

**In The
Supreme Court of the United States**

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RUTHELLE FRANK, *et al.*,
Petitioners,

v.

SCOTT WALKER, *et al.*,
Respondents.

– and –

LEAGUE OF UNITED LATIN AMERICAN CITIZENS
(LULAC) OF WISCONSIN, *et al.*,
Petitioners,

v.

THOMAS BARLAND, *et al.*,
Respondents.

—◆—
**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Seventh Circuit**

—◆—
**BRIEF OF THE CHARLES HAMILTON HOUSTON
INSTITUTE FOR RACE AND JUSTICE, THE CYBER
PRIVACY PROJECT, AND DR. RICHARD SOBEL
AS AMICI CURIAE IN SUPPORT OF PETITIONERS**

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INTEREST OF *AMICI CURIAE*¹***The Charles Hamilton Houston Institute For Race And Justice at Harvard Law School:***

The Charles Hamilton Houston Institute for Race and Justice at Harvard Law School (“Houston Institute”) was founded in 2005 by Professor Charles J. Ogletree, Jr. to continue the work of Charles Hamilton Houston in using the law to end racial inequality and discrimination. Its long-term goal is to ensure that every member of society enjoys equal access to opportunity in the United States. The Houston Institute believes that voting rights are one of the most important rights citizens possess.

The Cyber Privacy Project:

The Cyber Privacy Project (“CPP”) is a non-partisan organization focusing on governmental intrusions against First, Fourth, Fifth and Fourteenth Amendment rights, including voting and privacy. CPP focuses on constitutional questions about national identification schemes, particularly for voting, travel and work. CPP was an *amicus* with Privacy Activism in *Hiibel v. Sixth Judicial District of Humboldt*

¹ Counsel of record for all parties received notice at least 10 days prior to the due date of *amici curiae*’s intentions to file this brief. The parties have consented to the filing of this brief. No counsel for a party or a party to this proceeding authored this brief, in whole or in part, and no counsel for a party or party to this proceeding made a monetary contribution intended to fund either the preparation or the submission of this brief.

County, 542 U.S. 177 (2004), and *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008).

Dr. Richard Sobel:

CPP director Richard Sobel is a scholar of constitutional and political rights, has authored articles on rights and identification issues, and was an *amicus* with CPP in *Hiibel* and *Crawford*. He has taught “The Supreme Court and Privacy” and been a visiting professor at the Medill School at Northwestern. Currently, he is a visiting scholar at Northwestern’s Buffett Institute. As a senior scholar at the Houston Institute, he authored the study *The High Cost of “Free” Voter Identification Cards* (2014) (the “Sobel Study”).



SUMMARY OF THE ARGUMENT

Because of the high cost associated with obtaining voter IDs, Wisconsin’s Act 23 burdens voting rights, particularly of minorities and the poor. Belated attempts to offer “free” voter IDs do not save Act 23 because “free” voter IDs are not free. In fact, when expenses for supporting documentation, travel, and waiting time are taken into account, the costs involved in obtaining “free” voter IDs can range from \$75 to \$500, or more. And if legal fees are added to these numbers, the costs range as high as \$1,500. These amounts are significant for low-income voters and disproportionately affect protected classes such

as racial minorities, women and the elderly. Even accounting for inflation, they are far greater than the \$1.50 poll tax outlawed by the Twenty-Fourth amendment in 1964 and in *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663 (1966). These IDs demonstrably are not “free.” This Court should grant certiorari to determine whether Act 23 constitutes an unconstitutional abridgement of voting rights and effectively disenfranchises significant segments of the voting public.

◆

ARGUMENT

In the last two decades, over twenty states have passed laws requiring voters to show some form of identification at the polls. While some have been struck down, photo ID laws are at least partially in effect in more than a dozen states and are scheduled for implementation in others. Yet, most other states either do not require ID or require non-photo ID in order to vote.²

In *Crawford*, a case involving a “facial” challenge to Indiana’s voter ID law, a divided U.S. Supreme Court permitted the use of the challenged IDs. The opinion cautioned, however, that such laws might be unconstitutional under “as-applied” challenges if evidence shows that they burden particular voters. In response to the *Crawford* decision, several states

² Nat’l Conf. of State Legislatures, *Voter ID*, <http://tinyurl.com/ohqwx>.

requiring official IDs now claim to offer “free” voter IDs to those who lack driver’s licenses or other forms of government identification.

This brief addresses a central issue impacting the constitutionality of photo voter ID laws. Are “free” voter IDs actually “free” or does obtaining them impose a significant burden on numerous and vulnerable voters?

