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# When Politics Rule Policy: The Role of Discursive Politics in Wisconsin's Photo Identification Law

Rachel Matthews

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WHEN POLITICS RULE POLICY: THE ROLE OF DISCURSIVE POLITICS IN  
WISCONSIN'S PHOTO IDENTIFICATION LAW

RACHEL MATTHEWS

SCRIPPS COLLEGE  
CLAREMONT, CA  
APRIL 20, 2018

PRESENTED TO:

PROFESSOR VANESSA TYSON  
SCRIPPS COLLEGE

PROFESSOR THOMAS KIM  
SCRIPPS COLLEGE

PROFESSOR ANN QUINLEY  
POMONA COLLEGE

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## PREFACE

I voted in my first major election as a freshman in college. The day my absentee ballot arrived, I was ecstatic. *Indicate your choice with circles not check marks; sign here not there*: I read every line of instruction, determined to get it right. After triple-checking my work (and snapping a quick picture for Mom), I was almost ready to mail. I just needed to print a scanned copy of my driver's license.

All Wisconsin voters are required to present valid and accurate government-issued photo identification before voting. At first glance, this policy may seem simple, but for many Wisconsinites, the requirement stands between their voice and their vote. For me, Wisconsin's photo ID requirement meant I needed to find an electronic scanner with printer functions on campus. Being only a freshman, I had no idea where I could access such equipment. I first walked to the school's mailroom, where I learned they had a scanner, but not one available for student use. I was then sent to the college's copy room, where again, I was told no. Getting a bit desperate, I went to the college's career planning office, which had a similar scanner-but-not-for-students rule, yet also informed me that I could access what I needed at Steele, our campus computer lab. Nearly an hour after I first set out on my mission, I was struggling to work the Steele scanner when I realized: if I didn't care so much about politics and still faced these requirements, I probably wouldn't vote.

That realization sparked my interest in American voting policy. Coming from one of the seventeen photo ID states, I couldn't stop researching the topic. Why did we have this requirement? How many other citizens faced challenges producing an ID? By the second semester of my junior year, I knew I had my thesis topic. As a public policy analysis major, I've spent my college career analyzing policy. I've studied laws through all stages of the political process and very much enjoy mastering every nitty-gritty detail. I've learned how to interview policy stakeholders. How to track results and public opinion down to significant findings. I see my love for policy as a tangible connection to my love for government. At its core, I believe our government is good and capable, perhaps one of the strongest support systems we have. Yet, I also see the shortcomings. I see the injustice and waste, the abuse of power and privilege.

I regard Wisconsin's photo ID law as yet another example of our government's shortcomings. Passed under an inconsistent argument, the requirement harms any citizen that doesn't own a valid driver's license (most often voters in communities of color, those with disabilities, the elderly, the homeless, the poor, and student voters). I chose my thesis topic because I believe the people of Wisconsin deserve a state government that does more good than harm. Free and fair voting is a central tenet to our democracy, and I hope to see the day when our state policymakers acknowledge that.

## INTRODUCTION

As of April 2018, 17 states have voter photo identification requirements.<sup>1</sup> First passed in South Dakota in 2003, these laws require voters to present a valid and accurate photo ID at the polls, such as a driver's license, state identification card, military ID, or qualifying student ID. Photo ID supporters claim such laws deter voter fraud in our election system, ensuring that each individual identity matches the ballot that is counted in her name (Hans von Spakovsky 2011). Opponents, however, argue such laws suppress many otherwise eligible voters, mainly those who lack a government-issued, accurate, and unexpired photo ID. Furthermore, opponents say such requirements disproportionately harm the franchise of certain communities, including communities of color, those with disabilities, the elderly, the homeless, the poor, and student voters (Ellis 2009).

This paper holds photo ID as an irrational public policy. While most scholars agree that the hypothetical presence of voter fraud would threaten the health of any democracy, significant disagreement exists over the actual presence of such fraud in our election system.<sup>2</sup> Yet, even if one does operate under the presumed presence of voter fraud, evidence suggests photo ID laws are not appropriately tailored towards the most common fraud tactics (Gilbert 2014). Photo ID laws only target prevention of one form of voter fraud—in-person voter fraud. Requiring all individuals to provide a valid, accurate photo ID does not prevent fraud perpetrated through absentee ballots, as the casting of such ballots does not involve in-person interactions with an election official.

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<sup>1</sup> These states include GA, IN, KS, MS, TN, VA, WI, AR, AL, FL, HI, ID, LS, MI, RH, SD, and TX.

<sup>2</sup> For more discussion about the presence of voter fraud see *Election Fraud: Detecting and Deterring Electoral Manipulation* (The Brookings Institution)

Photo ID laws cannot prevent double voting by a person who votes twice under her own valid ID. Finally, photo ID laws cannot prevent tampering with already-cast ballots, voting machines, or ballot-counting methods. Few elections turn on a handful of votes. As such, a corrupt individual attempting to turn an election via in-person voter fraud would need to recruit a significant number of fraudulent voters. Even beyond the organizational demands, said individual would face additional barriers. Although the organizer could pay people to cast votes under another name, she could never completely confirm for whom they voted—or even whether they voted at all. As Michael Gilbert writes, “theory and evidence suggest that in-person impersonation rarely occurs” (Gilbert 2014: 746).

Wisconsin Governor Scott Walker signed the state’s photo ID requirement on May 25, 2011. Wisconsin Act 23 (originally passed as AB-7) adopted a strict interpretation of photo ID legislation, requiring all voters to present a specified ID or, if unable to provide the identification at the polls, to present a valid ID at the municipal clerk’s office no later than 4 p.m. on the Friday following Election Day. After thorough analysis of arguments for and against Wisconsin’s law, this paper seeks to answer the following: *How did Wisconsin policymakers justify the state’s strict photo identification law, AB-7 (2011)?* In structuring the language of my research question, I chose the word “justify” because it allows me to push back on how the dominant voice of policy analysis understands policy justification. Traditional policy researchers hold public policies as direct products of fact-based study (Bardach 1996).<sup>3</sup> These researchers describe their work as objective, grounded in evidence-based positivistic research. I argue that one

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<sup>3</sup> More discussion on this traditional viewpoint can be found below, in the paper’s literature review.

cannot properly understand photo identification voting policies under this traditional framework. State lawmakers do not adopt photo ID as rational policies to solve a measurable societal problem. Instead, lawmakers back the requirement with an assertion of voter fraud—a phenomenon routinely found to be minimal and inconsistent. Isolating the state of Wisconsin as a case study, I seek to understand how state policymakers justified the photo ID law, especially against opponents who argued such laws suppress certain voters. To do so, I will employ Fischer and Forester’s argumentation theory to analyze how discursive politics influenced the photo ID’s policymaking process.<sup>4</sup> Put broadly, this paper seeks to understand how policymakers form, implement, and evaluate irrational policies. I hope to highlight the intersection between politics and policy, asking researchers to step outside the blinders of assumed rationality and acknowledge the power structures that rule underneath.

The first chapter of this paper will survey necessary background for understanding photo ID policy. This section will explain relevant election law, offer a historical analysis of the rise of photo ID, and review key scholarship on voting policy. Chapter one concludes with an explanation of my research design and methods. The second chapter introduces the case study of Wisconsin’s photo ID. This section offers a partisan analysis of the state at the time the law gained passage, surveys key provisions of the legislation, and analyzes scholarship on the law’s consequences. The third chapter details my research findings, analyzing the justification framework Wisconsin policymakers used to justify AB-7. Finally, this paper concludes by highlighting

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<sup>4</sup> Fischer, Frank and John Forester, *The Argumentative Turn in Policy Analysis and Planning* (Durham and London: Duke University Press, 1993.)

discursive patterns in the justification framework, suggesting Wisconsin policymakers passed photo ID after tapping into a national conservative inclination towards paranoia.

This paper targets the public policy academy as its main audience. The traditional field of public policy largely ignores the influence of discursive politics. Instead, researchers evaluate policies via scientific models of inquiry, identifying societal problems and solutions via an “objective” process. But what happens when political actors craft policies solely to achieve political gains? What methods can these actors use to ground their argument, especially in the face of adversaries who publically challenge their logic? Existing research within the academy largely ignores these two questions. Although I cannot possibly expect this paper to sufficiently address both concerns, I will use the following pages to reflect on the topic.

## **CHAPTER 1: BACKGROUND ON PHOTO IDENTIFICATION LAWS**

### *REVIEW OF KEY ELECTION LAW<sup>5</sup>*

*The original United States Constitution allowed each state to determine the voting qualifications for its own residents.<sup>6</sup> While today’s states still retain significant power over their respective election systems, a combination of constitutional amendments, court rulings, and federal legislation has limited the scope of their power. The following section surveys defining changes in United States election law, highlighting how such policies enable today’s photo identification laws.*

Following the end of the Civil War, the United States Congress passed a series of constitutional amendments on election law. The Fourteenth and Fifteenth Amendments limited state discretion over the election process, granting citizenship to “all persons born

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<sup>5</sup> Portions of prose from this section are drawn from my previous research paper on federal voting policy. The paper was written for credit in Spring of 2017, under the instruction of Professor John Haskell, of Claremont McKenna’s Washington Program. Both works are available upon request.

<sup>6</sup> Donald Ratcliffe, “The Right to Vote and the Rise of Democracy, 1787-1828,” *Journal of the Early Republic* 33, no. 2 (2013): 231, <https://jer.pennpress.org/media/26167/sampleArt22.pdf>.

or naturalized in the United States”<sup>7</sup> and guaranteeing that a citizen’s right to vote “shall not be denied or abridged [...] on account of race, color, or a previous condition of servitude.”<sup>8</sup> Together, these two amendments expanded the franchise to recently freed slaves and all males of color, promising to protect their vote under law. In 1920, the Nineteenth Amendment expanded this promise to women, declaring the right to vote “shall not be denied or abridged [...] on account of sex.”<sup>9</sup> All three amendments granted congressional power for enforcement.

Yet despite the promised suffrage, racist voting practices routinely denied black franchise throughout 20<sup>th</sup> Century. In 1965, Congress again attempted to improve the conditions with the passage of the Voting Rights Act (VRA). This landmark legislation enforced the Fifteenth Amendment, prohibiting the voting discrimination that plagued the Post-Reconstruction and Jim Crow Era. The act contained three provisions that regulate election administration: Section 2, Section 3, and Section 5. Section 2 of the Act prohibited any voting law that discriminates based on race. This prohibition included redistricting plans and at-large election systems, poll worker hiring, and voter registration procedures.<sup>10</sup> In 1975, Congress renewed the VRA to extend this protection to limited English speakers, as well. Section 3 of the Act instructed the United States Attorney General to enforce the right to vote, allowing the agency to bring ex post facto challenges to discriminatory election practices.<sup>11</sup> Finally, Section 5 required covered jurisdictions to obtain “preclearance” from the U.S. Department of Justice or a federal district court in

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<sup>7</sup> U.S. Constit. Amend. XIV.

<sup>8</sup> U.S. Constit. Amend. XV.

<sup>9</sup> U.S. Constit. Amend. XIX.

<sup>10</sup> 52 Denial or abridgment of the right to vote on account of race or color through voting qualifications or prerequisites; establishment of violation U.S. Code 103 §10301 et seq.

<sup>11</sup> Voting Rights Act of 1965, Yale School of Law Lillian Goldman Law Library, accessed January 3, 2018 [http://avalon.law.yale.edu/20th\\_century/voting\\_rights\\_1965.asp](http://avalon.law.yale.edu/20th_century/voting_rights_1965.asp).

the District of Columbia before enacting any new voting practices.<sup>12</sup> This section specifically covered voting districts that have historically suppressed minority votes, identifying such districts via a coverage formula subsequently gutted by the Supreme Court in *Shelby County v. Holder*. Since the 2013 decision, *Shelby* left Section 5 virtually unenforceable, removing ex ante federal oversight of districts with troubling histories of voter suppression.<sup>13</sup>

Following the Voting Rights Act, Congress passed four additional pieces of election law legislation. The Voting Accessibility for the Elderly and Handicapped Act of 1984 attempted to improve access for the elderly and people with disabilities. The Act required local election officials to equip registration and polling places with the voting aid technology needed to assist voters.<sup>14</sup> In 1986, Congress passed the Uniformed and Overseas Citizens Absentee Voting Act, requiring all U.S. states and territories to allow members and family members of the Uniformed Service to register and vote absentee in all federal elections. The act also provided for an emergency backup ballot (a federal “write-in” absentee ballot) overseas voter can cast if they have “made a timely application for, but have not received, their regular ballot.”<sup>15</sup> The National Voter Registration Act of 1993 (NVRA) brought meaningful advances to voter registration accessibility, requiring states to offer voter registration opportunities to any eligible

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<sup>12</sup> Ibid

<sup>13</sup> *Shelby County v. Holder*, 570 U.S. 2 (2013)

<sup>14</sup> HR 1250. 98th Congress (1984), accessed January 3, 2018.  
<https://www.govtrack.us/congress/bills/98/hr1250/summary>

<sup>15</sup> About The Uniformed and Overseas Citizens Absentee Voting Act, The United States Department of Justice, accessed January 3, 2018,  
<https://www.justice.gov/servicemembers/uniformed-and-overseas-citizens-absentee-voting-act-uocava>

person who applies for or renews a driver's license.<sup>16</sup> NVRA applies to all states and the District of Columbia, though Section 4(b) exempts states that had no voter registration requirements or states that had election-day registration at polling places, as of August 1, 1994. Six states fall under NVRA's exemption, including Wisconsin.<sup>17</sup>

Finally, the Help America Vote Act of 2002 (HAVA) stands as the most recent piece of election law legislation. Although some scholars portray the act as a voting rights law, the concern of HAVA is not of full and nondiscriminatory ballot access. Rather, HAVA sought to address the more mechanical issues of our election administration by providing states with funding to replace outdated voting technology (such as the infamous punch card machines from the 2000 Presidential Election).<sup>18</sup> The act also created the Election Administration Commission (EAC), an independent agency that serves as a national clearinghouse for all information on election administration.<sup>19</sup> Yet more relevant to this paper, HAVA served as the first national introduction of voter identification policy. HAVA requires all citizens to present identification when registering to vote. Moreover, any voter registering by mail who cannot provide such documentation must present proof of their identity the first time they vote (such proof may include a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter). The requirement caused great congressional debate at its time of passage—civil rights groups such as the National Association for the Advancement of Colored People, the National Urban

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<sup>16</sup> About the National Voter Registration Act, The United States Department of Justice, accessed January 3, 2018, <https://www.justice.gov/crt/national-voter-registration-act-1993-nvra>.

