertson, Leroy Switlick, and James Green.

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 16-3003

Short Caption: Frank v. Walker

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

[ ] PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

Ruthelle Frank, Justin Luft, Dartric Davis, Barbara Oden, Sandra Jashinski, Anthony Sharp, Pamela Dukes, Anthony Judd, Anna Shea, Max Kligman, Steve Kvasnicka, Sarah Lahti, Edward Hogan, Shirley Brown, Nancy Lea Wilde, Eddie Holloway, Jr., Mariannis Ginorio, Frank Ybarra, Dewayne Smith, (cont'd on next page)

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

American Civil Liberties Union of Wisconsin Foundation, Inc.; American Civil Liberties Union Foundation, Inc.; National Law Center on Homelessness and Poverty; Dechert LLP

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

not applicable

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

not applicable

Attorney's Signature: s/ Neil A. Steiner Date: August 11, 2016

Attorney's Printed Name: Neil A. Steiner

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ____ **No** X

Address: Dechert LLP, 1095 Avenue of the Americas
New York, NY 10036

Phone Number: 212-698-3822 Fax Number: 212-698-0480

E-Mail Address: neil.steiner@dechert.com

(cont'd from previous page) Melvin Robertson, Leroy Switlick, and James Green.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

STATEMENT REQUIRED BY FED R. APP. P. 35

Pursuant to Fed. R. App. P. 2, 35(b), Plaintiffs-Appellees-Cross-Appellants file this Emergency Motion for Rehearing and Suggestion for Rehearing En Banc of an August 10, 2016 Panel Order Granting Motion to Stay, ECF No. 24 (hereinafter "Order"), which should be granted for three reasons:

First, the panel order involves a question of exceptional importance because, "with this November's elections fast approaching," it imposes a stay that "will substantially injure numerous registered voters in Wisconsin, and the public at large, with no appreciable benefit to the state." *Frank v. Walker*, 769 F.3d 494, 498 (7th Cir. 2014) (Williams, J., dissenting from the denial of rehearing *en banc* panel order granting stay); *see also Frank v. Walker*, 135 S. Ct. 7 (2014) (vacating stay, as dissenting circuit judges would have done). The panel order does this by blocking the district court's preliminary injunction, which created a safety net allowing voters who cannot obtain ID with reasonable effort to vote by affidavit this November—an affidavit that is almost identical to the type of affidavits used in other voter ID states. *See* Attached Exhibits A-C. The order shreds that safety net even though the panel held just four months ago that "[t]he right to vote is personal and is not defeated by the fact that 99% of other people can secure the necessary credentials easily," and that a "safety net" is required to protect the fundamental right to vote of those voters who are "unable to get acceptable photo ID with reasonable effort." *Frank v. Walker*, 819 F.3d 384, 386-87 (7th Cir. 2016) ("*Frank II*"). And the panel order utterly ignores the district court's extensive factual

findings that many vulnerable voters continue to be unable to obtain ID with reasonable effort, even under DMV's allegedly new and improved procedures. Dkt. 294 at 22-31.[1] The record below demonstrates that the panel's "premise[]" "that the state is likely to succeed on the merits . . . is dead wrong," and for the panel to "accept the disenfranchisement" of Wisconsin's most vulnerable voters this November is "shocking." *Frank*, 769 F.3d at 498, 500 (Williams, J., dissenting from denial of rehearing *en banc*).[2] Indeed, the panel decision now puts the Seventh Circuit significantly out of step with recent cases that have prevented strict voter ID laws from taking full effect this November.[3]

Second, the panel decision misapplied the four-factor test for granting a stay pending appeal set forth in *Nken v. Holder*, 556 U.S. 418, 434 (2009). Although "irreparable harm to the party seeking the stay is one of the two 'most critical' factors in deciding whether to issue a stay, . . . it is very hard to see any irreparable harm to the state." *Frank*, 769 F.3d at 500 (Williams, J., dissenting from denial of rehearing *en banc*) (quoting *Nken*, 556 U.S. at 434). Here, unrefuted evidence from elections officials establishes that implementing an affidavit remedy by November

---

[1] "Dkt." refers to the docket entries in the district court proceedings, *Frank v. Walker*, No. 11-cv-1128 (E.D. Wis.). "ECF No." refers to the docket entries in the instant appellate proceeding.