The Sobel Study, conducted by *amicus* Dr. Richard Sobel supported by *amici* Houston Institute and CPP, and published in June 2014, drew on published articles, media reports, and testimony to calculate the costs incurred by three individuals in each of three states – Pennsylvania, Texas, and South Carolina – in obtaining “free” voter ID cards.³ In the absence of readily available cost data, the report develops the methodology (discussed below) for estimating the costs of a “free” state-issued photo ID for voting based on the factors of documentation expenses, travel costs and time commitments.

The study finds that the expenses for documentation, travel, and waiting time impose significant costs, especially to minority and low-income voters, typically ranging from \$75 to \$175. When hours of legal assistance and court costs are factored in, the costs range as high as \$1,500. Even when adjusted for

³ Richard Sobel, “The High Cost of ‘Free’ Photo Voter Identification Cards,” Charles Hamilton Houston Institute for Race and Justice, Harvard Law School (2014). *See also* Sobel (2009).

inflation, these figures represent substantially greater costs than the \$1.50 poll tax outlawed in 1964 by the Twenty-Fourth Amendment and *Harper*⁴ When aggregating the overall costs to individuals for “free” photo IDs in the states with photo ID requirements, plus the costs to taxpayers and state governments for providing and propagating “free” IDs, the expenses can accumulate into the \$10s of millions per state and nationwide into the \$100s of millions.⁵

Similar costs affect voters in Wisconsin and any other state attempting to escape constitutional challenges by offering “free” voter IDs. In particular, Act 23, enacted on May 25, 2011, requires voters to produce one of several forms of photo identification to vote in person or, in most instances, by absentee ballot. Acceptable forms include: current or recently-expired Wisconsin driver’s license or non-driver photo ID; military ID; U.S. passport; tribal ID from a federally recognized Indian tribe in Wisconsin; naturalization certificate issued within the last 2 years; student ID from some Wisconsin college or university or an unexpired receipt from a driver’s license or non-driver

⁴ The value of the \$1.50 poll tax in today’s dollar is \$11.27, roughly one-tenth the average cost of a voter ID. Drew Desilver, “Anti-Poll Tax Amendment is 50 years old today,” Pew Research Center, January 23, 2014, available at: <http://www.pewresearch.org/fact-tank/2014/01/23/anti-poll-tax-amendment-is-50-years-old-today/>.

⁵ See footnote 28.

ID application. Wis. Stat. Ann. §§ 5.02(6m); 6.15(3), 6.79(2), 6.79(3)(b).

Voters without a qualifying photo ID can obtain one at a Department of Motor Vehicle (“DMV”) office. Generally, to obtain a qualifying photo ID card, those wishing to vote must produce records – typically including a certified birth certificate – proving citizenship, name, date of birth, identity, and Wisconsin residency. However, if the voter can establish that certain documents are both “unavailable” and obtaining such documents requires payment of a fee to a government agency, the voter may complete an application and a verification form attesting to such information. The Wisconsin Department of Transaction then will try to obtain a birth certificate on the applicant’s behalf using procedures established by the Emergency Rule.⁶ As noted in “The Emergency Rule Does Not Make Voter IDs Free,”⁷ Wisconsin law falls short of providing a voter ID that is truly free. First, the procedure requires a trip to a DMV office. Second, the forms and explanatory documents are complex and it is confusing to understand the requirements. They are written at a college level and the forms themselves are inconsistent with the provisions of the

⁶ Emergency Rule, EmR 14, issued on September 11, 2014, <http://walker.wi.gov/sites/default/files/documents/Trans%20102%20Photo%20ID%20Emergency%20Rule.pdf>.

⁷ Jenkins, Gerald, “The Emergency Rule Does Not Make Voter IDs Free,” 2015, www.cyberprivacyproject.org/storage/8113/u10227/Pubs/EmergencyRuleVID.pdf.

Emergency Rule. Third, the applicant is required to sign “under penalty of perjury,” which raises the cost of a mistake on a misleading form from losing the right to vote to the risk of fines or jail. Applicants might be advised to obtain legal assistance, which will dramatically increase the applicant’s costs and burden.

Fourth, the procedure only works for an applicant who already knows the information on her birth certificate including any discrepancy between her birth certificate and current name in federal social security files. **In other circumstances, the Emergency Rule provides no solution other than discretionary actions by DMV personnel.** Fifth, though birth certificates may be free, other supporting documents required in lieu of a missing birth certificate (*e.g.*, a school transcript or certified marriage license) may be only available at a cost or not at all. Sixth, unlike Wisconsin driver’s licenses and other types of state IDs, “free” voter IDs cannot be used as the supporting document at time of renewal. Therefore if a voter tries to renew his voter ID card, he must start this process all over again.