<sup>17</sup> Ibid

<sup>18</sup> About the Help America Vote Act of 2002, The United States Department of Justice, accessed on January 3, 2018, <https://www.justice.gov/crt/help-america-vote-act-2002>

<sup>19</sup> About the EAC, United States Elections Administration Commission, accessed on January 3, 2018, [https://www.eac.gov/about\\_the\\_eac/](https://www.eac.gov/about_the_eac/)

League, and National Council of La Raza called the measure “an exercise in intimidation.”<sup>20</sup> Yet despite its controversy, President Bush signed HAVA into law on October 29, 2002, signaling to all states that the Bush Administration was willing to consider the use of voter identification.

### *THE RISE OF PHOTO ID*

*In order to trace the rise of photo ID, one must understand the political climate of the early 2000s. In particular, one must look to understand the increased concern over election integrity and administration. The following section describes three political operatives that were visible throughout this period. Together, Senator Kit Bond (R-MO), Thor Hearne, and Karl Rove—collectively dubbed “the “fraudulent fraud squad” by election scholar Richard Hasen<sup>21</sup>—articulated the first concerns of voter fraud, which ultimately led to the rise to photo ID.*

### SENATOR KIT BOND OF MISSOURI

The chaos of the 2000 election left the entire country suspicious of election administration. With each discussion of “hanging chads” and halted recounts, public view of our election system reached a historic low.<sup>22</sup> Republican Senator Christopher “Kit” Bond of Missouri publically voiced his suspicions. Although President Bush won Missouri in 2000, Missouri Republicans lost most other statewide races that year. Concluding such outcomes were electorally impossible, Senator Bond took to the floor of the U.S. Senate and publically suggested that voter fraud manipulated his state’s election. “Bond alleged that ‘brazen,’ ‘shocking,’ ‘astonishing,’ and ‘stunning’ voter fraud was committed with dead people registering and voting from the grave,” writes Lorraine Minnite in *The Myth of Voter Fraud*.<sup>23</sup> The Senator’s accusations continued throughout

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<sup>20</sup> Lorraine C. Minnite. *The Myth of Voter Fraud*. (Ithaca: Cornell University Press, 2010.),67.

<sup>21</sup> Richard L. Hasen. *The Voting Wars: From Florida 2000 to the Next Election Meltdown* (New Haven: Yale University Press, 2012), chapt 2.

<sup>22</sup> Wendy W. Simmons, “Black Americans Feel ‘Cheated’ by Election 2000,” Gallup News Service, December 20, 2000, <http://news.gallup.com/>.

<sup>23</sup> Minnite, *The Myth of Voter Fraud*, 134 and n. 34.

2001 and ultimately helped secure HAVA's voter ID registration requirement (see above section). Even more, Senator Bond's statements prompted Missouri to internally examine their own election administration. State auditor Claire McCaskill (now Democratic U.S. Senator) completed the examination in 2003 and uncovered significant oversights in the state's maintenance of voter registration. McCaskill discovered the St. Louis voting rolls contained numerous cases of duplicate registration and mistakenly included more than two thousand felons. Her findings prompted a lawsuit from the federal Department of Justice, leading the St. Louis Board of Election Commissioners to accept full responsibility and promise to fix all paperwork oversights going forward. Richard Hasen notes, "The [Missouri] problems were with the board, not with the voters."<sup>24</sup> Although McCaskill's findings uncovered no proof of actual voter fraud (just faulty recordkeeping), Senator Bond used the study as justification for fraud allegations throughout the 2000s.

#### THOR HEARNE AND THE ACVR

With each fraud accusation, Democratic leaders called upon congressional Republicans to provide proof to justify their dramatic claims. Under this pressure, we saw the rise of Mark "Thor" Hearne, former Vice President and Director of Election Operations for the Republican National Lawyers Association and National Election Counsel to the 2004 Bush-Cheney campaign. According to Murray Waas of the *National Journal*, the Bush White House handpicked Hearne to serve as their personal voter fraud siren, entrusting him to "bang the voter fraud drum the hardest."<sup>25</sup>

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<sup>24</sup> Hasen, *Voting Wars*, 48.

<sup>25</sup> Murray Waas, "Legal Affairs — The Scales of Justice," *National Journal*, June 2, 2007. <https://www.nationaljournal.com/s/423047/legal-affairs-scales-justice?mref=search-result>

In 2005, House Republicans called Thor Hearne to testify at a House Judiciary Committee hearing on fraud allegations in the 2004 Ohio election. Hearne did so as a representative of the American Center for Voting Rights (ACVR), a new “voting rights” non-profit organization founded days before Hearne testified. According to election scholar Richard Hasen, the organization served as a think tank like “front group” for Republican voter fraud accusations.<sup>26</sup> ACVR’s archived website claimed to support the “rights of voters” through their efforts to “increase public confidence in the fairness and outcome of elections.”<sup>27</sup> The organization submitted reports to Congress and state legislatures, identifying certain American cities as “hot spots” for voter fraud. Most importantly to this paper, ACVR became a vocal advocate for photo ID. While the funding of ACVR remains unknown, the organization was publically run by Hearne and other Republican operatives, including Jim Dyke, former Republican National Committee Communications Director.<sup>28</sup> Blogger Brad Friedman of *The Brad Blog* documented the short life of the ACVR.<sup>29</sup> As Friedman notes, the organization mysteriously disappeared in May of 2007. With no notice or comment, the group simply stopped appearing in government hearings or conferences. Its web domain later expired and record of the website only exists via the Internet Archive, [www.archive.org](http://www.archive.org). After ACVR dissolved, Hearne cleansed his public affiliation with the group and refused to speak on the subject. While Friedman speculates the group likely disappeared to avoid

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<sup>26</sup> Hasen, *Voting Wars*, 48.

<sup>27</sup> “ACVR Refers Voter Fraud Investigation To Department of Justice, Congressional Oversight Panel”. American Center on Voting Rights. Accessed from original archived website on January 19, 2018, [http://web.archive.org/web/2005\\_0324102250/http://www.ac4vr.com/](http://web.archive.org/web/2005_0324102250/http://www.ac4vr.com/).

<sup>28</sup> Hasen, *Voting Wars*, 50.

<sup>29</sup> For the Brad Friedman’s full report, visit [http://bradblog.com/?page\\_id=4418](http://bradblog.com/?page_id=4418).

the growing body of scholarship discrediting their “proof” of voter fraud,<sup>30</sup> the subsequent rise of statewide photo ID laws makes clear that ACVR existed long enough to inject a voter fraud discourse into our national election system.

#### KARL ROVE AND THE DOJ

At the same time, President George W. Bush’s Senior Advisor, Karl Rove, also worked to bring voter fraud to national legal agenda. As Hasen writes in *The Voting Wars*, Rove pushed the federal Department of Justice (DOJ) as well as several state U.S. attorneys to investigate claims of voter fraud. Furthermore, Hasen reports that the DOJ fired at least two top government prosecutors who resisted the new prioritization.<sup>31</sup> At Rove’s request, U.S. Attorney General John Ashcroft led the DOJ’s effort, directing “all components of the Department to place a high priority on the investigation and prosecution of election fraud.”<sup>32</sup> Ashcroft enlisted the help of Hons A. Von Spakovsky, a prominent Republican lawyer who vocally pushed for stricter voter identification laws. With Mr. Von Spakovsky serving as the de facto head of the DOJ’s voting section, the department committed itself to finding and prosecuting voter fraud.

Five years after the effort began, the *New York Times* headlined a story summarizing the DOJ’s findings:

Five years after the Bush administration began a crackdown on voter fraud, the Justice Department has turned up virtually no evidence of any organized effort to skew federal elections, according to court records and interviews.

Although Republican activists have repeatedly said fraud is so widespread that it has corrupted the political process and, possibly, cost the party election victories, about 120 people have been charged and 86 convicted as of last year.

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<sup>30</sup> Brad Friedman, “Special Coverage: Thor Hearne’s ‘American Center for Voting Rights’ (ACVR) GOP ‘Voter Fraud’ Scam,” *Brad Blog*, accessed January 19, 2018, [http://bradblog.com/?page\\_id=4418](http://bradblog.com/?page_id=4418).

<sup>31</sup> Hasen, *Voting Wars*, 52.

<sup>32</sup> Michael Waldman, “What’s Behind the Voter Fraud Witch Hunt?” *The Brennan Center for Justice*, accessed January 19, 2018, <https://www.brennancenter.org/blog/whats-behind-voter-fraud-witch-hunt>.

Most of those charged have been Democrats, voting records show. Many of those charged by the Justice Department appear to have mistakenly filled out registration forms or misunderstood eligibility rules, a review of court records and interviews with prosecutors and defense lawyers show.<sup>33</sup>

In particular, the article references the findings of Wisconsin state attorneys, who embraced the DOJ's call to investigate. The *Times* quotes Richard G. Frohling, an assistant United States Attorney in Milwaukee, who failed to find any evidence suggesting "some sort of concerted effort to tilt the [2000] election."<sup>34</sup>

#### THE DAMAGE IS DONE

Collectively, Senator Bond, Thor Hearne, and Karl Rove changed the national election conversation. While their efforts may not have uncovered masses of organized voter fraud, these three political operatives normalized a concern over America's election integrity. With every news article, press conference, and speech on the Senate floor, accusations of electoral corruption confronted the American public. So much so that eventually, state legislatures were compelled to act.

In 2003, South Dakota became the first state to enact a photo identification requirement. Three years later, Indiana and Missouri followed suit. After Missouri's passage, various civil rights groups challenged the law, arguing it disenfranchised the poor, elderly, and those with disabilities. Later that year, the Missouri State Supreme Court struck down the photo ID law, writing it "imposed too great of a burden on [otherwise legitimate voters'] voting rights."<sup>35</sup> Despite the litigation, Georgia passed a strict photo ID law in 2007, and it seemed the legality of photo ID would be determined

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<sup>33</sup> Eric Lipton and Ian Urbina, "In 5-Year Effort, Scant Evidence of Voter Fraud," *The New York Times*, accessed January 19, 2018, <http://www.nytimes.com/2007/04/12/washington/12fraud.html>.

<sup>34</sup> Ibid

<sup>35</sup> *Weinschenk v. State*, 203 S.W.3d 201 (2006)

on a state-by-state basis. However, the U.S. Supreme Court significantly changed the landscape in 2008. In a 6-3 decision, *Crawford v. Marion County Election Board* upheld Indiana’s photo ID law.<sup>36</sup> Justice Stevens wrote the majority opinion, analyzing the legality of Indiana’s law by standards created in *Harper v. Virginia Bd. of Education*, the 1966 poll tax case. Justice Stevens argued Indiana’s photo ID satisfied Harper’s standard, classifying the law as an “even-handed restriction” protecting the “integrity and reliability of the electoral process.”<sup>37</sup> The state, he explained, had a valid interest in deterring and detecting voter fraud, modernizing election procedures, and protecting public confidence in the electoral process. While he conceded that Indiana lacked proof of in-person voter impersonation (the type of fraud targeted in the state’s photo ID law), Justice Stevens reasoned that, “Such fraud has occurred in other parts the country.”<sup>38</sup>

The *Crawford* case sent clear signals to state legislatures: if you want a photo ID law, the federal government will not stop you. Yet states did not have the necessary political power to pass such legislation until the Republican landslide election of 2010. Beginning with Idaho, Alabama, Kansas, and Mississippi, states with a Republican-controlled governorship and at least one Republican-controlled chamber began considering variations of Indiana’s photo ID.<sup>39</sup> Since 2011, a total of 17 states have passed photo ID laws. Policy procedures for voters who fail to produce a valid ID break into two separate camps: non-strict and strict procedures (Underhill 2017). Although both procedure types allow voters without an acceptable photo ID to vote via provisional ballot, the steps needed to allow the count of such ballot differ among each type. Non-

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<sup>36</sup> *Crawford v. Marion County*, 553 U.S. 181 (2008)

<sup>37</sup> *Ibid*

<sup>38</sup> *Ibid*

<sup>39</sup> “The High Cost of ‘Free’ Photo Voter Identification Cards,” Charles Hamilton Houston Institute for Race & Justice, *Harvard Law School*, June 2014, <http://today.law.harvard.edu/>.

strict states count provisional ballots without further action on the part of the voter. For example, a voter without an acceptable photo ID in a non-strict state may sign an affidavit, legally swearing his or her identity. After the close of Election Day, election administration officials will then determine whether or not the provisional ballot may be counted, most likely via the state's voter registry. By contrast, strict photo ID procedures require the voters themselves to take additional steps in order to have their provisional ballot counted. For example, voters without an acceptable photo ID in strict states may be required to report back to the state election office within a few days and present a valid ID. Failure to do so disqualifies the voter's provisional ballot. Among all 17 photo ID states, 11 are considered to have "strict" photo ID laws, while the other six are categorized as "non-strict."<sup>40</sup>

#### *KEY SCHOLARSHIP ON VOTING POLICY*

*The following chapter discusses the two distinct components of my research question. First, I examine how current public debate understands voting policy. Second, I introduce argumentation policy analysis theory as a means to examine a policy's formation, implementation, and evaluation. The last section seeks to place this paper within the two existing bodies of literature.*

#### **KEY DEBATE ON VOTING POLICY:<sup>41</sup>**

Current public debate on voting policy reflects a partisan divide. Throughout the literature, conservative authors call for restrictive voting policy as a safeguard against voter fraud, while liberal authors urge expansive policy to counter forces of voter suppression. Again, while most scholars agree that the hypothetical presence of voter fraud would threaten the health of any democracy, significant disagreement exists over

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<sup>40</sup> A full description of each state's law can be found at Appendix A.

