

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

August 10, 2016

Before

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL S. KANNE, *Circuit Judge*

DIANE S. SYKES, *Circuit Judge*

Nos. 16-3003 & 16-3052

RUTHELLE FRANK, *et al.*,
Plaintiffs-Appellees, Cross-Appellants,

v.

SCOTT WALKER, in his official capacity as
Governor of the State of Wisconsin, *et al.*,
Defendants-Appellants, Cross-Appellees.

Appeals from the United
States District Court for
the Eastern District of
Wisconsin.

No. 11-C-1128
Lynn Adelman, *Judge.*

Order

The injunction entered by the district court on July 19, 2016, is stayed pending appeal. Applying the standards of *Nken v. Holder*, 556 U.S. 418 (2009), we conclude both that the district court's decision is likely to be reversed on appeal and that disruption of the state's electoral system in the interim will cause irreparable injury.

Our most recent decision in this case concluded that anyone who is eligible to vote in Wisconsin, but cannot obtain a qualifying photo ID with reasonable effort, is entitled to an accommodation that will permit him or her to cast a ballot.

Frank v. Walker, 819 F.3d 384 (7th Cir. 2016). On remand, the district court concluded that at least some voters fall in this category, notwithstanding the most recent revisions to the procedures that Wisconsin uses to issue photo IDs. But instead of attempting to identify these voters, or to identify the kinds of situations in which the state's procedures fall short, the district court issued an injunction that permits any registered voter to declare by affidavit that reasonable effort would not produce a photo ID—even if the voter has never tried to secure one, and even if by objective standards the effort needed would be reasonable (and would succeed).

The district court's injunction allows any registered voter to check a box stating a reason why reasonable effort would not produce a qualifying photo ID. The boxes include lack of necessary documents (apparently including situations in which the person has not tried to obtain them), "work", "family responsibilities", and "other" —and the voter can put anything in the "other" box, including a belief that spending a single minute to obtain a qualifying photo ID is not reasonable. The injunction adds that state officials are forbidden to dispute or question any reason the registered voter gives. Yet the Supreme Court held in *Crawford v. Marion County Election Board*, 553 U.S. 181, 198 (2008), that "the inconvenience of making a trip to the [department of motor vehicles], gathering the required documents, and posing for a photograph surely does not qualify as a substantial burden on the right to vote, or even represent a significant increase over the usual burdens of voting." A given voter's disagreement with this approach does not show that requiring one trip to a governmental office is unreasonable.

Because the district court has not attempted to distinguish genuine difficulties of the kind our opinion mentioned, 819 F.3d at 385–86, or any other variety of substantial obstacle to voting, from any given voter's unwillingness to make the effort that the Supreme Court has held that a state can require, there is a substantial likelihood that the injunction will be reversed on appeal.