As discussed in more detail below, reviewing the situations of Wisconsin voters who were affected by this new law demonstrate that the cost of the allegedly “free” photo ID could range from \$250 to \$500, or more. These include document fees, travel expenses, and time costs.

There are other costs attendant to voter ID laws. These include the resources voting and civil rights

organizations have to divert from their core missions of getting people registered and out to vote.⁸ They also include expenses imposed upon the budgets and taxpayers of states that enact voter identification laws. The government costs include establishing new bureaucracies or adding staff to existing ones, producing the identification cards, publicizing and instructing voters about the new laws, training poll workers, judges and other voting officials, and litigating against challenges in federal and state courts. Studies indicate that meeting the voter ID requirements could cost the treasuries of voter ID states up to \$78 million.⁹ Hence, the burden of voter ID laws also fall on the taxpayers and state governments that must fund the “free” voter IDs.

⁸ Alleged fraud does not justify Voter ID laws. A study of 2,068 alleged cases conducted by the News21 journalism found that since 2000 less than a dozen cases of in-person voter fraud have occurred. News21, “Who Can Vote?” (2012), <http://votingrights.news21.com/article/election-fraud/1>. Sobel, 2014, Table 1 shows in-person voter fraud is about 15 times less likely than being struck by lightning. <http://discovertheodds.com/what-are-the-odds-of-being-struck-by-lightning>; *Frank v. Walker*, 768 F.3d 744, 755 (7th Cir. 2014) (Posner, J., dissenting) (citing Sobel Study).

⁹ See The Voting Rights Institute, *The Real Cost of Photo ID*, available at: http://assets.democrats.org/pdfs/photoid/Dems-report-real_cost_of_voting_ID.pdf (Fig. 1), and Advancement Project, “What’s Wrong with this Picture?,” April 2011, available at: <http://www.advancementproject.org/resources/entry/whats-wrong-with-this-picture-new-photo-id-proposals.part.of.national.push>.

A. Courts Consider Costs Attendant To Photo Voter ID Laws.

In *Weinschenk v. State of Missouri*, 203 S.W.3d 201 (Mo. 2006), the Missouri Supreme Court struck down as a violation of equal protection and the right to vote in its state constitution a photo voter ID law, in part, because it found that the costs of a supposedly free government ID placed a substantial burden on the right to vote. It included fees to obtain birth certificates, naturalization papers, or passports; cost of travel to governmental agencies; time spent securing required documents; and time spent developing skills necessary to navigate bureaucracies.

The court wrote: “[I]n addition to the monetary costs imposed on persons seeking to obtain the proper photo ID, the process . . . imposes additional practical costs, including navigating state and/or federal bureaucracies, and travel to and from the Department of Revenue and other government agencies.”¹⁰

In Wisconsin, two state circuit judges separately ruled the voter ID law invalid before the 2012 election. In *League of Women Voters of Wisconsin Educators Network, Inc. v. Walker*, No. 11-CV-4669 (Wis. Cir. Ct. Dane County, Mar. 12, 2012), the Court made explicit that requiring voter IDs abridges the democracy-

¹⁰ *Id.* at 208-209.

sustaining right, noting the cost component of compliance:

[T]hese disenfranchised citizens . . . consist of those struggling souls who . . . lack the . . . resources to comply with [the law], but are otherwise constitutionally entitled to vote. . . . The right to vote belongs to all Wisconsin citizens . . . , not just the fortunate majority for whom [Voter ID] poses little obstacle. . . .¹¹

B. Calculating The Cost Of A “Free” Voter ID.

The constitutionality of photo voter ID laws that impose burdens on voters remain in question. Thus, it is critical to clarify the costs of obtaining a photo voter ID, even if the ID or birth certificate document can be obtained without payment.

Information in the public domain concerning individuals seeking voter IDs provides the basis for examples. Based on the criteria in *Weinschenk*, the Sobel Study, identifies seven types of costs for individual voters in obtaining a “free” voter ID:

- 1) Fees (out of pocket) for purchasing supporting documents, such as birth certificates, name changes, and marriage licenses.

¹¹ *League of Women Voters of Wisconsin Education Network, Inc.*, Decision and Order Granting Summary Declaratory Judgment and Permanent Injunction at pp. 8-10.

