UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

THE ANDREW GOODMAN FOUNDATION, Plaintiff, v. MARGE BOSTELMANN, JULIE M. GLANCEY, ANN S. JACOBS, DEAN KNUDSON, ROBERT F. SPINDELL, JR., and MARK L. THOMSEN, in their official capacities as Wisconsin Elections Commissioners, Defendants.	Civil Action No. 19-cv-955

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO STAY

Over three years ago Defendants litigated *One Wisconsin Institute, Inc. v. Thomsen*, a case challenging over a dozen provisions of eight different laws governing voting in Wisconsin under at least five different legal theories. Notably, unlike this case and despite Defendants' contentions otherwise, the district court in *One Wisconsin* did not determine whether the student ID restrictions challenged here violate the Twenty-Sixth Amendment. Rather, the Court's analysis of Wisconsin's photo ID requirement in *One Wisconsin* was limited to considering intentional racial discrimination under the Fifteenth Amendment as a motivation for Act 23, as well as the burden it imposed on the right to vote under the Fourteenth Amendment and Voting Rights Act. 198 F. Supp. 3d 896, 913-923 (W.D. Wis. 2016) (analyzing photo ID claims). Today, *One Wisconsin* remains on appeal before the Seventh Circuit, where it has been pending for at least two years. A clear understanding of *One Wisconsin* coupled with knowledge of its appeal status makes Defendants' request for a stay legally untenable. Indeed, Defendants effectively seek an indefinite stay of this case—which raises a far narrower claim based on a separate and distinct legal issue than the claims in *One Wisconsin*—on the basis of a pending appeal from a case that did not adjudicate and, as a consequence, cannot decide the issue before this Court.

This Court has a "'virtually unflagging obligation' absent 'exceptional circumstances' to exercise jurisdiction when a case is properly before it." *Grice Eng'g, Inc. v. JG Innovations, Inc.*, 691 F. Supp. 2d 915, 920 (W.D. Wis. 2010) (citing *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976); *R.R. Street & Co., Inc. v. Vulcan Materials Co.*, 569 F.3d 711, 715 (7th Cir. 2009)). Nothing in Defendants' Motion to Stay ("Motion"), *One Wisconsin*, or the facts of this case present such exceptional circumstances. This is particularly so given the prejudice that Plaintiff and thousands of young Wisconsin voters will suffer should this Court issue a stay: another series of Wisconsin elections, including the upcoming 2020 presidential election, in which they will continue to be burdened by intentional and arbitrary restrictions on the use of their student IDs to vote. Given the severe prejudice Plaintiff faces if the Court waits to resolve this matter, as well as the absence of any exceptional circumstances warranting a stay, the Court should deny Defendants' Motion and allow this case to proceed expeditiously.

BACKGROUND

In June 2011, the Republican-controlled Wisconsin legislature passed 2011 Wisconsin Act 23, sweeping in a body of new election laws, including heightened requirements for registering to vote and the requirement that voters show one of a few acceptable forms of photo ID to cast their ballot. As part of the photo ID law, Act 23 placed a number of unique restrictions on student ID use for voting, accepting student IDs only if they have an issuance date, an expiration date no more than two years from the issuance date, a signature line, and are accompanied by a letter demonstrating current enrollment at the university ("Student Voter ID Restrictions"). After their enactment, Act 23 and the voter ID law as a whole were challenged in several state and federal lawsuits on a diverse array of legal theories. None of these cases specifically addressed the legality of the Student Voter ID Restrictions under the Twenty-Sixth Amendment.