<sup>41</sup> Portions of prose from this section are drawn from my previous research paper on voter identification laws. The paper was written for credit in Spring of 2017, under the instruction of Professor Adam Wolfson, of Claremont McKenna's Washington Program. I'm happy to provide a copy of my paper upon request.

the actual presence of such fraud within our election system. In *Stealing Elections: How Voter Fraud Threatens Our Democracy* (2004), conservative columnist John Fund asserts that American democracy suffers from active and widespread voter fraud. So much so that the presence of such fraud justifies voting restrictions, including laws like Wisconsin's photo identification requirement. Fund deems our election system "haphazard" and "fraud-prone," marred with "voting irregularities" such as voter registration fraud, absentee ballot fraud, recount manipulation, and even voter impersonation (Fund 2004). Yet while Fund invokes grave and sweeping claims, he offers little empirical evidence beyond colorful anecdotes. Despite his lack of argumentative grounding, however, Fund's work still stands as a centerpiece for scholars who advocate for voting restrictions.

A 2008 book published by the Brookings Institution sought to offer such empirical evidence of voter fraud. In *Election Fraud: Detecting and Deterring Electoral Manipulation* (2008), a group of election scholars studied the evidence of voter fraud in federal, state, and local elections. Contributing author Delia Bailey analyzed all federal criminal cases of voter fraud between 2000 and 2005. After systematically analyzing and categorizing each case, Bailey uncovered a total of nine fraud cases over the five-year span. Of the nine cases, one involved noncitizen voting, four alleged vote-buying schemes, two involved destroying and fabricating physical evidence (such as absentee ballots) and the last two involved constitutional violations and equal protection claims (Bailey 2008). At the state and local level, contributing authors R. Michael Alvarez and Frederick Boehmke examined voter fraud allegations in California and Georgia. Using databases obtained from California's and Georgia's Secretary of State offices, the authors

compared voter fraud incidence rates for all documented cases that existed at the time of data collection. The California Secretary of State's database provided information from 1994 to 2003, while Georgia captured 1999 to 2003. In total, the study put both states averaging less than 70 cases of voter fraud per year, with California recording about 52 per year, and Georgia 68 per year (Alvarez and Boehmke 2008).

On the other hand, leading liberal authors often engage in historical excavation of voter suppression. In *The Politics of Voter Suppression*, Tova Wang explains that voter suppression has existed throughout American history. From 1800s poll taxes, literacy tests, and grandfather clauses to the adoption of today's secret ballot, Wang argues that partisan electoral manipulation defines American voting policy. In Wang's view, policymakers should not use voting policies for partisan gain. Instead, Wang suggests that voting laws should adhere to the *voter inclusion principle*, or the assertion that lawmakers must justify any proposed policy decreasing ballot accessibility with a strong, evidence-based condition of the voting electorate (Wang 2012). Wang contends that high voter participation strengthens the health of our democracy, increasing leadership accountability and inspiring ethical, responsible, and responsive governance. Furthermore, she also notes the impact voting has on an individual, strengthening her sense of community and sense of voice. Although a single vote may seem inconsequential in an election, voting brings the community together in an expression of support for our democracy.

Finally, Lorriane C. Minnite's *The Myth of Voter Fraud* stands as a direct refutation of John Fund's work. Minnite seeks to highlight the inconsistencies in Republican rationales for restrictive voter policy, arguing that most claims of voter fraud

collapse when the scrutinized. Refusing to classify voter fraud as a real and widespread problem, Minnite suggests that policymakers engage in *voter fraud politics*, or the “use of spurious and exaggerated claims of voter fraud allegations to persuade about the need for more administrative burdens on the vote” (Minnite 2010:10). The unseeded accusations intend to confuse the public about election administration, making room for restrictive voting policies that are intentionally crafted for partisan benefit. Minnite describes voter fraud as a politically strategic myth and one that ultimately misshapes American democracy.

#### ARGUMENTATION POLICY ANALYSIS THEORY:

The field of public policy analysis offers multiple frameworks for understanding how and why policymakers make policy. Traditionally dominant theory assumes policymakers act in a rational manner, objectively crafting policies to solve societal issues. This traditional thought takes its roots in modernity, instructing social scientists to evaluate policies via empirical, rational, and scientific models of inquiry (Stokey and Zeckhauser 1978; Quade 1975). Yet since the 1980s, a number of policy theorists have rejected traditional policy analysis, instead offering frameworks that deviate from traditional assumptions of rationalized behavior. Argumentation policy analysis theory offers one such framework. In 1993, Frank Fischer and John Forester proposed an “argumentative turn” in policy analysis. Argumentation theory seeks to understand the intersection of the rational and the normative, positioning each proposed policy within an array of symbolically rich social and cultural contexts (Fischer and Forester 1993).

Operationally, the theory examines why policy analysts conduct their research, how they interpret and communicate their findings, and how such findings are received

and employed by political actors. The key driver in Fischer and Forester's analysis is language. Argumentation theory posits language as an active shaper of reality, directly influencing what we perceive and understand to be true. The theory explores how policymakers craft language around a policy, examining the use of rhetorical employment, narrative storytelling, and discursive argumentation. The following paragraphs survey these three argumentative tools, outlining the theory's conceptual development of each.

To begin, argumentation theory examines the deployment of rhetoric, an "essential and unavoidable aspect of argumentation" (Fischer and Forester 1993:10). When employing rhetorical argumentation, the arguer remains conscious of the beliefs, backgrounds, and intellectual styles of her audience. She seeks to combine reason and persuasive emotion, intentionally crafting the tools towards her audience's passions or prejudices (Garsten 2006). As Herbert Gottweis (2014) explains, a key notion of rhetorical analysis isolates the use of scenography, or the intentional emotional composition of scenery. For example, many political candidates choose to film campaign ads in living room homes, constructing a scene of intimate conversation with American voters. Such construction intersects rhetoric and scenography, as the candidate attempts to integrate feelings of warmth and familiarity within each policy she proposes.

Second, argumentation theory examines the use of narrative storytelling. Political actors often use narrative stories to define and contest policy problems (Stone 2003). To define a problem, narrators must engage in "enactment," as they create meaning via the strategic selection and connection of events (Kohler Riessman 2004). As Deborah Stone writes in *Policy Paradox* (2003), most speakers design narratives with a beginning,

middle, and end, following common themes, such as stories of change or stories of control. For example, tax break advocates often employ stories of decline (the decline of income, exports, or employment, for example). Furthermore, a so-called “law and order” candidate may advocate for increased law enforcement resources by describing a rise in crime or violence. Along a similar vein, stories of helplessness allow arguers to tie a sense of urgency to the policy in question, suggesting society needs that policy to regain control over a certain situation. Together, stories of decline and helplessness provide a particularly persuasive narration, as the stories “warn us of suffering and motivate us to seize control” (Stone 2003:168).

Finally, argumentation theory also acknowledges the development of mythology. Renowned UC Berkley folklorist Alan Dundes defines mythology as a “sacred narrative explaining how the world and man came to be in their present form” (Dundes 1984:1). Claude Lévi-Strauss (1955) suggests society creates myths to make sense of life’s randomness, forcing dualities on our “data of life and nature.” Myths allow us to organize life into simple divisions, split between celebratory and cautionary narratives. Lorraine Minnite highlights one particularly popular myth within American politics: the glorification of U.S. origins. The mythology of U.S. exceptionalism extols the Constitution as a “work of genius that ushered on to the historical stage a new age of freedom and equality” (Minnite 2010: 91). The Constitution’s purity is relentlessly celebrated, strengthened only by the accompanied myth of political pollution, or the perpetual threat of corrosion and corruption.

## POSITIONING THIS PAPER:

After heavy examination of voter fraud evidence within the United States, I do not believe we can analyze American photo identification laws under the traditionally dominant policy analysis framework. Given the consistently underwhelming evidence of voter fraud, one cannot maintain the assumption that policymakers advocating for such a law do so under objective rationale. Left with such an absence, I seek to employ Fischer and Forester's argumentation theory to explain how Wisconsin policymakers discursively justified the state's photo ID. I extend Lorriane Minnite's work to examine how voter fraud politics operated within Wisconsin at the time the state law gained passage. Examining the language surrounding Wisconsin's photo ID law, particularly on the part of the state's governor, lawmakers, and participating interest groups, my paper aims to bridge the gap between discursive speech and the traditional understanding of voting policy.

## *RESEARCH DESIGN AND METHODS*

As mentioned above, my paper seeks to examine Wisconsin's photo ID law via Fischer and Forester's argumentation theory. Although I hope my findings ultimately speak to the broader nature of discursive politics in all 17 photo ID states, a case study of a relatively bound political environment (such as Wisconsin) eases operation within my research constraints. Many political scientists employ the case study method, as it offers an in-depth study of a single unit in order to illuminate broader characteristics of a larger unit class (Gerring 2004). Case studies rely on covariational evidence but seek to define these variables rather than draw any causal relationship. By focusing on mere variable definition, the researcher avoids premature identification of causal mechanisms under

insufficient observation. In regards to my own experimental variables, I identify the discursive frames Wisconsin policymakers used to justify AB-7. My independent variables are each political actor: the state's governor, legislature, and active organizations or individuals who lobbied for the Act. My dependent variable, then, is each actor's discourse (or lack thereof) surrounding the photo ID bill.

I crosscheck my data collection from multiple sources. Social scientists use data triangulation to avoid the intrinsic weakness of single-observer qualitative research (O'Donoghue and Punch 2003). The method draws data from multiple sources, under the assumption that if multiple sources suggest the same conclusions, the conclusions stand with greater validity. Robert Yin (1982) suggests evidence be collected from at least three of the following sources: unstructured discussion with participants, structured interviews, field observations, and internal reports written by one or more of the participants. For the purposes of my own data triangulation, I consider four types of sources: archived state transcripts of public hearings, internal committee documents, official press statements, and structured interviews with Wisconsin lawmakers. I derive my data from official state-controlled sources, providing a uniformed medium to avoid accusations of "cherry picking" materials. By analyzing discourse directly from official sources, rather than via external media coverage, I hope to bypass questions of authenticity or potential media fabrication.

Qualitative research routinely relies on structured interviews. Researchers use these interviews when collecting uniformed data, meaning when projects require a specific set of information from numerous respondents (GAO 1991). Within a structured interview, the evaluator asks the same questions to multiple individuals, sticking to a

particular script or question order. By contrast, an unstructured interview mirrors a free-flowing conversation, in which the interviewer begins with open-ended questions and offers follow-up conforming to the topics introduced by the respondent (Murphy 1980). I designed my structured interviews in order to record the way in which Wisconsin lawmakers discuss the state's photo ID. Over a one-month period, I conducted six interviews with Wisconsin policymakers. Although I first asked each lawmaker for a direct phone interview, some offices refused and would only respond to a written questionnaire. In this case, I cannot verify whether the responses were directly written by the lawmaker or written by an associated staff under office guidance. In addition, one office accepted my phone interview request, but only allowed access to the Chief of Staff, rather than the lawmaker himself.

Regardless, in each interview or questionnaire, I asked these two questions, circling back with clarification as needed:

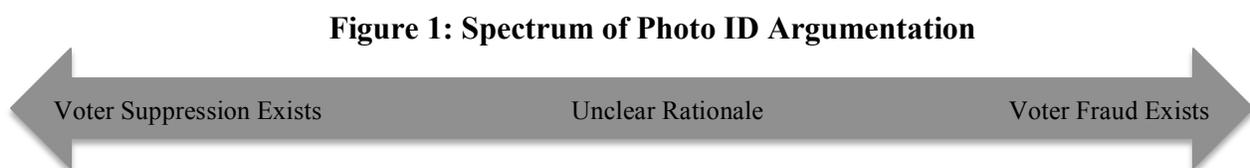
- 1. Does the elected official support AB-7 (Wisconsin's photo identification law)? Why or why not?*
- 2. Since its 2011 passage, has AB-7 accomplished the intended policy goals?*

Unfortunately, the two lead sponsors of AB-7, State Representative Jeff Stone (R-82) and State Senator Joe Leibham (R-9), no longer hold public office. As a result, I could not contact either individual without prior approval from the Institutional Review Board (IRB), a process that proved too time-intensive under my research restraints. I therefore decided to target Wisconsin lawmakers who vocally supported AB-7 in 2011 and have remained in office to see the bill through implementation. From the Wisconsin Assembly, I targeted the two policymakers who served on the assembly committee that initially considered AB-7, attended the public hearing, and still remain in office. First, I

interviewed Representative Gary Tauchen (R-6), who served as the chairman of the Assembly Committee on Election and Campaign Reform. In addition, I interviewed Representative Kathy Bernier (R-68), who also served on the Assembly committee during AB-7's deliberation. From the Senate side, I sent interview requests to all state senators who voted for AB-7 and still remain in office. Only state Senator Alberta Darling (R-8), a co-sponsor of the bill, agreed to the interview.