- 2) Time costs for correspondence and waiting for IDs and supporting documents by mail or delivery services.
- 3) Postage, delivery and handling expenses.
- 4) Travel costs to and from agencies to obtain documentation and apply for the identification.
- 5) Travel time for making the trips to government offices, including DMVs.¹²
- 6) Navigating costs for having to maneuver complex bureaucracies (often open only for limited days or hours).
- 7) Waiting time costs at government offices, particularly DMVs.¹³

Because those without driver's licenses by definition cannot lawfully drive, if public transportation is

¹² Estimating time value is minimized by assuming travel and personal waiting times are valued at minimum wage (\$7.25), although only 5 percent of the Labor Force earns minimum wage (U.S. Department of Labor, "Characteristics of Minimum Wage Workers: 2011," March 2, 2012, <http://www.bls.gov/cps/minwage2011.htm>). Because of the skill of the driver and use of his/her car, a driver's time is calculated at the state median wage, not minimum wage. *Pro bono* legal services are valued at a low hourly wage for attorneys.

¹³ The former Indiana Governor described as a "time tax" the waiting period to get "his government's permission to drive a car" at the DMV bureaucracies (Mitch Daniels, *Keeping the Republic*, 2011, p. 148). The requirement for waiting in line is particularly onerous for elderly and persons with disabilities.

unavailable, voters have to find or hire a ride. Individuals may also have to pay legal fees and court costs to acquire supporting documents.

The following examples for South Carolina, Texas and Wisconsin detail a range of total costs involved in applying for and obtaining a photo voter identification card. The voters in the South Carolina examples represent individuals who tried to obtain “free” voter identification cards as publicized in the media. The Texas examples are drawn from situations described in depositions in *Texas v. Holder*, 888 F. Supp. 2d 113, 139 (D.D.C. 2012), *vacated on other grounds*, No. 12-1028, 2013 U.S. LEXIS 4937, at *1 (June 27, 2013). The Wisconsin examples are a lead plaintiff and another voter discussed in trial transcripts, depositions and public media sources. The costs for these two Wisconsin voters range from \$250 to \$500 to obtain a “free” ID. Among the nine examples in the Sobel Study,¹⁴ the costs to an individual attempting to secure a voter ID typically range from \$75 to \$175. In South Carolina they range from \$92.50 to \$166.50; in Texas from \$77.96 to \$360.09; and in Pennsylvania they range from \$107.25 to \$172.39. Adding in the cost of court fees and legal counsel, e.g., to assist in locating or changing documents like birth certificates, can increase costs up to \$1,500.

¹⁴ Sobel, 2014, pp. 15-25, and Tables 2 to 4.

1. South Carolina Example: \$166.50.¹⁵

In 2011, South Carolina resident Larrie Butler, 85, a registered voter went to the DMV to acquire a photo ID, but was told he needed to provide a birth certificate.¹⁶ He traveled to Vital Records to acquire a birth certificate, but was told he did not possess the necessary paperwork, and was told what documents he needed to bring. He returned to Vital Records, but was told he still did not have the paperwork for a birth certificate. He was then instructed to go to court (court costs unknown) to have his name added into records to acquire a birth certificate. He traveled to court to have his name added into necessary records. At the time of reporting, he intended to return to Vital Records and the DMV to acquire a birth certificate and photo ID.

The document cost for a certified birth certificate in South Carolina is \$12. Mr. Butler's travel costs to and from the DMV by bus were about \$4 and he needed to return a second time for another \$4, for a

¹⁵ Under the South Carolina law, to cast a ballot, voters must provide: a photo ID issued by the South Carolina Department of Motor Vehicles, a passport, a military ID including a photo, or a South Carolina voter registration card containing a photo. S.C. Code Ann. § 7-13-710(A). Voters facing "reasonable impediments" do not need IDs.

¹⁶ "A casualty of the voter ID law," June 7, 2011, <http://www.youtube.com/watch?v=UZ5cKz-bTCA>; The Lawyers Committee for Civil Rights Under Law, "Think Getting 'Free' ID Is Easy? Think Again!," <http://www.lawyerscommittee.org/page?id=0046>.

total of \$8. Similarly, the two trips to and from Vital Records were about \$4 each roundtrip; with the need to return a third time at \$4. Thus, the estimated public transportation cost to Vital Records was \$12. The public transportation costs to and from court were an additional \$4. The total estimated travel costs were, therefore, \$24.