In 2015, voters and advocacy groups challenged certain provisions of Act 23 and a number of other subsequent Wisconsin election laws under several causes of action in *One Wisconsin Institute, Inc. v. Thomsen*. With respect to the use of student IDs for voting, the *One Wisconsin* plaintiffs argued, in pertinent part, that the requirement that student IDs must be unexpired to be

accepted for voting purposes while other forms of ID were not subject to the same requirement amounted to disparate treatment of students without a rational basis. *See* 198 F. Supp. 3d at 960-62. The *One Wisconsin* plaintiffs also argued that the requirements for using a student ID to prove residence when registering to vote—which are distinct from and do not overlap with the Student Voter ID Restrictions challenged here, *compare* Wis. Stat. § 6.34(3)(a)(7) (proof of residence statute) *with* Wis. Stat. § 5.02(6m)(f) (student voter ID statute)—intentionally discriminated against voters in violation of the Twenty-Sixth Amendment. *See One Wisconsin*, 198 F. Supp. 3d at 926. The district court found that the restriction on the use of expired student IDs violated the Fourteenth Amendment, but that the student ID proof of residence requirements did not violate the Twenty-Sixth Amendment. *One Wisconsin Inst., Inc.*, 198 F. Supp. 3d at 925-27, 960-622. The district court made clear, however, that its decision did not impact the Student Voter ID Restrictions challenged in this case, stating that "the court is not concluding that voters have carte blanche to use expired college or university IDs at the polls; they must still comply with [the Student Voter ID Restrictions]." *Id.* at 962. The parties appealed the district court's decision, and the appeal was argued in February 2017. As of today, no opinion has been issued and the appeal remains pending.

Act 23 and the Student Voter ID Restrictions ultimately went into effect for the 2016 general election, and its effects were striking. One study estimates that over 200,000 more people would have voted in Wisconsin in the 2016 general election but for the new voter ID requirement alone. Memorandum from Guy Cecil, Chairman of Priorities USA, on Voter Suppression Analysis (May 3, 2017), https://www.demos.org/sites/default/files/publications/2017.05.03%20Voter%20Suppression%20Memo%5B1%5D.pdf. And Wisconsin's student voting rate plummeted. Despite record-breaking student voter turnout nationally, Wisconsin experienced the second-largest decline in student voter turnout in the country. Some areas of Wisconsin reported declines in student voting of more than 11%, and many areas of the state had declines of 5% or more. Nancy Thomas et al., Institute for Democracy & Higher Education, Democracy Counts: A Report on U.S.

College and University Student Voting (2017), https://idhe.tufts.edu/sites/default/files/NSLVE%20Report%202012-2016-092117%5B3%5-D.pdf.

In light of the increased body of research demonstrating the effects of Wisconsin's voter ID law, including the effect of the Student Voter ID Restrictions on young voters, and to prevent the ongoing burdens that Plaintiff suffers each election as it contends with Act 23 and the corresponding Student Voter ID Restrictions, Plaintiff filed suit in advance of the 2020 election to advocate for itself and its young voter constituents. Here, Plaintiff brings a single claim, distinct from those in *One Wisconsin* and other cases that have challenged Act 23, alleging that the Student Voter ID Restrictions—which do not apply to any other acceptable form of ID—intentionally deny and abridge the right to vote of young voters in violation of the Twenty-Sixth Amendment. Plaintiff should be heard now on its claim.

LEGAL STANDARD

When considering a motion to stay until the resolution of another action, "courts should be mindful of the Supreme Court's admonition, stated repeatedly by the Court of Appeals for the Seventh Circuit, that federal courts have a 'virtually unflagging obligation' absent 'exceptional circumstances' to exercise jurisdiction when a case is properly before it." *Grice*, 691 F. Supp. 2d at 920 (citing *Colo. River*, 424 U.S. at 817; *R.R. Street & Co.*, 569 F.3d at 715). Indeed, "[o]nly in rare circumstances will a litigant in one cause be compelled to stand aside while a litigant in another settles the rule of law that will define the rights of both." *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936). This is because such stays are indefinite in duration. Where a movant seeks an indefinite stay, the Court must deny the motion unless the movant has demonstrated a pressing need. *Landis*, 299 U.S. at 255-56; *see also Hy Cite Corp. v. Regal Ware, Inc.*, No. 10-CV-168-WMC, 2010 WL 2079866, at *1 (W.D. Wis. May 19, 2010) (Conley, J.) ("[A] court would abuse [its] discretion by issuing 'a stay of indefinite duration in the absence of pressing need.'"). Only after the movant has demonstrated a pressing need can the court "'balance interests favoring a stay against interests frustrated by the action' in light of the court's strict duty to exercise jurisdiction in a timely manner." *Grice*, 691 F. Supp. 2d at 920 (quoting *Cherokee Nation of Okla. v. United*

States, 124 F.3d 1413, 1416 (Fed. Cir. 1997) (noting "paramount obligation to exercise jurisdiction timely in cases properly before it")).