[2] As demonstrated in Plaintiffs' Petition for Initial Hearing En Banc, Wisconsin's voter ID law should be enjoined in its entirety because *Frank v. Walker*, 768 F.3d 744 (7th Cir. 2014) ("*Frank I*") was wrongly decided. ECF No. 13.

[3] *See Veasey v. Abbott*, --- F.3d ---, 2016 WL 3923868 (5th Cir. July 20, 2016) (en banc); *N.C. State Conf. of NAACP v. McCrory*, --- F.3d ---, 2016 WL 4053033 (4th Cir. July 29, 2016); *Brakebill v. Jaeger*, No. 1:16-cv-008, Order Granting Pls.' Mot. for Prelim. Inj. (D.N.D. Aug. 1, 2016), ECF No. 50.

is not only entirely practicable, Dkt. 294 at 37, but *desirable* from an elections administration perspective, Dkt. 280-8, 280-9. And "[t]he scale balancing the harms here . . . is firmly weighted down by the harm to the plaintiffs. Should Wisconsin citizens not have their votes heard, the harm done is irreversible. . . . On the other side of the scale is the state's interest in guarding against a problem it does not have and has never had." *Frank*, 769 F.3d at 501 (Williams, J., dissenting from denial of rehearing *en banc*). Rather than apply these factors properly, the panel order relies largely on a speculative parade of horribles that the affidavit will be misused by voters who might be able to obtain ID with reasonable effort. But such speculation is unsupported by evidence, *see, e.g.*, *Ezell v. City of Chicago*, 651 F.3d 684, 710 (7th Cir. 2011), and fails to "'give deference to the discretion of the District Court'" in its weighing of the relevant preliminary injunction factors and crafting practicable relief. *Frank*, 769 F.3d at 499 (Williams, J., dissenting from denial of rehearing *en banc*) (quoting *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006)); *Planned Parenthood of Ind. v. Comm'r. of Ind. State Dept. of Health*, 699 F.3d 962, 981 (7th Cir. 2012) (appellate review of district court's balancing of relative harms to parties and public interest is "deferential").

Third, it is especially important immediately to vacate and rehear the panel's stay decision on an emergency basis, because this is likely the only opportunity the full *en banc* Court will have to prevent the disenfranchisement of the most vulnerable voters among us this November (unless this Court grants Plaintiffs' pending Petition for Initial *En Banc* Hearing, ECF No. 13).

For these reasons, "[t]he district court's injunction . . . should remain in place, and the panel's order lifting that injunction should be revoked." *Frank*, 769 F.3d at 498 (Williams, J., dissenting from the denial of rehearing *en banc*). Plaintiffs respectfully request that this Court do so as soon as possible.

STATEMENT OF THE CASE

This is the third appeal involving Plaintiffs' challenge to Wisconsin's strict voter ID law, which is one of the strictest voter ID laws in the country. The law requires eligible Wisconsin voters to provide one of a limited number of forms of photographic identification in order to exercise their fundamental right to vote. Wis. Stat. §§ 6.79(2), 5.02(6m). After a two-week trial, "[t]he district court found that 300,000 registered voters—*registered* voters, not just persons eligible to vote—lack the most common form of identification needed to vote in the upcoming elections in Wisconsin." *Frank*, 769 F.3d at 498 (Williams, J., dissenting from denial of rehearing *en banc*). It found that Wisconsin's strict voter ID law violated the Fourteenth Amendment and Section 2 of the Voting Rights Act, and granted a permanent injunction enjoining the law, Dkt. 195, which Defendants appealed.

On September 12, 2014, during the pendency of the first appeal, a panel of this Court granted a stay of the district court's injunction. *Frank v. Walker*, 766 F.3d 755 (7th Cir. 2014). Although this Court denied rehearing that order by an equally divided vote, *see Frank v. Walker*, 769 F.3d 494 (7th Cir. 2014), the Supreme Court then vacated the stay, as the dissenting circuit judges would have done, *see Frank v. Walker*, 135 S. Ct. 7 (2014). The Supreme Court's vacatur appropriately

prevented Wisconsin's voter ID law from going into effect that November.