In order to strengthen my conclusions, I also interviewed several Democratic lawmakers who voted against AB-7. This group served as my control, allowing me to contrast their responses with those from AB-7's supporters. Again, I sent interview requests to all state senators and representatives that voted against AB-7 and still remain in office today. In total, two Democratic representatives agreed to interviews (Representative Leon Young (D-16) and a representative who requested to remain anonymous), as well as two Democratic senators (Senator Jon Erpenbach (D-27) and Senator Dave Hansen (D-30).)

As a whole, my research design centers in Fischer and Forester's argumentation theory. In order to systematize the common patterns of argumentation, I slot discourse from each official source into the following spectrum:



*Figure 1* reaffirms discursive patterns developed throughout the existing literature on photo ID. As previously outlined, leftist argumentation often frames photo ID as voter

suppression (Minnite 2011), while rightwing responses frame the policy as a rational solution to voter fraud (Fund, 2004). Operating under this framework, then, a left-leaning lawmaker would explicitly name the bill as voter suppression, while a left-of-center lawmaker might express worry that this bill could *lead* to suppression. In contrast, a moderate might avoid citing any direct reasoning for their stance on AB-7, perhaps framing the policy as a response to the “will of the people” or as action simply on trend with other neighboring states. A right-of-center lawmaker might express worry over potential voter fraud while not asserting any definitive proof of such phenomenon. Finally, a right-leaning lawmaker would explicitly cite voter fraud as an active and dangerous threat to our election system.

Fischer and Forester’s theory posits argumentation as an essential component to policy development, so I therefore anticipate Wisconsin policymakers to engage in discourse matching their respective partisan leaning.

## **CHAPTER 2: WISCONSIN’S PHOTO IDENTIFICATION LAW**

### *POLITICAL ANALYSIS*

In order to fully understand Wisconsin’s photo identification law, one must acknowledge the state’s partisan makeup at the time of the bill’s passage. In 2011, Wisconsin Republicans controlled the state Assembly, the state Senate, and the governorship. Like many states, this control reflected the 2010 midterm election, which drastically changed state party power. Before the 2010 election, Wisconsin Democrats had complete control, including both legislative chambers and the governorship, led under Governor Jim Doyle. In November 2010, the state GOP scored major victories up and down the ballot, most notably in the election of Governor Scott Walker, U.S. Senator

Ron Johnson (R-WI), and new GOP majorities in the state's U.S. House delegation, state Assembly, and state Senate. Before the midterm election, Wisconsin Democrats controlled the Assembly 52-46 and the Senate 18-15.<sup>42</sup> By the time of AB-7's passage, however, Wisconsin Republicans controlled the Assembly 60-38 and the Senate 19-14.<sup>43</sup> This new conservative state power proposed Wisconsin's photo identification requirement. On January 27, 2011—just 25 days after the inauguration of the state's new legislature—Representative Jeff Stone (R-82) introduced Assembly Bill 7.

### *LEGISLATIVE TIMELINE*

As a long-time member of Wisconsin Assembly's Election and Campaign Reform Committee,<sup>44</sup> Representative Stone stood as a dedicated advocate for photo ID. In fact, he previously introduced a state photo ID requirement in 2005, which passed the state Assembly and state Senate, only to die under the veto of then-Democratic Governor Jim Doyle.<sup>45</sup> Forty-six other state representatives signed on to AB-7, while the bill gained 20 “cosponsors” in the Wisconsin State Senate. All sponsoring elected officials were Republicans, apart from Representative Robert “Bob” Ziegelbauer (I-25), who served as an Independent.<sup>46</sup> After its introduction, the Republican majority read and referred AB-7 to the Assembly Committee on Election and Campaign Reform. Not long after, AB-7 received fiscal estimates from the Wisconsin Department of Justice (DOJ), the Wisconsin

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<sup>42</sup> 2010 State and Legislative Partisan Composition Prior to the Election, National Conference of State Legislatures, accessed February 5, 2018, [http://www.ncsl.org/documents/statevote/2010\\_Legis\\_and\\_State\\_pre.pdf](http://www.ncsl.org/documents/statevote/2010_Legis_and_State_pre.pdf).

<sup>43</sup> 2011 State and Legislative Partisan Composition, National Conference of State Legislatures, accessed February 5, 2018, [http://www.ncsl.org/documents/statevote/LegisControl\\_2011.pdf](http://www.ncsl.org/documents/statevote/LegisControl_2011.pdf)

<sup>44</sup> Campaigns and Election Committee, Wisconsin State Assembly, Ballotpedia, accessed February 5, 2018, <https://ballotpedia.org>

<sup>45</sup> 2005 Veto Messages: SB 42, Wisconsin State Legislature, last modified August 12, 2005, [http://docs.legis.wisconsin.gov/2005/related/veto\\_messages/sb42.pdf](http://docs.legis.wisconsin.gov/2005/related/veto_messages/sb42.pdf).

<sup>46</sup> AB0007. Assemb. Reg. Session. 2011-2012 (WI 2011)

Department of Transportation (DOT), and the State Government Accountability Board (GAB). The Department of Justice predicted no fiscal impact from AB-7.<sup>47</sup> The Department of Transportation predicted the bill's passage would increase agency costs, primarily with the issuance of free state ID cards for individuals who wanted to vote but did not own valid and accurate photo identification.<sup>48</sup> In total, the DOT predicted a \$2,736,832 net loss of revenue and an \$18,038 ongoing annual cost via their calculated assumption that 20% of Wisconsin residents did not own a valid photo ID. Finally, the State's Government Accountability Board predicted a \$2,310,799 net increase in costs, grounded primarily in the bill's call for a public information campaign to educate citizens, as well as the necessary election administration training for the bill's implementation.<sup>49</sup>

Following the three fiscal estimates, the Election and Campaigns Reform Committee held a five-hour public hearing. Seven Wisconsin citizens testified in support of AB-7, along with state Senator Joe Liebham (R-9). Forty-six Wisconsin citizens testified against AB-7, with multiple individuals testifying on behalf of state organizations.<sup>50</sup> On May 5, 2011, AB-7 passed out of the Election Campaign Committee in a 5-3 vote.<sup>51</sup> The bill was then sent to the Joint Committee on Finance, where it passed on May 9, 2011, in a 12-2 vote. The Assembly Committee on Rules quickly placed the

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<sup>47</sup> WI DOJ. Fiscal Estimate-2011 Session, 2011. LBR 11-0089/1. Accessed February 5, 2018. [https://docs.legis.wisconsin.gov/2011/related/fe/ab7/ab7\\_DOJ.pdf](https://docs.legis.wisconsin.gov/2011/related/fe/ab7/ab7_DOJ.pdf)

<sup>48</sup> WI DOT. Fiscal Estimate-2011 Session, 2011. LBR 11-0089/1. Accessed February 5, 2018. [https://docs.legis.wisconsin.gov/2011/related/fe/ab7/ab7\\_DOT.pdf](https://docs.legis.wisconsin.gov/2011/related/fe/ab7/ab7_DOT.pdf)

<sup>49</sup> WI GAB. Fiscal Estimate-2011 Session, 2011. LBR 11-0089/1. Accessed February 5, 2018. [https://docs.legis.wisconsin.gov/2011/related/fe/ab7/ab7\\_GAB.pdf](https://docs.legis.wisconsin.gov/2011/related/fe/ab7/ab7_GAB.pdf)

<sup>50</sup> Record of Committee Proceedings, Wisconsin State Legislature, accessed February 5, 2018, [https://docs.legis.wisconsin.gov/2011/related/records/ab7/aele\\_05052011.pdf](https://docs.legis.wisconsin.gov/2011/related/records/ab7/aele_05052011.pdf)

<sup>51</sup> Assembly Bill 7, Wisconsin State Legislature, accessed February 5, 2018, <http://docs.legis.wisconsin.gov/2011/proposals/ab7>.

bill on the legislative calendar, and it passed the Wisconsin Assembly on May 11, 2011, in a 60-35 vote.<sup>52</sup>

The Wisconsin Senate received AB-7 on May 12, 2011. Four days later, the Senate Committee on Organization waived the public hearing requirement, pursuant to Senate Rule 18 (1m).<sup>53</sup> Wisconsin senators debated the bill during a particularly grueling senate session on May 17<sup>th</sup>, which notably included an unauthorized man charging onto the Senate floor at 11:40pm and repeatedly yelling, “No!”<sup>54</sup> The night ended with Democrats delaying the vote until May 19<sup>th</sup>, when it passed 19-14.<sup>55</sup> Governor Walker signed AB-7 on May 25, 2011, and the legislation was published into law.

#### *KEY PROVISIONS OF AB-7*

*Although AB-7’s primary effect required proof of identification at all state polling locations and absentee ballot requests, the bill also altered procedures relating to voter signature, the duration and location of residency for voting purposes, and straight party ticket voting. The following section details each key provision of the legislation.*

#### *Proof of Identification*

The central tenant of AB-7 created a strict photo ID requirement for all Wisconsin voters. As discussed in previous sections, AB-7 requires individuals to present a valid and accurate government-issued photo ID before gaining access to the ballot. The bill lays out several categories for valid documents:

1. One of the following unexpired documents or, if expired, has expired after the date of the most recent general election: (1) a DOT-issued driver’s license, (2) a DOT-issued identification card, (3) a U.S. uniformed service-issued identification card, (4) a U.S. passport

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<sup>52</sup> Ibid

<sup>53</sup> Ibid

<sup>54</sup> Patrick Marley, “Senate vote on photo ID bill delayed until Thursday” The Journal Sentinel, May 17, 2011, <http://archive.jsonline.com/>.

<sup>55</sup> WI Senate Journal. 2011. 100th Cong., 100 sess., 19 May. Accessed February 5, 2018, <https://docs.legis.wisconsin.gov/2011/related/journals/senate/20110519>

2. A certificate of U.S. naturalization, if issued no longer than two years before the election date
3. An unexpired DOT-issued driving receipt
4. An unexpired DOT-issued identification card receipt
5. An unexpired student ID card issued by an accredited Wisconsin university that contains the date of issuance and the student's signature and contains an expiration date indicating the card is valid no later than two years after date of issuance. The student must also present proof of enrollment<sup>56</sup>
6. An identification card issued by a federally recognized Indian tribe in Wisconsin<sup>57</sup>

Upon arriving at the polls, an election official must verify that the name on the voter's photo ID conforms to the name on her voter registration and that the ID's photo "reasonably resembles" the voter.

If the voter wishes to vote via absentee ballot, she must meet a similar requirement. AB-7 prohibits any election clerk from issuing an absentee ballot without the voter's valid and accurate government-issued photo ID. If a voter requests an absentee ballot online, the voter must attach a scanned copy of her identification. In addition, if a voting agent requires an absentee ballot on behalf of a hospitalized voter, the agent must present the hospitalized voter's photo ID.

Finally, AB-7 outlines several exemptions for the bill's photo ID requirement.

The following individuals bypass the requirement:

1. An active military voter who votes by absentee ballot
2. An overseas voter who votes by absentee ballot

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<sup>56</sup> Although the bill allows students to present certain student ID's at the polls, in reality, the convoluted constraints add additional steps. For example, consider students from UW-Madison, Wisconsin's largest university. If a UW-Madison student does not own valid documents from the first category and wishes instead to use her student ID, the student must also obtain a free UW-Madison Voter ID Card at the University's student union. This card includes the student's signature and expires two years from the date of issuance (meaning the average student would need two cards over their college career.) The student then must also obtain proof of enrollment, accessed via an Enrollment Verification Letter, which is also available at the student union. Once at the polls, the student must present her student ID, her UW-Madison Voter ID Card, and her Enrollment Verification Letter. For more information on this process, visit [www.vote.wisc.edu](http://www.vote.wisc.edu).

<sup>57</sup> AB0007. Assemb. Reg. Session. 2011-2012 (WI 2011)

3. A voter with confidential listing (as a result of domestic abuse, sexual assault, or stalking)
4. A voter who has been forced to surrender their driver's license because of a citation or license suspension/revocation occurring within 60 days of the election
5. An absentee voter who received an absentee ballot from the municipal clerk by mail in a previous election and has not changed her name or address
6. An absentee voter indefinitely confined because of age, illness, or indefinite disability, and a voter who has qualified for the state's automatic absentee ballots
7. An absentee voter who lives in a nursing home or similar facility<sup>58</sup>

In all cases—absentee and otherwise—any voter who fails to provide proof of identification must be offered a provisional ballot. The voter then assumes the responsibility of providing identification at the polling place before the closing hour of Election Day or at the office of the municipal clerk/board of election commissioners no later than 4 p.m. on the Friday after the election. This assumed burden on the part of the voter triggers Wisconsin's classification as a "strict" photo ID state.

#### *Voter Signature Requirement*

In addition to the photo ID requirement, AB-7 also requires voters to sign the poll list when voting in-person. If a voter is unable to sign due to a physical disability, an election official must waive the requirement.

#### *Proof of Residency*

Prior to AB-7, individuals in Wisconsin could vote in a particular election district so long as they resided in said district for at least 10 days before an election. AB-7 increased this requirement to 28 days. If an otherwise eligible voter has only resided in the election district for less than 28 days, the voter may vote for president and vice president, but no other office.