Courts within the Seventh Circuit often look to four factors when striking that balance: (1) the stage of the litigation, (2) prejudice and tactical disadvantage to the non-moving party, (3) the simplification and streamlining of issues by a stay, and (4) the reduction in the burden of litigation on the parties and on the court. *Id.* "A stay is not a matter of right, even if irreparable injury might otherwise result." *Nken v. Holder*, 556 U.S. 418, 433 (2009) (quotation omitted). The proponent of a stay bears the burden of establishing that it not only has a pressing need, but that the need outweighs the prejudice to the non-moving party. *Clinton v. Jones*, 520 U.S. 681, 708 (1997).

ARGUMENT

I. Defendants' request for an indefinite stay must be denied because they have not demonstrated a pressing need.

Defendants' request for a stay pending the resolution of *One Wisconsin* is a quintessential request for an indefinite stay and it must be denied because Defendant has not, and cannot, demonstrate a pressing need.

This Court has expressly recognized that a district court's discretion to control its docket by staying a proceeding is "not . . . without bounds," and it would abuse its discretion by issuing a stay that is "'immoderate or indefinite.'" *Hy Cite*, 2010 WL 2079866, at *1 (quoting *Cherokee Nation of Okla.*, 124 F.3d at 1416); *see also, e.g.*, *Landis*, 299 U.S. at 256 (finding that district court erred by granting stay until resolution of separate, related case because indefinite stays exceed "the limits of a fair discretion."); *Radio Corp. of Am. v. Igoe*, 217 F.2d 218, 221 (7th Cir. 1954) (upholding denial of motion to stay because, in part, "no date for said separate trial has been set and when set will involve at least a year of court days"); *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005) (noting that *Landis* barred stays that exceed a "fairly short duration"); *In re Davis*, 730 F.2d 176, 178-79 (5th Cir. 1984) ("The court must also 'carefully consider the time reasonably expected for resolution of the 'other case,' for 'stay orders will be reversed when they are found to be immoderate or of an indefinite duration. . . .'"). The only exception to the

general prohibition on indefinite stays occurs when the movant can demonstrate a pressing need. *See Hy Cite*, 2010 WL 2079866, at *1 (quoting *Landis*, 299 U.S. at 255). Only then can a district court exercise its discretion by balancing the movant's pressing need against the prejudice to the non-moving party.

As a threshold matter, there is no question that Defendant's request for a stay until the Seventh Circuit resolves *One Wisconsin* would result in a stay of indefinite duration. *See, e.g.*, *Landis*, 299 U.S. at 256; *Belize Soc. Dev. Ltd. v. Gov't of Belize*, 668 F.3d 724, 732 (D.C. Cir. 2012) (finding stay pending resolution of case before Belize Supreme Court was indefinite and unlawful); *Lockyer*, 398 F.3d at 1110 (noting that *Landis* found a stay lasting until related case was finally resolved was indefinite and impermissible); *In re Davis*, 730 F.2d at 178-79 ("A stay hinged on completion of [related] proceedings is manifestly indefinite." (internal quotation marks omitted)); *Dellinger v. Mitchell*, 442 F.2d 782, 788 (D.C. Cir. 1971) (stay until related case decided is indefinite); *Hy Cite*, 2010 WL 2079866, at *2 (finding "defendants' vague prediction" on resolution of related case created "an indefinite time period for the stay"). Nevertheless, Defendants have not demonstrated a pressing need that would warrant this Court waiting for the Seventh Circuit's decision in *One Wisconsin*.