A panel of this Court reversed on the merits, *Frank v. Walker*, 768 F.3d 744 (7th Cir. 2014) ("*Frank I*"), and an evenly divided court declined to rehear the case *en banc*, *Frank v. Walker*, 773 F.3d 783 (7th Cir. 2014). Plaintiffs then sought relief for voters with significant barriers to obtaining voter ID. Dkt. 222. After the district court denied that request for relief, Dkt. 250, a panel of this Court reversed in a second appeal decided earlier this year, *Frank II*, 819 F.3d at 386-87, holding that *Frank I* did not preclude the district court from providing relief for voters "unable to get acceptable photo ID with reasonable effort." *Id.* Indeed, the panel recognized that even under the *Frank I* regime, a "safety net" such as an affidavit option may be necessary to uphold the constitutionality of the law as a whole. *Id.*

Bound by *Frank I* and following the guidance of *Frank II*, the district court granted Plaintiffs' motion for a preliminary injunction requiring the state to provide an affidavit that would allow voters who cannot obtain ID with reasonable effort to vote without having to show ID, beginning with the November election. *See* Dkt. 294. At the heart of the district court's decision was its factual finding that "although many individuals who need qualifying ID will be able to obtain one with reasonable effort under [the DMV] procedures, there will still be some who will not," Dkt. 294 at 22, a finding which rejected Defendants' argument that DMV's allegedly new and improved procedures resolved all of the problems with obtaining ID.

Both parties appealed. ECF No. 15. Defendants moved for a stay in the district court, which was denied. Dkt. 311. Defendants then moved for a stay with

this Court, which was granted. ECF No. 24. Plaintiffs now move this Court to grant *en banc* review and vacate the panel's decision as soon as possible to prevent the most vulnerable voters among us from being disenfranchised this November.

ARGUMENT

As the Supreme Court explained in *Nken*, courts must consider four factors when deciding whether a stay is warranted:

> (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

556 U.S. at 434 (citations omitted). "The first two factors of the traditional standard are the most critical." *Id.* The "party requesting a stay bears the burden of showing that the circumstances justify" a stay. *Id.* at 433-34. Here, the panel decision imposes a stay that "will substantially injure numerous registered voters in Wisconsin, and the public at large, with no appreciable benefit to the state." *Frank*, 769 F.3d at 498 (Williams, J., dissenting from the denial or rehearing *en banc*); *see also Frank v. Walker*, 135 S. Ct. 7 (2014) (vacating stay). As discussed below: (1) the panel order guarantees that vulnerable voters will be disenfranchised this November; (2) the stay provides no appreciable benefit to the state; and (3) immediate *en banc* review is likely the only chance to ensure that vulnerable voters are not disenfranchised this November.

I. THE PANEL ORDER GUARANTEES THAT VULNERABLE VOTERS WILL BE DISENFRANCHISED THIS NOVEMBER

The panel order is premised on a conclusion that the state is likely to succeed on the merits—specifically, the premise that the district court failed to "identify the kinds of situations in which the state's procedures fall short" in helping voters obtain ID, and that it failed to identify specific voters in those situations. Order at 2. But "[t]hat premise is dead wrong." *Frank*, 769 F.3d at 500 (Williams, J., dissenting from denial of rehearing *en banc*). In its recent opinion, the district court *specifically* identified the deficiencies of the DMV's current rules for issuing ID. Dkt. 294 at 22-31. The panel's blithe dismissal of these factual findings not only fails to demonstrate "clear error," *Planned Parenthood*, 699 F.3d at 972, it is reminiscent of the same egregious factual errors committed by *Frank I* itself, *see Frank v. Walker*, 773 F.3d 783, 793, 796-97 (7th Cir. 2014) (Posner, J., dissenting from denial of rehearing *en banc*). The panel's elimination of the district court's "safety net" thus guarantees that vulnerable voters will be disenfranchised this November.

