

Exhibit A

From: [Jacobs, Ann - ELECTIONS](#)
To: [Schmelzer, Jody J - DOJ](#); [Welte, Amanda J - DOJ](#); [Cook, Andrew C - DOJ](#); [Seggelink, Jessica R - DOJ](#); [Kawski, Clayton P - DOJ](#); [Curtis, Jr., Charles G. \(MSN\)](#); [Keenan, Brian P - DOJ](#); [Deuster, Suzanne E - DOJ](#); [Murphy, Sean M - DOJ](#); [Kurth, Misty L - DOJ](#); [brad.lawrence@co.pierce.wi.us](#); [Martin, Rhett P. \(WDC\)](#); [Johnson-Karp, Gabe - DOJ](#); [Phifer, Wendy L - DOJ](#); [Welte, Amanda J - DOJ](#); [Kaul, Joshua L. \(MSN\)](#); [Horn, Brenda \(MSN\)](#); [*Docket Madison](#); [Wilson, Bobbie J. \(SFO\)](#); [*Docket SF LIT](#); [Idecosta@perkinscoi](#); [Elias, Marc \(WDC\)](#); [Spiva, Bruce V. \(WDC\)](#); [Winovich, John E. \(WDC\)](#); [Roberts, Rachel M. \(WDC\)](#); [Wenzinger, Joseph \(Perkins Coie\)](#); [Medile, Jennifer L. \(WDC\)](#); [Allred, Colin Z. \(WDC\)](#); [jmgore@jonesday.com](#); [svaden@jonesday.com](#); [macarvin@jonesday.com](#); [ajdick@jonesday.com](#); [Frost, Elisabeth C. \(WDC\)](#); [Branch, Aria C. \(WDC\)](#); [mmurray@jonesday.com](#); [Haas, Michael R - ELECTIONS](#); [Judnic, Nathan - ELECTIONS](#); [Gill, Beverly - ELECTIONS](#); [Glancey, Julie - ELECTIONS](#); [King, Steve - ELECTIONS](#); [Millis, Don - ELECTIONS](#); [Tseytlin, Misha - DOJ](#); [jvanderhulst@publicinterestlegal.com](#)
Cc: [mark thomsen \(mthomsen_34@hotmail.com\)](#); [Jacobs, Ann - ELECTIONS](#); [Ann Jacobs](#)
Subject: One Wisconsin Institute et al. v. Thomsen et al / 15 CV 324.
Date: Monday, October 10, 2016 11:25:29 AM
Attachments: [WEC - Letter to Peterson With Attachments.pdf](#)

Attached please find communication from Wisconsin Elections Commission Chair and Vice Chair directed to Judge Peterson.

We had hoped to file this today, but the court is closed due to Columbus day.

We are unable to file this through the e-filing process. Accordingly, we plan to hand-deliver this to the court tomorrow morning.

Thank you.

Ann S. Jacobs
Vice Chair
Wisconsin Elections Commission

Mark L. Thomsen
Chair
Wisconsin Elections Commission

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October 10, 2016

Hand Delivered

The Hon. James D. Peterson
U.S. District Court
Western District of Wisconsin
120 North Henry Street, Room 320
Madison, WI 53703

Re: *One Wisconsin Institute et al. v. Thomsen, et al.*
15 CV 324

Dear Judge Peterson:

We are named defendants in this case in our official capacities as members of the recently created Wisconsin Elections Commission (WEC) and have appeared to-date by representatives of the Wisconsin Department of Justice (DOJ), including Attorney General Brad Schimel. This letter is being sent by us directly to the Court upon the DOJ's explicit instructions as explained below.

Pursuant to this Court's orders, and particularly in response to the Court's September 30, 2016 order, on October 6, 2016, we instructed DOJ (Exhibit A) to file our October 7, 2016 report (Exhibit B). In a response sent at 4:22 p.m. on Friday, October 7, DOJ refused to file the report and instead recommended that we "send the memorandum directly to Judge Peterson, in our own names...and that we do not speak for the entire WEC." (Exhibit C). We have now honored that DOJ request and respectfully ask this Court to not find us in violation of its order for not filing our report on October 7, 2016, and to accept our report as timely.