Defendants' request for a stay, and consequently the "pressing need" it sets forth in its Motion, is premised on the misguided argument that the resolution of *One Wisconsin* will necessarily resolve the issues in this case. This argument fails for several reasons. As an initial matter, there is no issue on appeal in *One Wisconsin* that will dispose of the sole issue in this case—whether the Student ID Restrictions are unconstitutional under the Twenty-Sixth Amendment. This question was not decided in *One Wisconsin* nor is it at issue on appeal. Specifically, the district court in *One Wisconsin* considered the lawfulness of Wisconsin's photo ID law under the Voting Rights Act and the First, Fourteenth, and Fifteenth Amendments. *See One Wisconsin*, 198 F. Supp. 3d at 918-22, 929-30, 953, 960-962. When it addressed student IDs specifically, it did so only to consider whether the requirement that a student ID be unexpired violated the Fourteenth Amendment, expressly clarifying that it only addressed that one

requirement because the plaintiffs had not directed their challenge at the Student Voter ID Restrictions. *Id.* at 960-62.

Likewise, when the district court in *One Wisconsin* considered the plaintiff's Twenty-Sixth Amendment challenge in that case, it reviewed the constitutionality of Wisconsin's proof of residence statute, which limits when a voter can use a student ID to register to vote. *See id.* at 927. Crucially, the proof of residence statute does not impose the same restrictions on student IDs used to *register to vote* that the Student Voter ID Restrictions impose on student IDs used to *cast a vote*. *Compare* Wis. Stat. § 6.34(3)(a)(7) *with* Wis. Stat. § 5.02(6m)(f). Thus, *One Wisconsin* did not decide the constitutionality of the Student Voter ID Restrictions under the Twenty-Sixth Amendment or any other constitutional provision. As such, the parties in *One Wisconsin* did not raise, nor will the Seventh Circuit decide, that issue on appeal. Accordingly, the *One Wisconsin* decision will *not* resolve the issues in this case, and awaiting the resolution of *One Wisconsin* does not amount to a pressing need.

Defendants also identify other issues in *One Wisconsin* that they claim will "clearly steer resolution of Plaintiff's claim here." Mot. to Stay at 14. Those issues fare no better. *First*, Defendants argue that the Seventh Circuit's determination of whether Wisconsin's free voter ID program unconstitutionally burdens the right to vote under the First and Fourteenth Amendments will guide resolution of Plaintiff's claim that the Student Voter ID Restrictions violate the Twenty-Sixth Amendment. But the issue of whether the free voter ID program has the effect of burdening the right to vote is irrelevant here. That program's constitutionality (or unconstitutionality) has no impact on the key question before this Court: whether the Student Voter ID Restrictions have the purpose, at least in part, to burden and deny the ability of young voters to register. The availability of a free voter ID has no role in that analysis, as its existence and constitutionality cannot speak to the Legislature's intent in enacting the Student Voter ID Restrictions. Even if the Seventh Circuit were to reverse the *One Wisconsin* court's finding that the free voter ID program is unconstitutional because it "imposes severe burdens on the right to vote," *One Wisconsin*, 198 F. Supp. 3d at 949-50, the Twenty-Sixth Amendment claim in this case would still require resolution. And it is of no

consequence whether the free voter ID program contributes to the burden that Act 23 places on young voters. Rather, it is the fact that the Student Voter ID Restrictions were imposed with the purpose of burdening young voters that makes those restrictions unconstitutional under the Twenty-Sixth Amendment. That question will not be resolved no matter the outcome in *One Wisconsin*.

Second, Defendants argue that the Seventh Circuit's consideration of the Wisconsin photo ID law's requirement that student IDs be unexpired will guide the Court in this case. Mot. at 15; *see also One Wisconsin*, 198 F. Supp. 3d at 960-62. But the lawfulness of requiring that student IDs be unexpired also has no bearing on the issues here as the district court's holding does not address the requirement that an expiration date appear on the face of a student ID. Even if the Seventh Circuit upholds the district court's decision in *One Wisconsin*, that "requiring unexpired college or university IDs violates the Fourteenth Amendment," *id.* at 962, a student ID presented to vote must still comply with the Student Voter ID Restrictions being challenged here. Indeed, the district court in *One Wisconsin* explicitly recognized that "[the Student Voter ID Restrictions] still apply" and "[t]he only thing that will change is that the ID card that a college or university student actually presents at the polls can be expired." *Id.* In other words, although a student can now vote with an expired student ID, that ID must still include on its face an expiration date no more than two years after the issuance date, as well the issuance date, a signature line, and corresponding proof of enrollment. Whether a student can present an expired ID or not, Plaintiff's challenge is the same: the aforementioned Student Voter ID Restrictions are arbitrary and intentionally discriminate against young voters in violation of the Twenty-Sixth Amendment.