The district court correctly found (and certainly did not clearly err in finding) that the DMV's current procedures will not ensure that all voters without ID can obtain it with reasonable effort, for three simple reasons. First, despite the State's brazen "just trust us, we'll get it right this time" assurance that the DMV will now automatically give any and all Wisconsin voters a temporary ID for voting purposes, notwithstanding DMV's five-year track record of rule changes that consistently fail to remove barriers to getting ID, ECF No. 16 at 5, the district court found that not every voter can obtain ID under the current procedures. Only voters who initiate successfully the separate process known as the ID Petition Process ("IDPP")—a

process that on its face is only open to voters without birth certificates (and does not ultimately issue permanent ID to many of them)—can get the temporary ID at all. Dkt. 294 at 17. As the district court found, voters who do not qualify for the IDPP include voters who lack one of the limited forms of documentary proof of identity that DMV requires, Dkt. 294 at 27-28, 31, such as a social security card, which "is the most commonly available document to use to prove identity," Dkt. 195 at 28. These voters include Plaintiff Leroy Switlick, who was already disenfranchised in April despite two unsuccessful efforts to get ID at DMV, Dkt. 280-6; Plaintiff James Green, Dkt. 280-7; and approximately 1,640 other eligible voters in Milwaukee alone who lack social security cards, Dkt. 279 at 25. The district court found that these voters also are often caught in the "gastonette" of needing a social security card (as proof of identity) to obtain photo ID, when a social security card often cannot be obtained without photo ID, *Frank II*, 819 F.3d at 386, *see* Dkt. 294 at 28.

Other voters, such as Rachel Fon, Dkt. 280-12, are unable to travel to the DMV to initiate the IDPP process in the first place and cannot avail themselves of narrow statutory exemptions to needing ID to vote, Dkt. 294 at 29; indeed, Defendants *conceded* in the court below that "making that trip [to the DMV] is an undue burden on some voters," Dkt. 285 at 19.[4] Voters with birth documents that

[4] Though the panel order cites the statement from *Crawford v. Marion County Election Board*, 553 U.S. 181, 198 (2008) that "the inconvenience of making a trip to the [DMV] . . . does not qualify as a substantial burden on the right to vote," the order notably omits the introductory phrase of that sentence: "For *most* voters." *Id.* (emphasis added). Whether "most voters" can easily get to the DMV is cold comfort to voters like Rachel Fon, whose "health problems and poverty" "have made it impossible for her to obtain ID without going through a great amount of effort," Dkt. 294 at 29, and who was disenfranchised during the

contain name mismatches, like Plaintiff Ruthelle Frank and voters Christine Krucki and Bernice Kvidera, Dkt. 280-4, 280-11, 280-16, are also out of luck because, as the district court found, the DMV's procedures for such voters still do not guarantees them ID, Dkt. 294 at 21-22.[5] Lastly, many voters who lack qualifying ID on Election Day will simply be unable, "without going to unreasonable lengths," to get to an available DMV office right away to apply for a temporary photo ID receipt, *see, e.g.*, Dkt. 280-12, 280-14, 280-22, which is not even issued in-person but by mail, and may not arrive in time for the voter to cure their provisional ballot by Friday after Election Day, Dkt. 294 at 29-30. As the district court noted, voters like Miguel Angel Vega and Alexandra Kirschner were disenfranchised this year for precisely that reason. Dkt. 294 at 30.

Second, the district court found that not every voter who *obtains* a temporary ID will even get to *keep* it or get a permanent ID, if birth documents or other secondary evidence of U.S. birth cannot be found, Dkt. 294 at 23-26—this is the situation faced by Plaintiff Melvin Robertson, who has been unable to find secondary documentation even with help, Dkt. 280-5. The district court cited several examples of voters going through Kafkaesque ordeals only to end up empty-handed because the DMV was unable to track down old birth records or secondary documentation like baptism certificates. Dkt. 294 at 23-26.[6] The latest version of

---

April 2016 primary election because she could not even get to the DMV, Dkt. 280-12.

[5] Such voters also apparently do not qualify for the IDPP. *Compare* Dkt. 280-24 at 15 *with* Dkt. 280-24 at 18; *compare* Dkt. 287 at 8-9 *with* Dkt. 287 at 9-10.