We briefly outline the background to this filing and why we two were and are compelled to issue a report to the Court.

- Since this Court ordered "the state publicize that anyone who enters the IDPP will promptly get a receipt valid for voting," the state has not provided any additional funding to the WEC to carry out this order. Rather, as set forth in the WEC memorandum and declarations from its Administrator Michael Haas and our attached report, the WEC searched its available limited funds and did what we could reasonably do to comply with this unfunded requirement.
- The WEC has no control over this litigation and no control over the DOJ and the DMV. In other words, only the DOJ and DMV can guarantee that Wisconsin's citizens can obtain a free photo ID for voting with one trip to the DMV or guarantee that individuals who enter the IDPP the

week before a statewide election, or the week of a statewide election, will receive their temporary receipt for voting by overnight delivery from DMV.¹

BRIEF BACKGROUND AND OVERVIEW

The Wisconsin Elections Commission (WEC) was created by 2015 Wis. Act 118. Effective on **June 30, 2016**, the WEC is responsible "for the administration of chs. 5 to 10 and 12 and other laws relating to elections and election campaigns." As created, the WEC is by design an entity with equal shared power between the appointees of the two main political parties in our State. As such, the undersigned Commissioners are also responsible for implementing this Court's orders, i.e. "other laws relating to elections and election campaigns," to the extent reasonably possible. The full Commission is not scheduled to meet until October 14, 2016.

On **July 29, 2016**, this Court held, among others, that "Wisconsin's election laws cross constitutional boundaries," that 2013 Wis. Act 146...intentionally discriminates on the basis of race," and that the State must "publicize that any one who enters the IDPP will promptly get a receipt valid for voting."

On **August 26, 2016**, the Seventh Circuit en banc stated: "[W]e conclude that the urgency needed to justify an initial en banc hearing has not been shown. Our conclusion depends also on the State's compliance with the district court's second criterion, namely, that the State **adequately inform** the general public that those who enter the IDPP will promptly receive a credential for voting, unless it is plain that they are not qualified. The Western District has the authority to monitor compliance with its injunction, and we trust that it will do so conscientiously between now and the November 2016 election." (emphasis added)

On **September 30, 2016**, this Court ordered: "Defendants must investigate these allegations and provide a report to the court by October 7, 2016. The report should explain the scope of the investigation, its results, and any corrective action to be taken."

On **October 7, 2016**, the DOJ filed a 40-page response with this Court in answer to that September 30 order. In DOJ's filing with the Court, it claims that the Defendants have developed a "robust" outreach campaign to inform the public about the IDPP. This is not correct.

The list at page 26 of the DOJ's report implies that those efforts provided information to the public on the IDPP. It omits the fact that nearly all of those efforts are not directly providing information on IDPP. Instead, they are part of WEC's larger campaign to inform voters about the existence of the voter ID requirement. Only when voters go to the "BringIt" website would a voter learn about the IDPP process and its various intricacies.²

¹ We note that we are unaware of the procedures in place, if any, for persons who wish to use the IDPP on Friday, November 11, 2016 – the last day to provide ID to a clerk in order to have a provisional ballot counted.

² For example, not mentioned in the DOJ report is the fact that the television and radio advertising is limited to 15-30 second public service announcements (PSA's) put on through the Wisconsin Broadcasters Association's Non-Commercial Sustaining Announcement/Public Education Program. That program does not guarantee specific airtimes or frequencies. While it is a cost-effect way of getting PSA's on television, there is no guarantee that most won't air at 2:00 a.m. instead of during the nightly news. Additionally, the IDPP process is not even mentioned in the 15 second PSA's. *See*

Additionally, some of the efforts listed at page 26 are profoundly unlikely to reach many of the voters most in need of knowledge regarding the IDPP process. For example, on-line advertising and social media posts are an excellent way to reach digitally-connected persons who need to learn more about voter ID. That group is unlikely to be the same as persons born in the Jim-Crow south who currently lack a birth certificate.