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<sup>58</sup> Ibid

### *Straight Ticket Voting*

Finally, AB-7 eliminated the voter's ability to automatically vote for all candidates nominated by one political party, so-called "straight ticket voting." The bill preserved this option for military or overseas voters who vote via absentee ballot.

### *CONSEQUENCES OF AB-7<sup>59</sup>*

In order to estimate the consequences of AB-7, one must consider how the bill's requirements affect various populations in Wisconsin. Richard Sobel and Robert Smith of the American Political Science Association explain that the costs associated with photo ID requirements may disproportionately burden the following voters:

1. *Poor voters* often do not own a government-issued ID, as they often do not drive cars and rarely travel by air. Those who are homeless or living with relatives may not have the proof of permanent address (i.e. utility or cell phone bill) needed to request a government-issued ID. In addition, some individuals cannot afford the costs of traveling to the government office. Because minorities are more likely to be socioeconomically disadvantaged in our society, communities of color disproportionately face this burden.
2. *Elderly voters* may encounter greater difficulty when traveling to the government office to request a photo ID. In addition, they may not possess a copy of their birth certificate if they were born in rural areas that operated under delayed or sporadic birth registration. Elderly voters may lack the experience needed to "navigate the system" such as identifying and contacting the appropriate hospital to request a copy of their birth certificate (assuming the hospital still operates today).
3. *Female voters* whose last name has changed in a marriage or divorce may need additional identity documents if the name listed on their photo ID does not match their birth certificate.
4. *Student voters* who frequently change addresses because of the school they attend may have trouble obtaining and submitting the necessary documents before each election.

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<sup>59</sup> Portions of prose from this section are drawn from my previous research paper on voter identification laws. The paper was written for credit in Spring of 2017, under the instruction of Professor Adam Wolfson, of Claremont McKenna's Washington Program. I'm happy to provide a copy of my paper upon request.

5. *Voters with Disabilities* may experience greater difficulty when traveling to government offices or when “navigating the system” with government officials.

6. *Language Minority voters* whose identity documents are not written in English may need to pay to have the documents translated or pay to have translators accompany them to obtain records or IDs. Furthermore, if the voter is a naturalized citizen, they may have difficulty obtaining the necessary documents from their countries of origin.<sup>60</sup>

But exactly how many Wisconsin voters face such challenges? In September 2017, UW-Madison Professor Kenneth Mayer conducted a survey of Wisconsin voters in Dane and Milwaukee Counties. The survey identified registered voters who did not vote in the 2016 presidential election and asked them the following: their reasons for not voting, the types of ID they possess, their interest in the election, their confidence in the accuracy of the vote count, and their individual demographics. The survey did not ask about party identification or their candidate of choice. In total, Professor Mayer found that Wisconsin’s voter ID law deterred 11.2% of eligible nonvoting Wisconsin registrants.<sup>61</sup> An estimated 6% of nonvoters cited their lack of ID as the main reason they did not vote. Furthermore, the study illustrated that a disproportionate percentage of low-income and minority populations reported challenges with the state’s ID requirement. Among low-income registrants, 21.2% were deterred, compared to 7.2% for middle-upper income registrants. Among minority registrants, 27.5% of African American registrants were deterred, compared to 8.3% of White registrants.

Studies like this triggered a stream of litigation challenging the passage of AB-7. In December 2011, the American Civil Liberties Union (ACLU) sued the state of

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<sup>60</sup> Richard Sobel and Robert Ellis Smith, “Voter-ID Laws Discourage Participation, Particularly among Minorities, and Trigger a Constitutional Remedy in Lost Representation,” *P.S. Political Science and Politics* 42, no. 1 (2009):107-110, DOI: 10.1017/S1049096509090271.

<sup>61</sup> Voter ID Study Shows Turnout Effects in 2016 Wisconsin Presidential Election, Wisconsin Elections, accessed February 5, 2018, <https://elections.wisc.edu/news/voter-id-study/Voter-ID-Study-Release.pdf>.

Wisconsin, arguing the photo ID requirement violated the Voting Rights Act.<sup>62</sup> Although the litigation successfully blocked the law from taking full effect up until the April 2015 primary, election officials reinstated the law after the United States Supreme Court denied the writ of certiorari.<sup>63</sup> As such, the photo ID requirement was in effect during the 2016 Presidential Election and will remain so for the foreseeable future.

### **CHAPTER 3: ANALYSIS OF JUSTIFICATION FRAMEWORK**

*The following chapter analyzes the collected data on discursive politics in Wisconsin's photo ID. Using structured interviews, official press statements, and official testimony at public hearings, this section seeks to answer how state policymakers justified AB-7.*

#### *GOVERNOR SCOTT WALKER*

Wisconsin Governor Scott Walker supported photo identification requirements long before his tenure as governor. As a state Representative in 2001, Walker introduced AB-259, which proposed that “each elector attempting to register or vote” present a valid Wisconsin driver’s license or other valid state photo identification card issued by the Department of Transportation (“Wisconsin State Legislature Assembly Bill 259” 2001). Not long after its introduction, however, Walker’s measure failed and the issue went quiet for a number of years. Nearly a decade later, Walker reintroduced photo identification to Wisconsin—only this time, he did so as governor.

On May 25, 2011, Governor Walker signed Wisconsin’s photo identification requirement into law. Before the signing ceremony, Walker delivered a seven-minute speech congratulating the Wisconsin legislature on their achievement. Throughout his speech, Walker employed various discursive tactics to frame the bill as rational,

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<sup>62</sup> Frank v. Walker: Fighting Voter Suppression in Wisconsin, ACLU, accessed February 5, 2018, <https://www.aclu.org/cases/frank-v-walker-fighting-voter-suppression-wisconsin>.

<sup>63</sup> “Frank, Ruthelle, et al. v. Walker, Gov. of WI, et al, 14-2058 (7<sup>th</sup> Cir., 2011), cert. denied,” [https://www.supremecourt.gov/orders/courtorders/032315zor\\_b97d.pdf](https://www.supremecourt.gov/orders/courtorders/032315zor_b97d.pdf)

upgraded, and popular. The following pages include a deep reading of Walker’s speech, highlighting each discursive tactic and its strategic value.<sup>64</sup>

*A Common Sense Solution:*

To begin, Walker repeatedly frames the bill as a “common sense” solution for Wisconsin’s election system. He explains the following:

[Republicans, Democrats, and Independents] have repeatedly said that requiring a photo identification to vote was a common sense solution. It’s something that we do in just about everywhere else in life—as simple as things like getting cold medicine requires a photo ID, checking out a library book in many of our public libraries, doing just about everything else in life requires it. Doesn’t it make sense for something that’s much more important than cold medicine or a library book?

“Common sense” issue framing has deep roots in conservative politics. In his 2008 book, *Words that Work*, Republican political consultant Frank Luntz discusses the value behind framing policy proposals as “common sense” measures. Luntz writes, “Ask Americans what one principle or value is most missing in Washington today and they’ll say ‘common sense’ more than any other answer [...] If you think back to every presidential election since the age of television, it can be argued that the candidate who best demonstrated ‘common sense’ always won.” (Luntz 2008: 210-11) The value in “common sense” framing lies in its ability to render the issue apolitical, transcending political division. The word “common” itself suggests a shared understanding among individuals, regardless of societal difference. In the same way that looking in both directions before crossing a street is not politically liberal or conservative, “common sense” framing suggests that *any* sensible individual can and should accept the policy. Further, the wording also stands as a measure of maturity—we teach our children to use “common sense” as they learn to navigate the world and scold them when they fail to do

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<sup>64</sup> The speech’s full transcript can be found at Appendix B.

so. The power of the “common sense” lies in its preemptive challenge to any policy opponent. The framing places dissenters in a defensive position, forcing them to explain why their logic trumps that of the common public. After all, who does not abide by “common sense”?

*One is Enough:*

Governor Walker’s speech also engages in a “one is enough” reasoning as it regards to voter fraud. He explains:

And some people would question, you know, the impact. To me, something as important as a vote is important in whether it’s one case, a hundred cases, or a hundred thousand cases. Making sure we have legislation that protects the integrity for an open, fair, and honest election. In every single case, it’s important protecting in that case and that case alone.

The Governor begins with a slight concession to political opponents. He acknowledges the main critique of photo identification laws: their “impact” on voters without a valid photo ID. Yet, he also does so with minimal injury, not fully articulating the critique, but rather mentioning it in passing, so broadly that one may not fully understand if not already familiar with voter suppression arguments. He continues, however, with a standard discursive tactic: avoiding the conversation. As a longtime supporter of photo ID, Governor Walker anticipates those who may ask him to produce empirical evidence of voter fraud. Yet, Governor Walker does not wish to have such a conversation. Even just one case of voter fraud, he explains, warrants the policy requirement. This framing allows him to sidestep any numerical fight over how much voter fraud justifies restrictive policy. Whether it be 1, 100, or 1,000 cases, Walker wants to strip power away from empirical “proof.”

### *New and Improved*

Next, Governor Walker frames AB-7 as a “new and improved” version of his 2001 photo ID requirement. His speech mentions Walker’s own personal ID bill (AB-259) multiple times. Yet his references frame AB-7 as a much-improved version of his original bill, perfected by a decade worth of revisions. Walker says:

Now, it’s interesting when you think about, in the past decade, the evolution of all the work that was put into this. I think about how simple it was when I asked back a decade ago. I was looking for essentially a driver’s license or a state-issued ID card. The legislation I’m gonna sign into law in a moment allows for plenty of other venues. It applies for legitimate exceptions, for example, for people who are living in residential care facilities such as nursing home and places like that. It accounts for all those issues out there.

The efficacy of this tactic comes from multiple fronts. First, the rhetoric brings political value to Walker as a politician. He reminds us that he served as the original advocate for photo ID and therefore should stand, at least in part, equal to the state representatives that introduced the final 2011 bill. He also, however, attempts to separate AB-7 from the criticism his bill once received. When then-Representative Walker first introduced his photo ID bill (AB-259), political opponents voiced familiar accusations of voter suppression (“Walker Introduced Photo ID Requirement for Voting” 2001). By highlighting the differences between AB-259 and AB-7—particularly the new exceptions for voters who live in residential care—Walker avoids any transfer of criticism. He effectively frames AB-7 as “new and improved,” no longer warranting those old voter suppression accusations.

### *Responding to Public Concerns:*

Finally, Governor Walker also frames the photo ID bill as a mere response to public wishes. Walker explains:

When I've talked to individual voters from across the state who've raised concerns about this, they've said more than anything it's what they care about in terms of their own personal vote that makes a difference. Here to make sure that the vote that they cast is one that counts just as much as anybody else's out there. And that every other vote cast here in the state of Wisconsin is cast fairly and under a legal process.

Here, Governor Walker frames the policy as a product of public will. As a Governor about to enter 2012 reelections, Walker wants photo ID supporters to know that he has listened. He heard their concerns and he has followed through, just like any successful politician. Yet Walker also uses this frame to defer any policy criticism to the will of the public. He wants photo ID opponents to know that they stand against the majority of Wisconsin voters. Any negative consequences or impact produced by the bill cannot solely be the responsibility of his Administration.

#### *PUBLIC TESTIMONY*

Roughly one month before the Governor's signing ceremony, the Wisconsin Assembly Committee on Election and Campaign Reform held a public hearing on AB-7. Lasting five hours and 55 minutes, the hearing featured 84 public appearances. Eight individuals testified in support of the bill, 68 individuals against, and the remaining eight individuals declared no position, instead offering "informational testimony."<sup>65</sup> In addition to those offering testimony, a number of citizens simply registered their position on the bill—43 citizens registered in support and 92 against.<sup>66</sup> The following section analyzes dominant argumentation voiced throughout the public hearing. In particular, the analysis highlights four discursive frames that encapsulate discussions of voter responsibility, voter fraud, and the racial impacts of AB-7.

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<sup>65</sup> Record of Committee Proceedings, Wisconsin State Legislature, accessed February 18, 2018, [https://docs.legis.wisconsin.gov/2011/related/records/ab7/aele\\_05052011.pdf](https://docs.legis.wisconsin.gov/2011/related/records/ab7/aele_05052011.pdf).

<sup>66</sup> Ibid

### *The Initial Frame*

The public hearing began with testimony from AB-7's lead sponsors, Representative Jeff Stone (R-82) and state Senator Joe Liebham (R-9). The placement of this testimony allowed the lawmakers to offer the first argumentation around the bill. Ahead of a long, grueling hearing (in which most citizen testimony stood against the bill), Representative Stone and Senator Liebham used this opportunity to voice a thorough and persuasive pitch for Wisconsin's photo ID. Representative Stone starts:

Good morning. [...] This is legislation that I've been working on for most of a decade. And it has in various forms moved through the process. It's been as far as the governor's desk three different times. And the intent of this legislation is to have an election system that allows everyone who's eligible to vote and to know that everyone who's voting is an eligible voter in the state of Wisconsin.

From the very first lines, Representative Stone engages in a similar "new and improved" framing used by Governor Scott Walker. Representative Stone wants us to know that AB-7 reflects years of work and has seen the walls of Wisconsin's state capitol four separate times. As a former sponsor for two of the three previous ID versions, the Representative also establishes himself as a photo ID expert. He has seen the development and can speak to the bill's position as a legitimate and viable policy. Soon after, Representative Stone explicitly summarizes the bill's intended goal, establishing this information before any potential public testimony speculates malicious motives or hidden effects. The Representative continues:

This is in no way a poll tax. The types of IDs that I've mentioned are possessed by almost all of the citizens in the state of Wisconsin currently. Those who do not possess, if they are unable to obtain one because they are indigent and do not have the resources to pay for an ID, it will be provided for them under this legislation. To not do so would create a poll tax, which would be unconstitutional. We want legislation that is constitutional—that will uphold the Constitution of Wisconsin and the Constitution of the United States. [...] In fact, similar legislation that was patterned after an earlier version of this bill was challenged, taken to the U.S.