The time costs for two trips to the DMV (estimated at 6 total hours at \$7.25/hr minimum wage) equaled \$43.50. The three trips to Vital Records (estimated at 9 hours – 3 hours travel, 6 waiting – at \$7.25/hr wage) were \$65.25. The trip to court (estimated at 3 hours – 1 hour of travel, 2 hours of waiting – at \$7.25/hr) added \$21.75. Thus, the total estimated cost of time is \$130.50 (\$43.50 + \$65.25 + \$21.75).

The total estimated cost, including the document cost of \$12, travel costs of \$24 (including a likely third trip to Vital Records and DMV), and time costs of \$130.50 is **\$166.50**.¹⁷

¹⁷ This constitutes Example 2.1 in the Sobel Study (2014). The other South Carolina examples in the Sobel Study (Examples 2.2, 2.3 in Table 3, p. 20) reflect total costs of \$92.50 (\$1047.50 including value for legal fees) and \$99.75 (\$1449.75 including value for legal fees). Examples for Pennsylvania can be found in Sobel Study, Table 2.

2. Texas Example: \$77.96-\$146.81.¹⁸

The 170-mile trip from Sanderson to Fort Stockton would most easily be made by car because there is limited van service and are no cabs in either community. Because there is no bus service, it is not possible to travel by bus between Sanderson and Fort Stockton. The closest bus station to Sanderson is in Fort Stockton.

The document cost for a birth certificate is \$22 and for a certified marriage license is \$10. The travel cost by car for 170 miles at 25 mpg is the cost of 6.8 gallons of gas; or \$26.79 (at the local cost of \$3.94 per gallon). It takes about 2.615 hours to drive 170 miles round trip at 65 MPH, and an estimated 2 hours waiting at the Texas DPS at minimum wage (\$7.25/hr). The time cost for the total of about 4.615 hours travel and waiting would be \$33.46. The total for the voter traveling by car would be documents at \$22.00, gas at \$26.79, and time at \$33.46, for a total of **\$82.25**. With a marriage license, it would be \$92.25.

Since, by definition, someone lacking a driver's license cannot drive legally, a driver would need to be found or hired and spend the same 4.6 hours or

¹⁸ The Texas law (S.B. 14), in May 2011, requires voters to present a driver's license, an election identification certificate, a Department of Public Safety ID card, a U.S. military ID, a U.S. citizenship certificate, a U.S. passport, or a license to carry a concealed handgun. (Effective January 1, 2012).

\$54.55 (at median wage of \$11.82/hr). The full costs for a “free” voter ID by car including the cost of a driver would be \$136.81 (without a marriage license) or \$146.81, including a marriage license.

It is possible to travel by a community van service (“TRAX”) from Sanderson to Fort Stockton and back, booking the ride at least a day in advance. The total by TRAX would be the \$22.50 cost of the roundtrip fare. Because it is a shared van service, it could take more than the 1.31 hours one-way to make the 85-mile trip at 65 MPH. But using 2.615 hours for the roundtrip at \$7.25 per hour would have a time cost of \$18.96. Waiting time at DPS is assumed to be 2 hours at \$7.25/hr, or \$14.50. Totals would be \$22 for documents, \$22.50 in travel cost for the van, \$18.96 for 2.615 hours of travel, and \$14.50 for 2 hours of waiting (\$33.46), for an overall total of **\$77.96** (or **\$87.96** with marriage license at \$10 (Ex. 3.2.6 to Sobel Study)).¹⁹

3. Wisconsin.

a. Example 1: Ruthelle Frank, \$252.08 to \$260.82.

Ruthelle Frank, the lead plaintiff in the *Frank* lawsuit, is an 87 year old Wisconsin resident who has exercised her right to vote since she was 21 years

¹⁹ This is Example 3.2.6 in the Sobel Study (2014). The other Texas examples in the Sobel Study (Examples 3.1, 3.2 in Table 4, p. 24) reflect costs of \$79.26 and \$87.96.

old. Ms. Frank lives in Brokaw, Wisconsin, about 8.36 miles from the nearest DMV in Wausau, Wisconsin. See <https://trust.dot.state.wi.us/csfinder/cscsearch.do>.

When Ms. Frank first learned of the new Wisconsin Voter ID law, she attempted to obtain the ID. This first required obtaining a copy of her birth certificate (which at the time cost \$20). Ms. Frank contacted the Register of Deeds in Wausau and, after some time, that office located a certificate of Ms. Frank's birth. However, her name was misspelled. She was then informed she could amend the birth certificate to correct the misspelling for a cost of up to \$200.

Because Ms. Frank does not have a driver's license and public transportation is not available, she would need to obtain a ride or hire a taxi to reach the Wausau DMV. The cost of a taxi from Ms. Frank's house to the Wausau DMV ranges from \$32.75-48.88, depending on the time of day (including tip), averaging \$40.82. See www.taxifarefinder.com.