A fair reading of Administrator Haas's past declarations, and in particular his most recent, makes clear that the WEC efforts were and remain focused on generally publicizing the voter ID requirement across the state and coordinating such efforts with other agencies when possible. As set forth in our Report, the DOJ has never provided the WEC with a single additional penny to either "publicize that anyone who enters the IDPP will promptly get a receipt valid for voting" or in response to the Seventh Circuit's requirement that the State "adequately inform the general public that those who enter the IDPP will promptly receive a credential for voting."

The DOJ's assertion that "Wisconsin voters are properly informed about the availability of the IDPP" is unfounded.

Compounding the problem is DOJ attempts to use the WEC Administrator's declarations as the voice of the DOJ in furtherance of its litigation strategy, rather than as representing the voice of the WEC. The DOJ's actions in this regard are improperly attempting to make the WEC Administrator and staff subservient to a partisan DOJ. This is inconsistent with the enacting legislation that created a bipartisan WEC governed equally by the two major political parties, and impermissibly places the WEC Administrator and staff in a potential conflict between the demands of the DOJ, the position of the WEC, or its individual members.

Request for Appointment of Counsel: Given the DOJ's refusal to even honor a simple request from these named defendants to timely provide their report to this court, and in light of the DOJ's attempt in its October 7, 2016 report to spin and even usurp the activities of the WEC in furtherance of its litigation strategy, and because the WEC was expressly created by the state to be an agency governed equally by the Republican and Democratic Parties, we respectfully ask the Court to order DOJ to immediately assign these named defendants an attorney from the DOJ to appear on their behalf in this litigation, including at the October 12, 2016 hearing, to represent their views.

Compliance with the order of this Court in upholding the sanctity of the right to vote should not be sacrificed at the altar of a "win" in this litigation.

Respectfully submitted,

/s/ Mark L. Thomsen
Chair
Wisconsin Elections Commission

/s/ Ann S. Jacobs
Vice Chair
Wisconsin Elections Commission

cc (all by e-mail):

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Page 7

CONFIDENTIAL

Page 8

CONFIDENTIAL

Page 9

CONFIDENTIAL

Page 10

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ADMINISTRATOR MICHAEL HAAS

REPORT

Date: October 7, 2016

To: District Judge James D. Peterson

From: Mark L. Thomsen, Chair, Wisconsin Elections Commission
Ann S. Jacobs, Vice-Chair, Wisconsin Elections Commission

Subject: *One Wisconsin Institute et al. v. Thomsen et al.*
15 CV 324

The Wisconsin Elections Commission (WEC) was created by 2015 Wis. Act 118. Effective on June 30, 2016, the WEC is responsible “for the administration of chs. 5 to 10 and 12 and other laws relating to elections and election campaigns.” The WEC is also responsible for implementing this Court’s text only order dated October 5, 2016. The full Commission, made up of three members generally appointed by the Republican Party and three by the Democratic Party, is not scheduled to meet until October 14, 2016, the day after the Court’s hearing on the plaintiffs’ pending motion.

As a brief and cursory background, pursuant to a recommendation by the Government Accountability Board, the WEC’s predecessor entity, the legislature and governor allocated the WEC \$250,000 to conduct a public information campaign for the voter photo ID law. A plan was put in place by the WEC to maximize those limited funds to inform the 10% of Wisconsin voters who were still unaware of the voter ID requirement and the 6% of voters who didn’t know if an ID was needed¹, notifying them that voter ID was required, and that information was available on the “Bringit.wi.gov” website as to the nature of the ID’s required, and how to obtain them.