Supreme Court, and upheld as not being a barrier to voting. It was upheld as a reasonable requirement to ensure the sanctity of the voting process.

Similar to Governor Walker’s press conference, this frame directly engages in the main critique of photo identification laws. Even more, the Representative actually employs a prominent buzzword in anti-photo ID discourse: poll tax. Perhaps anticipating the inevitable use of the buzzword in the public testimonies that are to follow, Representative Stone seizes his momentary spotlight to get ahead of the argument and assert the bill’s constitutionality. He wants opponents to know that he acknowledges their critiques yet remains confident of the bill’s standing. Even further, he cites *Crawford v. Marion County Election Board* (2008) as proof for his argument.

The last component of Representative Stone’s frame adds one final description to AB-7. He frames the bill not only as reasonable and constitutional, but also *bipartisan*:

You know I served in this body for 13 years, there’s never been a piece of legislation that I’ve been involved with that has had as broadest support as the concept of providing a photo ID for voting. People believe this is a reasonable requirement, that it is across the board. It’s not a partisan issue—people who believe and care about the sanctity of our elections think that this is a reasonable requirement that everyone in our state could easily comply with. And they really, to a person in my district and throughout the state when I’ve worked on this issue, people believe this is a common sense change that will restore faith and confidence in our election.

Citing no empirical evidence, Representative Stone begins by alluding to “broad support” within Wisconsin’s legislative body—an argument inconsistent with the state’s previous three photo ID bills, all of which passed under a Republican-controlled legislature and vetoed by a Democratic Governor.<sup>67</sup> Never mind the fact that as lead sponsor, Representative Stone must have had some notion that AB-7 would soon share the same partisan divide (only one state Assembly Democrat—and no Democratic Senators—

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<sup>67</sup> Brief History of Recent Voter ID Legislation of Wisconsin, Wisconsin Elections Commission, accessed February 18, 2018, <http://elections.wi.gov/node/1590>.

voted for the bill.)<sup>68</sup> So if photo ID was doomed for a partisan vote, why maintain the façade? The nonpartisan argumentation following his comment suggests Representative Stone used the notion as a bolster for his “common sense” framing. Like Governor Walker, Stone believes AB-7 ranks above partisan difference. In his eyes, any and all individuals who support “the sanctity of our elections” should support AB-7.

### *The Responsible Voter*

Turning now to framing employed by the public, a number of individuals discussed issues of voter responsibility within their testimony. Monica Hauskins from Brookfield, Wisconsin, shared the following in support of AB-7:

A responsible voter must take time to know the issues and the candidates. It is reasonable that they should also take the time to register to vote and get whatever identification is required to keep our elections of suspicion. [...] In closing, let me say again that as citizens, we have a responsibility and the obligation to know the issues and to know the candidates. This takes effort on the part of the voter. The additional effort of registering in advance is not too much to ask of responsible citizens.

Here, Ms. Hauskins engages in a classic conservative discussion of personal responsibility. Heavily tied to notions of individualism, conservative thinkers often highlight personal responsibility when discussing the role of government, specifically when discussing how government should or should not impact the lives of individual citizens. Prescribed throughout Judeo-Christian culture, personal responsibility holds each and every individual accountable for his own actions (Prager 1994). To Ms. Hauskins, the act of voting stands an individual duty, accompanied by a responsibility to know the issues, candidates, and registration processes. Just as a voter reads the news and confirms her voter registration, the voter must also obtain a verified ID.

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<sup>68</sup> 2011 Assembly Vote 331, Wisconsin State Legislature, accessed February 18, 2018, <https://docs.legis.wisconsin.gov/2011/related/votes/assembly/av0331>.

Later in the hearing, we also see “the responsible voter” frame trigger discussions of patriotism. Todd Hauskins—husband of Ms. Hauskins—explained the following during his testimony supporting AB-7:

In my opinion, informed voting is a duty of U.S. citizens. Many men and women have died for this freedom. I was just over at the VA [Veterans’ Administration] hospital and there are a lot of guys there that are really shot up. They’re really a mess. They’ve given their lives; they’ve given their limbs, for our privilege, our right of voting. And as a citizen, we should not be surprised that it takes a little effort, and it takes a little foresight to maybe go register to vote and to think through the issues. And it should not necessarily be easy. I mean, democracy and freedom is not easy. It’s something that we have to maintain.

This discussion takes the “responsible voter” framework one step further: it contrasts civilian responsibility with those in armed service. By including powerful descriptions of the physical and emotional sacrifice of American soldiers, Mr. Hauskins suggests that any sacrifice AB-7 may ask of the voter pales in comparison. Furthermore, Mr. Hauskins labels the photo ID requirement as a necessary effort in democracy, suggesting that the required labor reinforces the exceptionality of our national political system.

#### *No Resources to Detect*

As previously discussed, photo ID advocates often paint the policy as a solution to widespread voter fraud. That established, advocates rarely accompany their argument with empirical evidence. As a supporter of AB-7, Representative Don Pridemore (R-99) engages in this argumentation twice during the bill’s public testimony. The first framing occurs in response to Nikiya Q. Harris Dodd, former Milwaukee County Supervisor, after she cites a 2011 Wisconsin Attorney General report that found minimal voter fraud in Wisconsin<sup>69</sup>:

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<sup>69</sup> Sean Kirkby, “DOJ Task Force Charges 20 with Voter Fraud in ’08,” *The Badger Herald*, February 1, 2011, <https://badgerherald.com/news/2011/02/01/doj-task-force-charge/>.

Well, I would concur that [the report] is accurate, but the reason it's accurate is because there is no task force group out there that has the authority or the ability to observe elections and observe voter fraud. And without enforcement in the city of Milwaukee (or the county for that matter), a lot of this fraud goes undetected, unnoticed, and unreported. And I have been a poll observer in Milwaukee since '04 and I've witnessed things there, various irregularities there, that I have observed myself.

Here, the Representative engages in interesting logic. First, he incorrectly denies the existence of a statewide voter fraud taskforce, despite the 2011 Wisconsin Attorney General report being a direct product of the state DOJ's "Election Fraud Task Force".<sup>70</sup> Another Representative—Representative JoCasta Zamarripa (D-8)—points this out moments later. In addition, Representative Pridemore follows his statement with a description of personal experience, explaining he has witnessed "various irregularities" in Milwaukee's voting. He offers no further details, however, nor does he define which behaviors should be labeled as "irregular".

Representative Pridemore again references ill-managed resources hours later in the hearing. When asked to explain why so few citizens have been charged with voter fraud if individuals commit the crime at such high rates, the Representative responds with the following:

When you have police agencies that put fraud at a very low priority or not at all, when you have police agencies that deny reports from the very officers that work in those departments, then you begin to understand why there are not a lot prosecuted, and why, just for instance, the poll observer program just being put in place prevents a lot of voter fraud because they are there to observe the process. Unfortunately we don't have poll observers in every location, so take that for what it's worth.

Perhaps more effective than the assertion of personal experience, the Representative now frames minimal fraud detection as a consequence of under-prioritized investigation. He

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<sup>70</sup> Ibid

mirrors argumentation we may expect from a “law and order” candidate, who believes that a city’s crime rate reflects the lack of resources for law enforcement. If we funnel enough resources into detection, he argues, the evidence will follow.

### *Poverty Not Race*

The final distinct frame arose after several citizens criticized AB-7 for disproportionately burdening voters of color. In response to the testimony, Representative Don Pridemore offers this explanation:

You know, I understand the argument. We’re talking about Wisconsin and Milwaukee in particular being a highly segregated city. However, I would argue that this is not a racial problem; this is a poverty problem. And I don’t care where you go in the state, people of low-income or no income or no job are going to have the same problems that exist right now in the city of Milwaukee. So I would much rather look at the poverty rights than try to paint this as some kind of racial issue, which it’s not.

Here, the Representative attempts to shift the frame from that of a racial discussion to a discussion of poverty. One can trace this distinction throughout sociological discussions of poverty. In the United States, we know that structural barriers consistently discriminate against people of color (POC), making them more likely to live at or below the national poverty line.<sup>71</sup> Yet, discussions of poverty do not always acknowledge the intersectionality of such identities. In fact, sociologists disagree over the extent to which “multiculturalism” should be stressed throughout poverty issues.<sup>72</sup> Representative Pridemore clearly prefers to frame AB-7 as an issue of money, not race. Despite the fact that both identity issues can and should be acknowledged within discussions of AB-7, the lawmaker strategically chooses a poverty frame.

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<sup>71</sup> Poverty Rate by Race/Ethnicity, The Henry Kaiser Family Foundation, accessed February 18, 2018, <https://www.kff.org/other/state-indicator/poverty-rate-by-raceethnicity/>

<sup>72</sup> Elaine J. Hall, “Packaging Poverty as an Intersection of Class, Race, and Gender in Introductory Textbooks,” *Teaching Sociology* 28. no. 4 (2000): 299-315, doi:10.2307/1318581.

## *WISCONSIN LAWMAKERS*

The final section of this chapter details the results of my structured interviews with Wisconsin lawmakers. As previously mentioned, both lead sponsors of AB-7, Representative Jeff Stone (R-82) and State Senator Joe Liebham (R-9), no longer hold public office. As such, I could not interview the two primary advocates for AB-7. I did, however, connect with six state lawmakers who voted on the original 2011 bill and have stayed in office through its implementation. Through a combination of phone interviews and written questionnaires, I asked the six lawmakers (or associated staff) two questions:

- 1. Does the elected official support AB-7 (Wisconsin's photo identification law)? Why or why not?*
- 2. Since its 2011 passage, has AB-7 accomplished the intended policy goals?*

The following pages analyze the various argumentation frames used by both supporters and opponents of Wisconsin's photo identification law. Traditionally, public policy research interviews compile expert knowledge on a specific issue. By contrast, these interviews document the specific language used by policymakers. More concerned with the *how* than the *what*, these interviews do not take interviewee answers at face value. Instead, I examine each explanation for discursive frames. Although I interviewed six lawmakers, one Democratic state Representative asked to remain anonymous and will only be referenced by party affiliation. Each frame analysis begins with statements from AB-7 supporters and then contrasts the logic with argumentation from my Democratic control group, AB-7 opponents.

*It Was Necessary*

To begin, all three lawmakers who supported AB-7 described the law as necessary. The reasoning for this conclusion, however, varied by individual. Chief of Staff to State Representative Gary Tauchen (R-6) said the following:

We needed to verify who each voter was. Because Wisconsin has same-day registration, there's a concern that we don't know who's voting for what name. Before, we didn't have a signing of poll books and the residency requirement was only 10 days.<sup>73</sup>

As Chairman of the Assembly Committee on Election and Campaign Reform, Representative Tauchen voted in support of AB-7 during the initial committee consideration, as well as when the bill hit the Wisconsin Assembly floor. Mr. Arrowood's explanation suggests that individuals commit more in-person voter fraud in states with same-day voter registration. Although election research does not support Mr. Arrowood's reasoning, other same-day voting states have used the argument to support their own photo identification requirements.<sup>74</sup> The efficacy of this argument stems from its ability to present as balanced state policy. Only 15 states and the District of Columbia allow voters to register and vote within the same day and even fewer have the type featured in Wisconsin, which allows voters to register and vote on Election Day specifically.<sup>75</sup> By predicating the necessity of photo ID on an inclusive voting policy, Mr. Arrowood suggests Wisconsin has found a middle ground between the two viewpoints.

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<sup>73</sup> Phone Interview with Craig Arrowood, Chief of Staff to Wisconsin Representative Gary Tauchen, February 9, 2018 at 7:38 AM PST.

<sup>74</sup> Steve Harrison, "Does same-day voter registration in NC increase fraud risk? Experts disagree," *The Charlotte Observer*, August 30, 2016 <http://www.charlotteobserver.com/>.

<sup>75</sup> Same Day Voter Registration, National Conference of State Legislatures, last modified October 12, 2017, <http://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx>

State Representative Kathy Bernier (R-68) voiced a different logic when explaining AB-7. Her argumentation framed photo ID as a “just in case safeguard” that was also necessary for an unrelated voter administration tool:

It has been said that WI has clean elections. There is no way to substantiate that assertion. What we do know is that the more checks and balances that we use, the better our result. We need ID for banking, library, and many other things we do as adults. We also are participating in the PEW Charitable Trust (ERIC) system. This system is an interstate program to clean up our registration lists [...] In order to make this ERIC system work properly, we need to utilize a State ID/DL (driver’s licenses). It is a good thing to provide as much voter integrity and transparency as possible.<sup>76</sup>

As a member of the Assembly Committee on Election and Campaign Reform, Representative Bernier voted for AB-7 during its first committee consideration. Her frame combines two frequently cited reasons for photo ID, along with a unique detail. She begins by alluding to a vague possible threat of voter fraud, contending one cannot “substantiate” a lack of fraud in Wisconsin’s elections. The Representative then continues by comparing the ID requirement to other daily activities—the same reasoning voiced by Governor Scott Walker. She finishes, however, by mentioning an additional unrelated voter administration tool, the Electronic Registration Information Center (ERIC). As a multistate voter registration database, ERIC allows states to compare official data on voters, such as voter and motor vehicle registrations, U.S. Postal Service addresses, and Social Security death records.<sup>77</sup> The tool inputs state data on voters, compares duplicates, and flags individuals who have likely moved to another state or may have recently died. Although a photo ID requirement enhances the system by providing yet another vehicle

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<sup>76</sup> Email Questionnaire with State Representative Kathy Bernier, February 2, 2018 2:30 PM PST

<sup>77</sup> Election Registration Information Center, The Pew Charitable Trusts, accessed February 24, 2018, <http://www.pewtrusts.org/en/projects/election-initiatives/about/upgrading-voter-registration/eric>

of recordkeeping, ERIC does not require photo ID. In fact, of the 23 states that use ERIC, only five states have photo identification requirements.<sup>78</sup>

Finally, Senator Alberta Darling (R-8) also framed AB-7 as a necessary policy. In an email questionnaire with associated staff, the Senator's office described the law as a "way to ensure the integrity of our democracy and the voting process. This [law] helps every Wisconsinite to know that their vote is not being undermined through voter fraud."<sup>79</sup> Similar to Representative Bernier, Senator Darling calls for an insurance measure for election integrity. This "safeguard" argument bypasses any need for particular evidence or even any direct assertion of voter fraud. In her view, it is more important that Wisconsin voters know the requirement exists rather than having the law respond to any direct threat.