If Ms. Frank could find a ride, there would be costs for gas and the driver's time. For a roundtrip of about 17 miles, there would be the cost of half a gallon of gas (about \$2.00), plus possible parking costs (\$1.00). The average travel time to the Wausau DMV from Ms. Frank's home is roughly 12 minutes each way depending on traffic, plus time finding parking and walking to the DMV. The time for all tasks would be doubled to account for both the time of Ms. Frank and the time of her driver. Ms. Frank's

time is calculated at minimum wage in Wisconsin, while the cost for the driver's time would be calculated at the median wage in Wisconsin of \$16.32. See www.blg.gov/current/oes_wi.htm#00-0000.

The wait time for Wisconsin DMV is 20 minutes or less for most visitors, though longer for about one in six drivers. [www.dot.state.wi.us/about/performance/measures/series/waittime.htm] Time with a clerk is estimated at 20 minutes, though possibly higher because getting a free voter ID may be more complex than most DMV encounters. Totaling the estimated wait time at 20 minutes, plus 20 minutes with a clerk, 24 minutes of round trip travel, 5 minutes finding parking, and 5 minutes walking to and from the office, it would take approximately 74 minutes of Ms. Frank's time for each trip to the Wausau DMV. The value of that almost 1¼ hour, based upon national minimum wage of \$7.25, equals \$8.95. If she needed a driver (at median wage of \$16.32), the time cost would be another \$20.15. The total time for Ms. Frank and her driver would be \$29.

Therefore, total estimated cost for Ms. Frank, assuming only one trip to the DMV is required is \$252.08 (by car) to \$260.82 (by cab).

b. Example 2: Bettye Jones, \$466.07 to \$538.57.

Bettye Jones was a civil rights activist and the original lead plaintiff in this action.²⁰ When Mrs. Jones passed away, her daughter, Debra Crawford, told Mrs. Jones' story at trial.

Mrs. Jones was born in Tennessee in 1935. Like many African-Americans born in the South during segregation, Mrs. Jones was not issued a birth certificate. It was not until 1993 that Mrs. Jones obtained a record of her birth from the state of Tennessee.

After relocating to Wisconsin in November 2011, Mrs. Jones tried to register to vote. However, the official letter provided to Mrs. Jones from the State of Tennessee establishing her birth and confirming that she did not have a birth certificate, her out-of-state

²⁰ Trial Transcript of Ms. Crawford's testimony (Transcript of Court Trial, *Frank v. Walker*, No. 11-CV-1128 Nov. 4, 2013 at Tr. 24, 56-67, 60-75); Advancement Project, *They Stood Up: Unsung Heroes Behind The Voting Rights Headlines*, <http://www.advancementproject.org/blog/entry/they-stood-up-unsung-heroes-behind-the-voting-rights-headlines> (last visited Feb. 5, 2015); Chuck Quirnbach, *Federal Trial Challenging Voter ID Law Begins In Milwaukee*, WISCONSIN PUBLIC RADIO, <http://www.wpr.org/federal-trial-challenging-voter-id-law-begins-milwaukee> (last visited Feb. 5, 2015); *Personal Voter Story: Bettye and Debra by the Advancement Project*, <https://www.youtube.com/watch?v=7AkSwXZDKIs&list=UUHEP8VISy0wCuPrHMyk1o2w&index=4&feature=plcp>. Because it is unclear how much of the driving was completed by Ms. Crawford, the value of her daughter's time is calculated at minimum wage, not median wage.

identification, and other identification were deemed insufficient to register to vote in Wisconsin. Despite two trips to the DMV, approximately 12.7 miles from Mrs. Jones' home, and requesting Tennessee to conduct another search for her birth certificate, the DMV insisted that a birth certificate was required to register to vote in Wisconsin.

After many hours making telephone calls, sending emails to various government agencies, researching the voter registration requirements online, and making several trips to notaries, Mrs. Jones and her daughter could provide the Wisconsin DMV with another letter from Tennessee indicating her lack of a birth certificate, certified school records from Tennessee, proof of voter registrations in her former states, and an application for a delayed birth certificate with the Office of Vital Records. Despite these extensive efforts, Wisconsin DMV demanded a birth certificate.

After contacting the Department of Transportation and the DMV again, Mrs. Jones and her daughter learned that the supervisor at the DMV had the authority to grant exceptions to the birth certificate requirement. Following an extensive interview with the supervisor and providing all of the documentation, Mrs. Jones was able to obtain a Wisconsin driver's license and register to vote.