On June 30, 2016, the WEC unanimously voted to implement a multi-faceted outreach program designed largely to reach those 16% of voters who were still unaware of the voter ID requirement. That program included radio and TV public service announcements, bus

¹ <https://law.marquette.edu/poll/2016/02/25/new-marquette-law-school-poll-finds-tight-democratic-race-trump-maintaining-republican-lead-in-wisconsin/> (Last Viewed 10/5/16)

ads, Facebook posts, You-Tube ads and Movie advertisings. Approval was given to sign the contract with the agency selected and begin that process.

This Court's order in the *One Wisconsin* case occurred on July 29, 2016. A petition to stay that order was filed by the DOJ and thus no action was taken on that order until the stay was lifted on August 22, 2016 and the Seventh Circuit denied *en banc* review on August 29, 2016.

To date, the Wisconsin DOJ has maintained full control of the litigation in this case and has unilaterally made all legal decisions as to how to respond and comply with this Court's orders. After this Court's decision, which required the named State defendants, including the WEC, to advertise the availability of the IDPP process, the DOJ has not detailed what the WEC needed to specifically do in this regard, did not provide additional money to the WEC in this regard nor did the DOJ instruct the WEC to request funds from other State entities (the WEC is not self-funding and has no legal authority to independently access funds) to address inclusion of information regarding the IDPP.

Nonetheless, despite the scarce resources available to WEC, the WEC and its staff located and spent an additional roughly \$25,000 to try to increase voter ID awareness updating its "Bring it to the Ballot" resources.² The WEC was limited in its ability to specifically advertise the availability of the IDPP process. The complexities of the IDPP process were ill-suited for the voter-ID information campaign as originally implemented by the WEC. Summarizing the complex IDPP process in a manner conducive to movie theater ads and bus placards was not feasible. In other words, the advertising program as originally conceived stayed much the same, with the website (and social media postings) updated to include information regarding the IDPP process.

Based on discussions between the DOJ and WEC staff, the undersigned Commissioners relied on the representations and assurances from the DOJ that authorized the WEC to state in its public releases, information for the public such as:

- "Free Photo ID for Voting Now Available With One Trip to DMV"

² www.BringIt.wi.gov

- “The Commission communicated with the DMV to confirm the details of the IDPP and its delivery policy, **including that individuals who enter the IDPP the week before a statewide election, or the week of a statewide election, will receive their temporary receipt for voting by overnight delivery from DMV.**” (emphasis added)
- “DMV Offers Overnight Delivery of Free Photo ID Document Near Election.”

Accordingly, the undersigned Commissioners assumed that the DMV staff were going to be well-trained on the IDPP process (including as to the six day rule pursuant to the Governor’s May Emergency Rule as well as the “week before and week of election” rule noted above), and be able to effectively provide credentials consistent with the Court’s order.

The undersigned Commissioners were unaware of the practices as implemented by the DMV as alleged in recent press reports and now in the new court filings.

Based upon these recent filings, as members of the WEC, the undersigned commissioners are very concerned that the WEC will be unable to fulfill the various orders of this court. Only the DOJ and DMV can provide the necessary guarantees to this court that there will be compliance with the Court’s orders as to the IDPP process. **The WEC, because it lacks oversight or control over the DOJ or DMV, cannot provide assurances that individuals who enter the IDPP the week before a statewide election, or the week of a statewide election, will receive their temporary receipt for voting by overnight delivery from DMV.** As members of the WEC, and as named defendants in our official capacities subject to the Court order, we must express our grave concerns over our limited ability to implement the Court’s order.

Respectfully Submitted:

/S/ Mark L. Thomsen
Chair
Wisconsin State Elections Commission

/S/ Ann S. Jacobs
Vice Chair
Wisconsin State Elections Commission

cc: Michael Haas, Administrator
Nathan Judnic, Counsel
Commissioner Beverly R. Gill
Commissioner Julie M. Glancey
Commissioner Steve King
Commissioner Don Millis

Page 15

CONFIDENTIAL

Page 16

CONFIDENTIAL

Page 17

CONFIDENTIAL