### *Opponent Response*

Turning towards my control group, Democratic opponents of AB-7 employ significantly different discourse. During a phone interview with an anonymous state Representative, the lawmaker labeled AB-7 as a partisan effort to suppress voters. He explained:

This is an effort to suppress the vote, to limit voters' ability to vote. It's not about election integrity. Because of this law, many people haven't been able to vote. And if you look at news coverage on this, you'll see there's a report of a Republican staffer who was anonymously quoted saying he felt sick listening to the bill's hearing testimony. He specifically overheard Republican Senators saying, 'we need to hurry up and pass this bill in 2011.' That this was a 'once in a lifetime opportunity to gain such an important electoral advantage.'<sup>80</sup>

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<sup>78</sup> Who Are We, ERIC States, accessed February 24, 2018, <http://www.ericstates.org/whoweare>

<sup>79</sup> Email questionnaire with Chris Meyers, Staff member of Senator Alberta Darling, February 14, 2018 12:53 PST

<sup>80</sup> Phone Interview with Anonymous Wisconsin State Representative, February 16, 2018 9:46 AM PT

Here, the Democratic Representative references a 2016 Fox News article on Todd Allbaugh, former chief of staff for Wisconsin state Senator Dale Schultz (R-17). In the article, Allbaugh describes attending a closed-door caucus meeting with Senate Republicans. According to Allbaugh, Republican lawmakers were “giddy” that the legislation would suppress the vote turnout of minorities and students.<sup>81</sup> In citing this news coverage, the anonymous Representative suggests all AB-7 supporters shared this malicious motive. Although no Wisconsin lawmaker has ever publically expressed intent to suppress voters, the Fox News story suggests otherwise.

In addition to my anonymous interview, responses from an email questionnaire with three additional Democratic AB-7 opponents described the law as a “solution in search of a problem.”<sup>82</sup> The lawmakers argued that the incidence of “voter fraud in Wisconsin is so minuscule and statistically insignificant that a voter ID requirement just isn’t warranted.”<sup>83</sup> State Senator Jon Erpenbach’s (D-27) office cited the same 2011 Wisconsin Attorney General voter fraud report referenced by former Milwaukee County Supervisor Nikiya Q. Harris Dodd in the bill’s public hearing. The Senator’s office wrote, “After an exhaustive 2 year investigation by the Department of Justice into every alleged voter fraud case, only 11 improper voters were found in Wisconsin.”<sup>84</sup> As such, Senator Erpenbach holds AB-7 as a non-evidence-based policy solution. The Senator’s language and framing mirrors the argumentation we see from liberal election scholars, Lorraine C.

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<sup>81</sup> Theo Keith, “Former Republican staffer says GOP lawmaker were ‘giddy’ while crafting voter ID,” *Fox 6 Now*, April 7, 2016, <http://fox6now.com/>.

<sup>82</sup> Email questionnaire with Greg Stewart, Staff of Representative Leon Young February 8, 2018 8:52 PST, with Jay Wadd, Staff of State Senator Dave Hasen February 19, 2018 2:27 PM PT, and with Julie Landrie, Staff of State Senator Jon Erpenbach February 20, 2018 1:14 PM PT

<sup>83</sup> Ibid

<sup>84</sup> Email questionnaire with Julie Landrie, Staff of State Senator Jon Erpenbach February 20, 2018 1:14 PM PT

Minnite and Tova Wang. Wisconsin’s Democratic lawmakers routinely challenge AB-7 supporters to provide proof of voter fraud. Without such evidence, they argue, the policy stands a strict partisan tactic to gain electoral advantage. Senator Dave Hasen’s (D-30) office even compared the move to Republican gerrymandering in Wisconsin. Photo identification does not target election integrity, the office explained: “If Republicans care about such things, they wouldn’t have rigged the legislative and congressional districts to give them an unfair advantage.”

### *AB-7 Works Well*

In response to my second question—whether or not lawmakers believe AB-7 accomplished its original goals—all three Republican supporters described the policy as effective. During my interview with the Chief of Staff to state Representative Gary Tauchen, Mr. Arrowood detailed the following:

The argument has been made that these types of laws discourage people from voting. That evidence is kind of a mixed bag. Since the law’s enactment, we’ve actually seen a higher percentage of voters than anticipated. This means this has been a fairly successful endeavor.<sup>85</sup>

Here, Mr. Arrowood attempts to draw a distinction between the number of Wisconsin *citizens* without a valid photo ID and the number of Wisconsin *voters* who would otherwise vote, but do not possess the required documentation. By suggesting that voter turnout since AB-7 has been “higher than anticipated,” the Chief of Staff suggests that those without a photo ID likely would not have voted anyway. This reasoning stands against the previously cited 2017 UW-Madison study. According to study findings, Wisconsin’s photo ID requirement deterred 11.2% of eligible nonvoting Wisconsin

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<sup>85</sup> Phone Interview with Craig Arrowood, Chief of Staff to Wisconsin Representative Gary Tauchen, February 9, 2018 at 7:38 AM PST.

registrants in the state’s 2016 election.<sup>86</sup> Additionally, Mr. Arrowood does not explain what percent decline of voter turnout Republican lawmakers “anticipated” after AB-7’s passage. Reports suggest that 91,000 fewer Wisconsin voters cast in a ballot in the 2016 presidential election (a photo ID election) compared to the 2012 presidential election (a non-photo ID election).<sup>87</sup> While the decreased turnout may have been caused by a combination of external conditions (lower interest in candidates, harsh weather conditions on Election Day, etc.), Mr. Arrowood’s logic still stands against Professor Mayer’s findings.

Chris Meyers from State Senator Alberta Darling’s office also described AB-7 as effective. In his email questionnaire, the staff member linked a 2018 tweet by the Democratic Party of Wisconsin. “A good reminder—”, wrote the Democratic Party, “getting a photo ID is free and easy.”<sup>88</sup> According to Senator Darling’s staff, “[This] recent tweet by the Democratic Party of Wisconsin has backed up the idea that voting in Wisconsin, following the passage of the law, is ‘free and easy.’”<sup>89</sup> Citing direct language from his opponent, Mr. Meyers contends that both parties support AB-7. Although the tweet’s overall purpose aimed to encourage voter turnout in Wisconsin’s February 2018 primary election, Mr. Meyers caught his opposing party in a moment of political vulnerability. By all accounts, the Democratic Party of Wisconsin still opposes AB-7 as an unnecessary voting restriction. In fact, their 2016 State Party platform identified their

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<sup>86</sup> Voter ID Study Shows Turnout Effects in 2016 Wisconsin Presidential Election, Wisconsin Elections, accessed February 5, 2018, <https://elections.wisc.edu/news/voter-id-study/Voter-ID-Study-Release.pdf>.

<sup>87</sup> Christina Cassidy and Ivan Moreno, “Voter ID proved insurmountable for many in Wisconsin,” *The Associated Press*, May 9, 2017, <http://host.madison.com/>.

<sup>88</sup> Democratic Party of WI, Twitter Post, February 5, 2018, 12:14 PM, <https://twitter.com/>.

<sup>89</sup> Email questionnaire with Chris Meyers, Staff Assistant to Senator Alberta Darling, February 14, 2018 12:53 PST

opposition to voter identification requirements.<sup>90</sup> Mr. Meyer’s frame, however, highlights the political gain to be won when a party fails to ensure consistent messaging.

### *Opponent Response*

Finally, when asked whether or not AB-7 accomplished its intended policy goals, all three Democratic lawmakers drew a distinction between the policy’s *stated* goal and the policy’s *actual* goal. The anonymous Democratic Representative said the following:

If we’re assuming the policy goal was to suppress the vote, then yes, it has been successful. We know people have not been able to vote because of this. If we’re going off the stated policy motive of maintaining election integrity, however, then no. If someone is hell-bent on messing with an election—and very few people are—they’re going to figure out a way to get around this. It’s not very difficult to make a fake photo ID. Ask any teenager who’s ever snuck into a bar.<sup>91</sup>

The Representative employs a persuasive frame to argue against AB-7. By contrasting the “stated” and “actual” goals, he suggests both produce grim outcomes: the first being a malicious attempt to suppress the vote, and the second being a failed attempt to secure elections. The lawmaker restates and repurposes the reasoning of AB-7 supporters. AB-7 does not protect election integrity, he argues. Therefore, by all counts, this bill has failed.

Democratic Representative Leon Young (D-16) and Democratic State Senator Dave Hansen (D-30) mirrored the anonymous lawmaker, insisting the state’s voter ID law “has in fact achieved its ‘real’ objective.”<sup>92</sup> Both lawmakers believe the bill actively suppresses Wisconsin voters, with Representative Young adding the groups most likely to not own a valid ID “in general, tend to support Democrats and their agenda”.<sup>93</sup>

However, despite the familiarity of the frame, state Senator Hansen took the argument one

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<sup>90</sup> Democratic Party of Wisconsin 2016 Platform, Democratic Party of Wisconsin, last modified June 4, 2016, <http://www.wisdems.org/constitution-and-bylaws>

<sup>91</sup> Phone Interview with Anonymous Wisconsin State Representative, February 16, 2018 9:46 AM PT

<sup>92</sup> Email questionnaire with Greg Stewart, Staff Assistant to Representative Leon Young February 8, 2018 8:52 PST

<sup>93</sup> Ibid

step further, suggesting, “[AB-7] has suppressed the votes of tens if not hundreds of thousands of Wisconsin citizens and could very well have provided the margin of error for President Trump’s win in 2016.”<sup>94</sup> Here, the Senator’s statement risks exaggeration, as one cannot say whether the collective vote of Wisconsin’s non-photo ID voters would have cost President Trump the state. The Senator likely mentions this, however, as a means to provide his audience with a tangible vision of what a photo ID-free state may have provided. President Trump has a distinctively low public approval rating.<sup>95</sup> As such, this statement may reflect the Senator’s attempt to activate voters who may not otherwise care about Wisconsin’s photo ID.

## CONCLUSION

Examination of the discursive frames identified in the previous chapter suggests a reoccurring sentiment of paranoia. Although Wisconsin lawmakers employed a variety of discourse to justify AB-7, many frames articulated a clear and present danger to our electoral system. Wisconsin policymakers described our looming vulnerability to voter fraud, asserting one cannot “substantiate” assertions of clean elections in Wisconsin, particularly as officials lacked the necessary resources to detect manipulation. Governor Walker explained that the mere possibility of fraudulent behavior justifies “common sense” voting requirements. Overall, these findings suggest that Wisconsin policymakers capitalized on the conservative inclination for paranoia. In order to mask their effort to gain an electoral advantage, I argue that Wisconsin’s policymakers employed a discourse that complements conservative understanding of societal imperfections, using this

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<sup>94</sup> Email questionnaire with Jay Wadd, Staff Assistant to State Senator Dave Hasen February 19, 2018 2:27 PM PT,

<sup>95</sup> Presidential Approval Ratings—Donald Trump, Gallup News, last modified February 18, 2018, <http://news.gallup.com/poll/203198/presidential-approval-ratings-donald-trump.aspx>

foundation to convince the state's conservative voters of an active electoral manipulation with little to no evidence.

One can trace the conservative inclination towards paranoia to the foundations of modern conservatism. In 1953, political theorist Russell Kirk articulated 20th-century conservatism in his book, *The Conservative Mind: From Burke to Santayana*. Although Kirk's piece developed six central canons to the ideology, one particular conservative principal gives grounding towards paranoia tendencies. Kirk holds human nature as intrinsically flawed. The imperfections of man prevent society from creating a perfect social order. "All that we reasonably can expect is a tolerable ordered, just, and free society, in which some evils, maladjustments, and suffering will continue to lurk," Kirk writes. "But if the old institutional and moral safeguards of a nation are neglected, then the anarchic impulse in humankind breaks loose" (Kirk 1987). This thinking gives way to paranoia over societal systems. From climate change to gun control, conservative voices consistently resist policy change, calling for safeguards that protect our "American tradition." Even more, peer-reviewed psychology journals examining brain differences between liberals and conservatives have found that conservative thinkers experience a greater sensitivity to threats, in addition to their tendency to focus on the negative (Dodd et al. 2012) and a greater likelihood to react with fear (Kanai et al. 2011). Policymakers employ paranoia because it allows them to circumvent a need for evidence. The mere suggestion of widespread conspiracy or abuse places the respondent in a defensive position, forcing her to pause her original messaging and first prove that the paranoia accusation holds no grounding. Even after her explanation, a portion of the audience will likely remain suspicious, drawn towards the dramatics offered in the paranoia accusation.