Ultimately, Plaintiff challenges a small piece of the voter ID law—the Student Voter ID Restrictions—that has yet to be litigated, a fact confirmed by the *One Wisconsin* district court. *See id.* And Plaintiff brings this challenge under a single theory, the Twenty-Sixth Amendment. The outcome of *One Wisconsin* will have no effect on Plaintiff's case. Moreover, this Court would be in good company denying the Defendants' Motion on these grounds. There are many instances in which courts have denied stays even where there are identical facts or claims at issue. *See, e.g.*,

Williams v. CashCall, Inc., 92 F. Supp. 3d 847, 856-57 (E.D. Wis. 2015) (concluding that result of one plaintiff's arbitration would not simplify issues or streamline another plaintiff's case remaining before district court despite identical legal issues); *Pet Milk Co. v. Ritter*, 323 F.2d 586, 588 (10th Cir. 1963) (district court did not abuse its discretion by denying stay pending resolution of appeal involving identical issues). Courts have also declined to stay cases when the outcome of another pending case would only be persuasive. *See, e.g.*, *U. S. Oil v. Koch Ref. Co.*, 497 F. Supp. 1125, 1127 (E.D. Wis. 1980) (finding stay not warranted due to simplification of issues or streamlining of trial because district court would benefit from wisdom other decisions but would not be bound and would ultimately "still have to make its own independent decision on the law"); *Candy Lab Inc. v. Milwaukee Cty.*, 266 F. Supp. 3d 1139, 1141 n.1 (E.D. Wis. 2017) ("The Court is not inclined to delay the progress of this case on the mere possibility that some unspecified amendments to the Ordinance may be considered at a later date. The tenuous potential benefit of the County's proposed stay, considered against the potential harm [that plaintiff] and others may suffer in the interim, counsels against staying the proceedings at this time."). This Court should find the same here.

More fundamentally, even if resolving *One Wisconsin* could potentially resolve an issue in this case, it still would not present a pressing need for a stay. At bottom, Defendants' request for a stay pending resolution of *One Wisconsin* is a request for efficiency and judicial economy. But efficiency and judicial economy are not pressing needs that can overcome the general prohibition on indefinite stays. *See, e.g.*, *Landis*, 299 U.S. at 256 (finding that likelihood that concurrent litigation would settle and simplify many questions of fact and law did not justify indefinite stay); *Ortega Trujillo v. Conover & Co. Commc'ns*, 221 F.3d 1262, 1265 (11th Cir. 2000) ("the interests of judicial economy alone are insufficient to justify such an indefinite stay"); *U.S. Oil*, 497 F. Supp. at 1128 ("Therefore, notwithstanding the assistance the Court would gain from the other court's views on the law, there is no compelling reason to await their decision. While the Court recognizes that defendant may incur great expense in conducting the audit that plaintiff has apparently requested, the Court does not believe that this is any justification for a stay."). Thus,

because Defendants seek an indefinite stay without demonstrating a pressing need, the Motion must be denied.

II. The prejudice to Plaintiff outweighs any interest Defendants have in a stay.

Defendants' Motion necessarily fails because it seeks an indefinite stay without a pressing need. However, even setting this dispositive reality aside, a *Grice* balancing analysis makes clear that a stay is inappropriate because the prejudice to Plaintiff strongly outweighs any of Defendants interests.

A. Plaintiff would be grievously and irreparably prejudiced by a stay.

A stay until the Seventh Circuit decides *One Wisconsin* would prejudice Plaintiff and the young voters it serves because Plaintiff would be forced to continue to divert resources to educate students about the Student Voter ID Restrictions, and young voters would continue to be subjected to the intentional age discrimination inflicted by the Student Voter ID Restrictions during its duration. *See Grice*, 691 F. Supp. 2d at 920 (noting second factor in stay analysis is prejudice to non-moving party). This prejudice will result in constitutional injury in every election that occurs while the stay is in effect.