[6] This is not surprising. As the record shows, vital records offices from other states

the procedure does not meaningfully eliminate this burden. Dkt. 311 at 2-5.

Third, even if the DMV petition process were universally accessible and perfect on paper—and it is neither—the district court found that DMV's sprawling, cumbersome bureaucracy and deplorable track record proves that DMV is simply incapable of ensuring that all eligible voters can obtain ID with reasonable effort. Dkt. 294 at 26-27. Indeed, DMV failed to even tell some persons who inquired about obtaining IDs, such as voter Gilbert Ramos and Plaintiff Ruthelle Frank's daughter, about these procedures. *See* Dkt. 280-20, 280-22, 280-40, 280-57.

Defendants primarily respond to these record-heavy findings by arguing that Plaintiffs have "fail[ed] to cite even one example of a problematic denial of a request for a free photo ID after current law was put in place on May 10, 2016," ECF No. 22 at 4—referring to the "emergency rule" that was hastily enacted on May 10, a week after the mandate from *Frank II* was issued, Dkt. 263. But the district court correctly found that "the emergency rules did not create a brand new procedure for issuing free state ID cards," but instead codified preexisting failed practices. Dkt. 311 at 2-5. More to the point, nothing in the text of the emergency rule (or in DMV's last-minute, ad hoc interpretations of the rules issued *after* briefing for Plaintiffs' motion for preliminary injunction was well underway, *see* Dkt. 287, 278) actually cured the aforementioned problems faced by voters who were unable to obtain ID

---

frequently ignore DMV's inquiries, Dkt. 279 at 12, and DMV has had special "difficulty finding records from the south . . . during [the] Jim Crow era." Dkt. 280-31 at 94. Finding secondary documentation of birth is also difficult because many schools, hospitals, and church records from the Jim Crow south simply do not exist anymore. Dkt. 279 at 13-14.

with reasonable effort before May 10. Dkt. 311 at 2-5.

In sum, the district court found that "although many individuals who need qualifying ID will be able to obtain one with reasonable effort under [the DMV] procedures, there will still be some who will not." Dkt. 294 at 22. The panel order fails to demonstrate any clear error in these findings, and by shredding the safety net designed to catch these vulnerable voters, the panel order guarantees that they will be disenfranchised this November unless this Court grants *en banc* review.

II. THE STAY PROVIDES NO APPRECIABLE BENEFIT TO THE STATE

En banc review is further warranted because "the state [will not] be irreparably injured absent a stay." *Frank*, 769 F.3d at 500 (Williams, J., dissenting from denial of rehearing *en banc*). The panel does not even mention this factor, even though "[t]he Supreme Court has said that irreparable harm to the party seeking the stay is one of the two 'most critical' factors in deciding whether to issue a stay." *Id.* (quoting *Nken*, 556 U.S. at 434). Here, there is unrefuted evidence from the top election officials of Wisconsin's two largest municipalities that implementing an affidavit remedy by November is not only practicable, but *desirable* from an elections administration perspective, because it reduces the number of cumbersome provisional ballots that have to be handled separately. *See* Dkt. 294 at 37; Dkt. 280-8 ¶¶ 11-12, 280-9 ¶¶ 12-14. The panel should have been "deferential" to the district court's balance of the competing harms. *Planned Parenthood*, 699 F.3d at 981; *see Frank*, 769 F.3d at 499 (Williams, J., dissenting from denial of rehearing *en banc*)

(panel order's failure to "'give deference to the discretion of the District Court'" warrants *en banc* review (quoting *Purcell*, 549 U.S. at 4)).