Mrs. Jones and her daughter expended considerable time and costs to exercise Mrs. Jones' right to vote. Her daughter estimates they spent 40 to 50 hours, over several months, attempting to register to

vote. Based on the minimum wage of \$7.25, that amounts to \$290 to \$362.50 each. For each DMV trip, they traveled 25.4 miles round trip for a total of 76.2 miles, costing approximately \$8.03 in gas. They traveled 11.2 miles based on a well-known notary service at the UPS store in Brookfield, Wisconsin, which would require \$1.18 of gas. Finally, the bulk of travel took place to Mrs. Jones' former schools in Cleveland, Ohio, approximately 450 miles away, with the gas cost of \$98.86. In addition, obtaining the delayed birth certificate cost Mrs. Jones \$40. Mrs. Jones also paid for a driver's license for \$28.

Therefore, retaining her right to vote cost Mrs. Jones about **\$466.07 to \$538.57** (\$290 to \$362.50 time cost, \$68 in document fees, and \$108.07 in gas). With Ms. Crawford's time costs included (\$290 to \$362.50), the total for both Mrs. Jones and her daughter would be (\$756.07 to \$901.07).

C. "Free" IDs Are Costly.

The examples in South Carolina, Texas and Wisconsin demonstrate that obtaining a "free" photo voter ID card can impose significant costs on individuals. Examples in the Sobel Study show that the cost of "free" voter IDs, typically from about \$75 to \$175, can rise beyond \$1,500, particularly with document changes and legal services. Even without document expenses, the costs of "free" voter IDs are many times the current value of the \$1.50 poll tax outlawed by *Harper* and the Twenty-Fourth Amendment.

These examples show that “free” voter IDs are expensive. They constitute both a “poll tax” and a “time tax” on a citizen’s pocketbook and voting rights on their lives and livelihoods.²¹ In fact, voter ID requirements can cost some citizens the ultimate price: in losing their right to vote.²²

Moreover, voter ID laws require voting and civil rights organizations to divert resources from their core mission of facilitating and encouraging voter registration and voting, to informing and assisting people in getting official documents and IDs, or litigating the constitutionality of the laws. As the Pennsylvania Commonwealth court noted, “The Voter ID Law, and . . . ever-changing implementation requirements] caused [voting rights organizations] to divert scarce resources from their core missions (voter registration and encouraging full participation by citizens in elections) to other efforts . . . [R]epeated alteration of the prerequisites to obtaining complaint IDs caused Organizational Petitioners . . . to *waste*,

²¹ See Daniels (2011); see also *Veasey v. Perry*, 135 S. Ct. 9, 11-12 (2014) (Ginsburg, J., dissenting).

²² See Sobel Study, p. 25, notes 73-75 for voters who cannot afford or obtain documents such as birth certificates or name changes, cannot qualify for “free” voter IDs and cannot vote. A Pennsylvania expert notes an individual for whom “[m]ore than 2½ years have passed since . . . legal representation to obtain her birth certificate and she still does not have it. “Expert Report of Michele Levy,” Homeless Advocacy Project, July 16, 2012, p. 8.

not merely divert resources to perform its voter education efforts that are crucial to its mission.”²³

Even with state agency websites and outreach campaigns, the information for voters on how to obtain a “free” voter ID is often hard to find, incomplete and misleading. This may be as basic as no one answering the phone, long wait times on hold and in line, or an ill-informed clerk. It can be complicated by the offices only being open for limited hours or days, and particularly difficult for those with handicaps. The rules can be confusing. This confusion adds to the costs to voters trying to maneuver through the bureaucratic requirements for a “free” ID.

D. Expenses For Taxpayers And States.

In addition to the costs to individual voters of obtaining “free” voter ID cards, the voter ID requirements create major expenses for taxpayers and states. These include outreach and public instruction campaigns to tell citizens that they need government IDs and how to get them, training of staff, poll workers, and election judges, administrative expenses, and provisional ballot costs. The “outreach” efforts cost state agencies significant amounts of taxpayer dollars. Studies have estimated these total costs to states for defending Voter ID laws can be as high as \$78 million per state, which will be borne by the

²³ *Applewhite v. Pennsylvania*, 2012 WL 3332376, at *15-16 (Pa. Commw. Ct. Aug. 15, 2012) (emphasis in the original).

taxpayers.²⁴ These costs impose significant expenses not only on citizens seeking voter IDs, but also to other taxpayers and treasuries that have to fund the additional costs for providing and promulgating the ID cards. Many of those states already face large budget deficits.