In anticipation of the 2020 election, Plaintiff, its Student Ambassadors, and other student organizers will expend considerable resources to register students and get out the vote. They will have to divert many of those resources to educating the multitude of young, eligible voters that do not have a Wisconsin state ID or passport about the Student Voter ID Restrictions and how they can obtain an ID to comply with those restrictions. As past elections have demonstrated, many students do not know a photo ID is necessary to vote, mistakenly believe that their automatically issued student IDs can be used to vote, will be too discouraged by the Student Voter ID Restrictions to attempt to vote, or will be unable to set aside the time to obtain a second, compliant student ID. Thus, many of the students that Plaintiff serves will be prevented from voting in the elections that occur, likely including the upcoming 2020 presidential election, during the duration of the stay. This burden on young voters' right to vote constitutes a "grievous and irreparable wrong" and counsels against granting a stay. *Mills v. Green*, 159 U.S. 651, 652 (1895)

Moreover, the prejudice in this case is heightened because Plaintiff seeks injunctive relief. Suits for injunctive relief aim to terminate the infliction of an ongoing injury. When a court issues an indefinite stay in a case for injunctive relief, it "thereby with[holds] for a prolonged and indefinite period, any consideration of the claims of plaintiffs seeking injunctive relief that they are presently being denied their constitutional rights." *Dellinger*, 442 F.2d at 788. In other words, when a case seeking injunctive relief is stayed indefinitely, the plaintiff is denied her day in court *and* continues to suffer the legal injury she seeks to enjoin until the district court terminates the stay. *See Grice*, 691 F. Supp. 2d at 921 (finding that indefinite stay of case for injunctive relief would allow defendants "the opportunity to exploit and violate plaintiff's intellectual property rights"). In comparison, when a case seeking monetary damages is stayed indefinitely, the plaintiff is denied her day in court, but will eventually be made whole when the court exercises its jurisdiction and awards damages. *Lockyer*, 398 F.3d at 1110-12. In light of this distinction, an indefinite stay in a case seeking injunctive relief such as this one is particularly prejudicial.

B. A stay will not meaningfully streamline or simplify this case, nor will it reduce the burden of litigation on the parties and the Court.

As noted, Defendants premise their request for a stay on the misguided assertion that a decision in the *One Wisconsin* appeal will guide the Court in resolving this case, which will streamline the case and, in turn, reduce the burden of litigation. *See Grice*, 691 F. Supp. 2d at 920 (noting courts should consider "(3) whether a stay will simplify the issues in question and streamline the trial; and (4) whether a stay will reduce the burden of litigation on the parties and on the court"). Because the *One Wisconsin* decision will have no bearing on the only issue before the Court in this case, *see* discussion *supra* at 8-13, a stay in wait of that decision will not streamline the case or reduce the burden of litigation, it will merely delay this Court's adjudication of the issues presented herein. Accordingly, this factor also counsels against granting Defendants' request.

C. That this case is still in its early stages is of no consequence.

Plaintiff does not dispute that this case is still in an early stage, but this factor is of no consequence given that the requested stay will severely prejudice Plaintiff, who will likely lose any possibility of relief in time for the next election. In similar situations, even at an early stage in litigation, this Court has denied motions for indefinite stays. It should do so here.

In *Hy Cite*, 2010 WL 2079866 (Conley, J.), for example, this Court recognized that the case was in its early stages, but denied a motion to stay because, "[a]lthough defendants contend that plaintiff will not be prejudiced by a 'short stay' pending decisions in [three related cases], they do not and cannot know how long the stay would need to be in place because there are no set dates for decisions in any of those three cases." *Id*. at *1. Similarly, in *Grice*—oft-cited by district courts in the Seventh Circuit for its four-factor stay analysis—the court denied a motion to stay, concluding that the plaintiff would be prejudiced "because it is uncertain when the appeal [of a related case] will be resolved" and "plaintiff would not be able to prosecute this case and it would be deprived of the ability to obtain a judgment and injunctive relief while the stay is pending." 691 F. Supp. 2d at 921; *see also Williams*, 92 F. Supp. 3d at 856-57 (denying stay pending related arbitration because, although result of related arbitration had potential to influence case, many months of delay would prejudice plaintiff); *U. S. Oil*, 497 F. Supp. at 1127-28 (denying stay despite interest of judicial economy because "there is at this time no indication that the [other] cases are near resolution").