Rather than assess whether a stay would actually prevent irreparable harm to the State, the panel attacks the form of the affidavit itself. Order at 2. But the the affidavit ordered by the district court is virtually *identical* to the affidavits that have been approved by courts and used in other states with strict voter ID laws, *see* Exhibits A-C (affidavits from Texas, South Carolina, and North Carolina).[7] As the court decisions and attached examples demonstrate, similarities include: the requirement that voters swear under penalty of perjury that they are who they say they are and that they cannot obtain ID with reasonable effort; the listing of various barriers that could preclude a voter from obtaining ID; an "other" box that allows the voter to fill in an unlisted reason; and prohibiting challenges to the reasonableness of the provided justification to ensure that the affidavit works practically as a fail-safe, and is not a vehicle for voter harassment. *See, e.g., South Carolina v. United States*, 898 F. Supp. 2d 30, 40 (D.D.C. 2012) ("the process of filling out the form must not become a trap for the unwary, or a tool for intimidation or disenfranchisement of qualified voters"); *see also* 52 U.S.C. § 10307(b) (prohibiting voter intimidation). The district court's decision to follow other states' examples in this area can hardly be characterized as an abuse of discretion. *See*

[7] *See, e.g.*, *Veasey v. Abbott*, 2:13-cv-00193, (S.D. Tex.), ECF Nos. 889, 877-1; *South Carolina v. United States*, 898 F. Supp. 2d 30, 40-41 (D.D.C. 2012); *N.C. NAACP v. McCrory*, --- F. Supp. 3d ----, 2016 WL 1650774, at *120 (M.D.N.C. Apr. 25, 2016), *rev'd on other grounds*, 2016 WL 4053033 (4th Cir. July 29, 2016).

Nat'l People's Action v. Vill. of Milmette, 914 F.2d 1008, 1011 (7th Cir. 1990) (abuse of discretion examines "whether the judge exceeded the bounds of permissible choice in the circumstances, not what we would have done if we had been in his shoes" (citations and quotations omitted)).

The panel order instead puts forth a parade of horribles that it fears could occur as a result of the district court's order, Order at 2, but this Court has rejected similar arguments against a district court's carefully crafted injunction because they were speculative and not based on evidence. *See, e.g.*, *Ezell*, 651 F.3d at 710 (rejecting "parade of . . . horribles" allegedly caused by injunction as "speculative" and "in any event may be addressed by more closely tailored regulatory measures"). The panel suggests that it would be inappropriate for a voter to sign the affidavit if they have "not tried to obtain" ID. Order at 2. But the voter must swear under oath as to the impediment and, as discussed above, it is futile for many voters to "try" and obtain ID, if the state's own processes will not allow it or if they cannot even get to DMV. For these voters, "the obstacles to obtaining it [are] insurmountable, so there would be no point in trying to overcome them," *Frank*, 773 F.3d at 786 (Posner, J., dissenting from denial of rehearing *en banc*).

The panel also adopts Defendants' strawman argument, asserted for the first time on appeal, *see* ECF No. 16 at 3, that the affidavit will allow something as silly as a voter's "disagreement" with *Crawford* to justify signing the affidavit, Order at 2. But the district court's affidavit remedy—like the affidavit options in other states—does not allow "statements simply denigrating the law—such as 'I don't

want to' or 'I hate this law,'" or "nonsensical statements such as . . . 'The moon is made of green cheese, so I didn't get a photo ID." *South Carolina*, 898 F. Supp. 2d at 36 n.5; *see also N.C. NAACP v. McCrory*, --- F. Supp. 3d ----, 2016 WL 1650774, at *120 (M.D.N.C. Apr. 25, 2016), *rev'd on other grounds*, 2016 WL 4053033 (4th Cir. July 29, 2016).[8] Lastly, the panel speculates, without evidence, that voters will now brazenly swear under oath that they have an impediment if they spent a "single minute" trying to obtain ID, Order at 2, but courts "assess the 'reasonable' voter, not a voter who seeks to flout the law." *South Carolina*, 898 F. Supp. 2d at 36 n.5.

None of the panel's musings about the ways in which the district court's affidavit option might be misused demonstrates any real risk of irreparable harm to the State, which can implement the same kind of affidavit safety net as other states, and which Wisconsin elections officials have said is both practicable and desirable. The district court's careful balancing of the preliminary injunction factors in crafting this affidavit was not an abuse of discretion, and vulnerable voters should not be disenfranchised this November simply because the panel might have crafted a slightly different form of remedy had it been "in [the district court's] shoes." *Nat'l People's Action*, 914 F.2d at 1011.