The range of costs to states for providing “free” IDs range from \$1.3 million in Indiana just for the actual cards²⁵ to an estimated high of \$78 million in Texas for the full implementation and outreach programs.²⁶ Moreover, the litigation expenses for defending voter ID legislation and rules add significant expenses on state governments and taxpayers in those states passing voter ID laws.

As the evidence shows, in Pennsylvania the estimated state costs of providing “free” voter IDs range from \$15.75 million to \$47.26 million (Pennsylvania budget deficit was \$4.2 billion for FY12). For

²⁴ The Voting Rights Institute, *The Real Cost of Photo ID*, at Figure 1. The high estimate of \$113.5 million is for California which currently does not have a photo voter ID law. The estimate for Minnesota was \$84 million for a defeated proposal.

²⁵ National Conference for State Legislatures, *The Canvass*, No. XVII, February 2011, p. 2.

²⁶ The estimates ranged to \$78 million. Nicholas Anhut, *et al.*, *Voter Identification: The True Cost, An Analysis of Minnesota's Voter Identification Amendment*, The Hubert H. Humphrey School of Public Affairs, University of Minnesota, April 20, 2012, http://conservancy.umn.edu/bitstream/123582/1/Anhut_Voter%20Identification%20The%20True%20Costs%20An%20Analysis%20of%20Minnesotas%20Voter%20Identification%20Amendment.pdf.

South Carolina the estimates range from \$5.9 million to \$17.7 million (South Carolina deficit of \$877 million). For Texas the estimates range from \$26 million to \$78 million (Texas deficit of \$13.4 billion). And for Wisconsin, the estimate is \$7.34 million to \$22.03 million (Wisconsin deficit of \$1.8 billion).²⁷ This totals between \$55.06 million and \$165.21 million for these four states alone. Extrapolating Pennsylvania, South Carolina, Texas and Wisconsin costs to the rest of the voter ID states in 2014 approaches half billion dollars in costs to the state governments for providing “free” voter IDs.²⁸

There are also litigation costs.²⁹ These expenses create further costs to citizens and governments imposed by “free” voter IDs. In short, there are substantial costs to individuals and states from requiring and providing “free” photo voter IDs. That substantial

²⁷ *Id.*

²⁸ See Sobel (2014, notes 76 and 83) for extrapolating costs to voters in all Voter ID states to almost half a billion dollars (\$473,486,300). The costs for 3 state governments in Table 5 of between \$47.72 million and \$143.18 million can be extrapolated by the same population factor of (143.8 million/38.8 million= 3.706) to produce total costs to other states of about \$176.86 million to \$530.65 million. Combining the estimates, the total approaches \$1 billion for “free” voter IDs.

²⁹ Litigation in South Carolina to defend the state’s Voter ID law could cost over \$1,000,000. Renee Dudley, “State’s lawsuit over voter ID could cost more than \$1 million,” *The Post and Courier*, Charleston, S.C., March 23, 2012, <http://www.postandcourier.com/article/20120129/PC1602/301299971>.

sum does not take into consideration the costs to democracy that citizens and candidates will pay.

E. Voter IDs Are Not “Free.”

State Supreme Courts have found the burdens imposed by Voter ID laws facially unconstitutional under state constitutions.³⁰ The *Crawford* plurality left open federally the “as-applied” challenge based on additional investigations and evidence of burdens and abridgements of voting rights. As the Seventh Circuit dissents clarify, the record of burden in the present case is more complete as “entirely different . . . in every way” from *Crawford*. Voter ID laws burden and disenfranchise many times more voters than they might deter from improperly voting.

While voter identification laws are purportedly “race neutral,” their impact disproportionately affects minorities who do not have driver licenses or passports. The laws also burden other vulnerable populations, including the poor and elderly, least able to bear the costs. Married or divorced women face added burdens when purchasing copies of their marriage licenses as proof of name changes.

³⁰ See *Weinschenk*, *supra* note 6; *Martin v. Kohls*, 2014 Ark. 427 (2014); *Applewhite*, 2012 WL 3332376, pp. 6-7.

The calculations of the burdens reflected here provide evidence to evaluate whether photo voter ID laws unconstitutionally abridge the right to vote.

CONCLUSION

Wisconsin Act 23 substantially burdens the right to vote, particularly of minorities and the poor. Supposedly “free” voter IDs will not typically be free. It is respectfully submitted that the Court consider the true costs to voters by granting certiorari and evaluating the constitutionality of Act 23.

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