The injury to young Wisconsin voters' Twenty-Sixth Amendment right to vote continues unabated. Unless this case proceeds expeditiously and Defendants are enjoined from enforcing the law, Plaintiff and the young Wisconsin voters it represents will be injured again in at least the Spring 2020 election and the Fall 2020 presidential election. That this case is in its early stages does not change the situation, and this Court should allow Plaintiffs to adjudicate their claim.[1]

[1] Indeed, as Plaintiff has informed Defendants, it intends to file a motion for preliminary injunction in short order to expedite a decision on the issues in this case and to ensure relief in advance of the 2020 presidential election. Thus, while this case is in its early stages, Plaintiff anticipates that the issues in it can be resolved swiftly in the absence of a stay.

III. *Common Cause* is not instructive

Finally, Defendants' assertion that this Court should grant a stay simply because the court in *Common Cause v. Thomsen*, No. 3:19-cv-00323-jdp (W.D. Wis. filed Apr. 23, 2019), granted a stay falls flat for two reasons. *First*, because the question before the Court is whether Defendants have presented a pressing need for a stay in *this* case and on *these* facts, the imposition of a stay in a different case with distinct legal claims is simply not instructive. *Common Cause*, like *One Wisconsin*, is premised on an undue burden claim under the First and Fourteenth Amendments and requires analysis under the *Anderson-Burdick* framework. That justification does not hold water here, as Plaintiff's case is premised on the Twenty-Sixth Amendment and does not require additional information about the analysis under *Anderson-Burdick* to proceed. Likewise, as discussed, analysis of the Twenty-Sixth Amendment in *One Wisconsin* was limited and did not involve the Student Voter ID Restrictions challenged here. As such, no similar reasoning would apply in this case.

Moreover, the *Common Cause* court's text-only docket order staying that case does not provide analysis of the most significant question at issue here: whether there is a pressing need for a stay and how that need balances against prejudice to the non-moving party. Thus, there is nothing to be learned from the court's decision in *Common Cause*. The Court here should look to the facts before it, and to the wealth of examples plainly illustrating that an indefinite stay over the objections of a highly prejudiced non-moving party is impermissible. For these reasons, the district court's grant of a stay in *Common Cause* is not instructive.

CONCLUSION

For the reasons stated above, Plaintiff respectfully requests that the Court deny Defendant's motion to stay.

Dated this 24th day of December, 2019. Respectfully submitted,

/s/ *Amanda R. Callais*

David L. Anstaett
PERKINS COIE LLP
33 East Main Street, Suite 201
Madison, WI 53703-3095
Telephone: (608) 663-7460
Facsimile: (608) 663-7499
danstaett@perkinscoie.com

Marc E. Elias*
John Devaney**
Amanda R. Callais*
Stephanie Command*
PERKINS COIE LLP
700 Thirteenth St., N.W., Suite 600
Washington, D.C. 20005-3960
Telephone: (202) 654-6200
Facsimile: (202) 654-9959
melias@perkinscoie.com
jdevaney@perkinscoie.com
acallais@perkinscoie.com
scommand@perkinscoie.com

Gillian Kuhlmann*
PERKINS COIE LLP
1888 Century Park East, Suite 1700
Los Angeles, CA 90067-1721
Telephone: (310) 788-3245
Facsimile: (310) 843-1244
gkuhlmann@perkinscoie.com

Yael Bromberg*
Bromberg Law LLC
PO Box 1131
Glen Rock, NJ, 07452-1131
Telephone: (201) 280-1969
Facsimile: (201) 586-0427
yaelbromberglaw@gmail.com

Counsel for the Plaintiff
**Admitted Pro Hac Vice*
*** Pro Hac Vice Application Forthcoming*