III. IMMEDIATE *EN BANC* REVIEW IS LIKELY THE ONLY CHANCE TO PREVENT DISENFRANCHISEMENT OF VULNERABLE VOTERS THIS NOVEMBER

Plaintiffs also respectfully urge this Court to grant *en banc* review and vacate

[8] Had Defendants actually raised this issue in the court below, the district court could have simply clarified its relief to more specifically address these fanciful situations. If necessary, this Court also could provide such clarification.

the panel's order as soon as practicable, because immediate *en banc* review is likely to be the only opportunity that the full Court will have to prevent the disenfranchisement of vulnerable voters this November (unless this Court grants Plaintiffs' pending Petition for Initial *En Banc* Hearing, ECF No. 13). Under the current briefing schedule, any decision on the merits will not be issued *until after the November elections*, ECF No. 15, thus guaranteeing that vulnerable voters will be disenfranchised this November. Even if an expedited briefing schedule were to be entered, this Court should vacate the panel order as soon as possible because it is critical to begin implementing and publicizing the affidavit option to avoid voter confusion—something that elections officials from Wisconsin's two largest municipalities had already started to do, ECF No. 20, Exs. A, B, and absentee ballot mailings can begin as early as August 31, *see* http://tinyurl.com/zzadx4k at 15. *See Veasey v. Abbott*, 136 S. Ct. 1823 (2016) (suggesting any change in voter ID law should be made by July 20); Dkt. 294 (issuing preliminary injunction on July 19); Order, *N.C. NAACP v. McCrory*, No. 16-1468, slip op. at 7 (4th Cir. Aug. 4, 2016), ECF No. 156 (denying stay when voters had begun to learn of new procedures). The panel has also determined that there is "a substantial likelihood" that it will reverse the injunction on the merits. Order at 2.

CONCLUSION

For the above reasons, this Court should grant, as soon as practicable, Plaintiffs' Emergency Motion for Rehearing and Suggestion for Rehearing En Banc of the August 10, 2016 Panel Order Granting Motion to Stay.

Dated: August 11, 2016

Respectfully submitted,

/s/ Sean J. Young

KARYN L. ROTKER
State Bar No. 1007719
LAURENCE J. DUPUIS
State Bar No. 1029261
American Civil Liberties Union of Wisconsin Foundation, Inc.
207 East Buffalo Street, Suite 325
Milwaukee, WI 53202
(414) 272-4032
krotker@aclu-wi.org
ldupuis@aclu-wi.org

SEAN J. YOUNG (*Counsel of Record*)
DALE E. HO
SOPHIA LIN LAKIN
American Civil Liberties Union Foundation, Inc.
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2693
syoung@aclu.org
dale.ho@aclu.org
slakin@aclu.org

NEIL A. STEINER
Dechert LLP
1095 Avenue of the Americas
New York, NY 10036
(212) 698-3822
neil.steiner@dechert.com

LAUGHLIN MCDONALD
American Civil Liberties Union Foundation, Inc.
230 Peachtree Street, Suite 1440
Atlanta, GA 30303
(404) 523-2721
lmcdonald@aclu.org

CRAIG G. FALLS
Dechert LLP
1900 K Street NW
Washington, DC 20006
(202) 261-3373
craig.falls@dechert.com

TRISTIA BAUMAN
National Law Center on Homelessness & Poverty
2000 M Street NW, Suite 210
Washington, DC 20036
(202) 638-2535
tbauman@nlchp.org

ANGELA M. LIU
Dechert LLP
35 West Wacker Drive, Suite 3400
Chicago, IL 60601
(312) 646-5816
angela.liu@dechert.com

Attorneys for Plaintiffs-Appellees-Cross-Appellants

CERTIFICATE OF SERVICE

I hereby certify that on August 11, 2016, Plaintiffs-Appellees-Cross-Appellants' Emergency Petition for Rehearing and Suggestion for Rehearing En Banc of Panel Order Granting Motion to Stay was filed with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: August 11, 2016

/s/ Sean J. Young

SEAN J. YOUNG (*Counsel of Record*)
American Civil Liberties Union Foundation, Inc.
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2693
syoung@aclu.org

Attorney for Plaintiffs-Appellees-Cross-Appellants

REASONABLE IMPEDIMENT DECLARATION

TO BE COMPLETED BY VOTER

Name: _____

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT OR DIFFICULTY

By signing this declaration, I swear or affirm under penalty of perjury that I am the same individual who personally appeared at the polling place, that I am casting a ballot while voting in-person, and I face a reasonable impediment or difficulty that prevents me from getting an acceptable form of photo identification.

My reasonable impediment or difficulty is due to the following reason(s):

(Check **at least one** box below)

☐ Lack of transportation ☐ Disability or illness

☐ Lack of birth certificate or other documents needed to obtain acceptable photo ID

☐ Work schedule ☐ Family responsibilities

☐ Lost or stolen photo ID ☐ Photo ID applied for but not received

☐ Other reasonable impediment or difficulty _____

The reasonableness of your impediment or difficulty cannot be questioned.

X _____ _____

Signature of Voter Date

Sworn to and subscribed before me this

_____ day of ____, 20___

Presiding Judge _____

Provisional Ballot Envelope (Back)

Use this side for voters without Photo ID. Complete section C or D.
Note: Complete Voter Information section on front for all voters.

C **Voter did not bring Photo ID. Use Emergency/Provisional ballot.**

❑ Check here if voter has a photo ID but did not bring the photo ID with them to the polling place. Remind voter to show Photo ID to county election commission by the time of the provisional ballot hearing.

D **Voter has no Photo ID–Complete this section if voter does not have an ID due to some obstacle. Use Emergency/Provisional ballot.**

Reasonable Impediment Affidavit:

I swear (or affirm) under penalty of perjury that I am the same person who appeared at this polling place and cast this provisional ballot on Election Day.

I suffer from the following reasonable impediment that prevented me from obtaining one of the required photo IDs (check one):

❑ Religious objection to being photographed

❑ Lack of transportation

❑ Disability or illness

❑ Lack of birth certificate

❑ Work schedule

❑ Family responsibilities

❑ Other reasonable impediment (list if disclosure is not protected by state or federal law)

_____

_____

Signature of Voter_____

Signature of Poll Manager or Notary_____

Date_____ Commission Expiration Date_____

Provisional Ballot Envelope

REASONABLE IMPEDIMENT DECLARATION	ELECTION DATE	PROVISIONAL POLL BOOK NO.

TO BE COMPLETED BY ELECTION OFFICIAL

Location Voted: _____ VRN: _____

Provisional Voting Reason(s): ☒ No Acceptable ID ☐ Other (if any) _____

TO BE COMPLETED BY VOTER

Name: _____
Last Name First Name Middle Name Suffix

Contact: _____ _____
Email Address Phone

Date of Birth: _____ Last 4 Digits of Social Security No. _____

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT

I DECLARE that I am the same individual who personally appeared at the polling place, that I am casting a provisional ballot while voting in person in accordance with Article 14A of Chapter 163 of the General Statutes or G.S. 163-227.2, and I suffer from a reasonable impediment that prevents me from obtaining acceptable photo identification.

My reasonable impediment is due to the following reason(s):

- ☐ Lack of transportation
- ☐ Disability or illness
- ☐ Lack of birth certificate or other documents needed to obtain photo ID
- ☐ Work schedule
- ☐ Family responsibilities
- ☐ Lost or stolen photo ID
- ☐ Photo ID applied for but not received
- ☐ Other reasonable impediment _____
- ☐ State or federal law prohibits me from listing my impediment

Proof of Identity – I am presenting identification in the form of a copy of one of the following documents that shows my name and address:

- ☐ Last four digits of Social Security number and date of birth (provided above)
- ☐ A copy of one of the following documents that shows my name and address:
  ____a current utility bill ____bank statement ____ government check ____ paycheck
  ____other government document _____
- ☐ Voter Registration card

For Election Official

- ☐ Voter did not provide any alternative identification document or information.

FRAUDULENTLY OR FALSELY COMPLETING THIS FORM IS A CLASS I FELONY UNDER CHAPTER 163 OF THE NC GENERAL STATUTES

X _____
VOTER'S SIGNATURE (REQUIRED) DATE

NCSBOE 2016.01

EXHIBIT 2
Case Nos. 13-CV-368, -660, -861
PX1126