We see this phenomenon throughout American politics. When discussing climate change, conservative policymakers often dismiss the scientific community by hinting at an international scheme to destroy American jobs. As a result, climate change activists need to continually defend their position, presenting evidence that first disproves the international ploy. When discussing gun control, conservative policymakers may speculate a government effort to disarm rebellions, forcing gun control advocates to step off message and first deny any government takeover or institution of Marshall Law. Finally, within photo ID conversations, voter fraud accusations force voting rights activists to first disprove the presence of fraud, distracting from the true issue in American voting policy: efforts to enact voter suppression.

Fischer and Forester's argumentation theory suggests the language surrounding a public policy holds more value than the policy itself. I believe Wisconsin's AB-7 stands as an example. State policymakers justified the law via thorough and intentional party messaging. Capitalizing on a conservative inclination towards paranoia, policymakers warned of widespread voter fraud, convincing Wisconsin voters of the need for action without referencing any evidence. The law's discourse transgressed the boundaries of rationality, transforming one party's effort to gain electoral ground into a "nonpartisan" solution that solves a mythical problem.

## Appendix A

### STATES WITH IN-EFFECT PHOTO IDENTIFICATION REQUIREMENTS<sup>96</sup>

| State  | Acceptable Forms of ID   | Voters Without ID   |
|--|--|---|
| <p><b>Alabama</b><br/>§17-9-30</p>   | <ul style="list-style-type: none"> <li>-Valid Alabama driver's license or non-driver ID card</li> <li>-Valid photo voter ID card or other valid ID card issued by any state or the federal government, as long as it contains a photo</li> <li>-Valid U.S. passport</li> <li>-Valid government employee ID card with a photo</li> <li>-Valid student or employee ID card issued by a college or university in the state, provided it includes a photo</li> <li>-Valid U.S. military ID card containing a photo</li> <li>-Valid tribal ID card containing a photo</li> </ul>  | <p>Vote a provisional ballot or vote a regular ballot if he is identified by two election officials as an eligible voter on the poll list, and both election workers sign a sworn affidavit so stating.</p> <p>If voting a provisional ballot, the voter has until 5:00PM on the Friday after the election to bring the required ID</p>   |
| <p><b>Arkansas</b><br/><i>Arkansas Constitution, Amendment 51, § 13; Arkansas Code § 7-1-101</i><br/>§ 7-5-201<br/>§ 7-5-305<br/>§ 7-5-308<br/>§ 7-5-324<br/>§ 7-5-409<br/>§ 7-5-412</p> | <p>A voter shall verify registration by presenting a document or identification card that:</p> <ul style="list-style-type: none"> <li>-Shows the name of the person to whom the document or identification card was issued;</li> <li>-Shows a photograph of the person to whom the document or identification card was issued;</li> <li>-Is issued by the United States, the State of Arkansas, or an accredited postsecondary educational institution in the State of Arkansas; and</li> <li>-If displaying an expiration date, is not expired or expired no more than four (4) years before the date of the election in which the voter seeks to vote; or</li> <li>-Submitting with an absentee ballot in an election, a runoff election, or a school election a copy of a document or identification card that complies with the requirements of subdivision (b)(1)(A)(i) of this section.</li> </ul> | <p>A voter who did not present a required document or identification card may cast a provisional ballot accompanied by a sworn statement that the voter is registered to vote in the state and that he or she is the person registered to vote. The provisional ballot will be counted if: the county board of election commissioners does not determine that the provisional ballot is invalid and should not be counted based on other grounds; or the voter returns to the county board of election commissioners or the county clerk by 12:00 noon on the Monday following the election and presents a document or identification card that meets the requirements.</p> <p>A provisional ballot cast by an absentee voter who failed to submit the required documentation with an absentee ballot</p> |

<sup>96</sup> Voter Identification Requirements, National Conference for State Legislatures, last modified January 5, 2018, accessed March 16, 2018, <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>.

| State                              | Acceptable Forms of ID  | Voters Without ID  |
|------------------------------------|---|--|
|                                    | <p>Documents and identification cards that comply with the requirements include without limitation:</p> <ul style="list-style-type: none"> <li>-A driver's license;</li> <li>-A photo identification card;</li> <li>-A concealed handgun carry license;</li> <li>-A United States passport;</li> <li>-An employee badge or identification document issued by an accredited postsecondary educational institution in the State of Arkansas;</li> <li>-A United States military identification document;</li> <li>-A public assistance identification card if the card shows a photograph of the person to whom the document or identification card was issued; and</li> <li>-A voter verification card under § 7-5-324.</li> </ul> | <p>shall be counted if: the voter completes and returns the sworn statement portion of the absentee ballot form stating that the voter is registered to vote in this state and that he or she is the person registered to vote; or the voter returns to the county board of election commissioners or the county clerk by 12:00 noon on the Monday following the election and presents a copy of a document or identification card that complies with the requirements of subdivision (b)(1)(A)(i) of this section; and the county board of election commissioners does not determine that the provisional ballot is invalid and should not be counted based on other grounds.</p> |
| <p><b>Florida</b><br/>§101.043</p> | <p>One of the following current and valid <i>picture</i> identifications:</p> <ul style="list-style-type: none"> <li>-Florida driver's license</li> <li>-Florida ID card issued by the Dept. of Highway Safety and Motor Vehicles</li> <li>-U.S. passport</li> <li>-Debit or credit card</li> <li>-Military identification</li> <li>-Student identification</li> <li>-Retirement center identification</li> <li>-Neighborhood association ID</li> <li>-Public assistance identification</li> <li>-Veteran health identification card issued by the United States Department of Veterans Affairs</li> <li>-A license to carry a concealed weapon or firearm</li> </ul>   | <p>If the elector fails to furnish the required picture identification with signature as required, the elector shall be allowed to vote a provisional ballot. The canvassing board shall determine the validity of the ballot by determining whether the elector is entitled to vote at the precinct where the ballot was cast and that the elector had not already cast a ballot in the election.</p> <p>Florida uses signature matching: the voter signs the provisional ballot envelope. That signature is compared to the signature in the voter registration records. If they match, the ballot is counted.</p>   |

| State   | Acceptable Forms of ID  | Voters Without ID  |
|---|---|--|
|   | <p>-Employee identification card issued by any branch, department, agency, or entity of the Federal Government, the state, a county, or a municipality.</p> <p><i>If the picture identification does not contain the signature of the elector, an additional identification that provides the elector's signature shall be required.</i></p>  |  |
| <p><b>Georgia</b><br/>§21-2-417</p>                       | <ul style="list-style-type: none"> <li>-Georgia driver's license, even if expired</li> <li>-ID card issued by the state of Georgia or the federal government</li> <li>-Free voter ID card issued by the state or county</li> <li>-U.S. passport</li> <li>-Valid employee ID card containing a photograph from any branch, department, agency, or entity of the U.S. Government, - Georgia, or any county, municipality, board, authority or other entity of this state</li> <li>-Valid U.S. military identification card</li> <li>-Valid tribal photo ID</li> </ul> | <p>A voter without one of the acceptable forms of photo identification can vote on a provisional ballot. He or she will have up to three days after the election to present appropriate photo identification at the county registrar's office in order for the provisional ballot to be counted.</p>                             |
| <p><b>Hawaii</b><br/>§11-136</p>                          | <p>Acceptable types of ID are not specified by law. Hawaii's office of elections provides this information: "Forms of acceptable identification include a valid photo ID (Drivers License, State ID, etc), a copy of a current utility bill, bank statement, paycheck, or other government issued document that shows your name and address."</p>   | <p>If the voter has no identification, the voter will be asked to recite his/her date of birth and residence address to corroborate the information provided in the poll book.</p>   |
| <p><b>Idaho</b><br/>§34-1106(2),<br/>34-1113, 34-1114</p> | <ul style="list-style-type: none"> <li>-Idaho driver's license</li> <li>-Idaho ID card</li> <li>-Passport</li> <li>-ID card, including a photo, issued by an agency of the U.S. government</li> <li>-Tribal ID card, including a photograph</li> <li>-Student ID card, including a photograph, issued by a high school or accredited</li> </ul>   | <p>A voter may complete an affidavit in lieu of the personal identification. The affidavit shall be on a form prescribed by the secretary of state and shall require the voter to provide the voter's name and address. The voter shall sign the affidavit. Any person who knowingly provides false, erroneous or inaccurate</p> |

| State   | Acceptable Forms of ID   | Voters Without ID  |
|---|--|--|
|   | <p>institution of higher education within the state of Idaho</p> <p>-Concealed carry weapon license</p>  | <p>information on such affidavit shall be guilty of a felony.</p>  |
| <p><b>Indiana</b><br/>§3-5-2-40.5,<br/>3-10-1-7.2<br/>and 3-11-8-25.1</p> | <p>Specific forms of ID are not listed in statute. ID must be issued by the state of Indiana or the U.S. government and must show the following:</p> <p>-Name of individual to whom it was issued, which must conform to the individual's registration record</p> <p>-Photo of the person to whom it was issued</p> <p>-Expiration date (if it is expired, it must have an expiration date after the most recent general election; military IDs are exempted from the requirement that ID bear an expiration date)</p> <p>-Must be issued by the United States or the state of Indiana</p>   | <p>Voters who are unable or decline to produce proof of identification may vote a provisional ballot. The ballot is counted only if (1) the voter returns to the election board by noon on the Monday after the election and: (A) produces proof of identification; or (B) executes an affidavit stating that the voter cannot obtain proof of identification, because the voter: (i) is indigent; or (ii) has a religious objection to being photographed; and (2) the voter has not been challenged or required to vote a provisional ballot for any other reason.</p> |
| <p><b>Kansas</b><br/>§25-2908, 25-1122, 25-3002, and 8-1324(g)(2)</p>     | <p>The following forms of identification are valid if they contain the name and photograph of the voter and have not expired. Expired documents are valid if the bearer is aged 65 or older.</p> <p>-Driver's license issued by Kansas or another state</p> <p>-State identification card</p> <p>-Government-issued concealed carry handgun or weapon license</p> <p>-U.S. passport</p> <p>-Employee badge or identification document issued by a government office or agency</p> <p>-Military ID</p> <p>-Student ID issued by an accredited postsecondary institution in Kansas</p> <p>-Government-issued public assistance ID card</p> | <p>A voter who is unable or refuses to provide current and valid identification may vote a provisional ballot.</p> <p>To have his or her ballot counted, the voter must provide a valid form of identification to the county election officer in person or provide a copy by mail or electronic means before the meeting of the county board of canvassers.</p>  |
| <p><b>Louisiana</b><br/>§18:562</p>                                       | <p>-Louisiana driver's license</p> <p>-Louisiana special ID card</p> <p>-Other generally recognized picture</p>  | <p>If the applicant does not have identification, s/he shall sign an affidavit to that effect before the commissioners,</p>  |

| State                                    | Acceptable Forms of ID   | Voters Without ID  |
|--|--|--|
|  | <p>identification</p>  | <p>and the applicant shall provide further identification by presenting his current registration certificate, giving his date of birth or providing other information stated in the precinct register that is requested by the commissioners. However, an applicant that is allowed to vote without the picture identification required by this Paragraph is subject to challenge as provided in R.S. 18:565.</p>  |
| <p><b>Michigan</b><br/>§168.523</p>      | <ul style="list-style-type: none"> <li>-Michigan driver's license</li> <li>-Michigan personal identification card</li> </ul> <p>A voter who does not possess either of the above may show any of the following, as long as they are current:</p> <ul style="list-style-type: none"> <li>-Driver's license or personal identification card issued by another state</li> <li>-Federal or state government-issued photo ID</li> <li>-U.S. passport</li> <li>-Military ID with photo</li> <li>-Student ID with photo -- from a high school or accredited institution of higher education</li> <li>-Tribal ID with photo</li> </ul> | <p>An individual who does not possess, or did not bring to the polls, photo ID, may sign an affidavit and vote a regular ballot.</p>   |
| <p><b>Mississippi</b><br/>§23-15-563</p> | <ul style="list-style-type: none"> <li>-A driver's license</li> <li>-A photo ID card issued by a branch, department, or entity of the State of Mississippi</li> <li>-A United States passport</li> <li>-A government employee ID card</li> <li>-A firearms license</li> <li>-A student photo ID issued by an accredited Mississippi university, college, or community/junior college</li> <li>-A United States military ID</li> <li>-A tribal photo ID</li> <li>-Any other photo ID issued by any branch, department, agency or entity of the United</li> </ul>  | <p>An individual without ID can cast an affidavit ballot which will be counted if the individual returns to the appropriate circuit clerk within five days after the election and shows government-issued photo ID.</p> <p>Voters with a religious objection to being photographed may vote an affidavit ballot, which will be counted if the voter returns to the appropriate circuit clerk within five days after the election and executes an affidavit that the religious exemption applies.</p> |

| State                                     | Acceptable Forms of ID   | Voters Without ID  |
|---|--|--|
|   | States government or any state government<br>-A Mississippi Voter Identification Card  |  |
| <b>Rhode Island</b><br>§17-19-24.2        | A valid and current document showing a photo of the person to whom it was issued, including:<br>-RI driver's license<br>-RI voter identification card<br>-U.S. passport<br>-Identification card issued by a U.S. educational institution<br>-U.S. military identification card<br>-Identification card issued by the U.S. government or state of RI<br>-Government-issued medical card | If the person claiming to be a registered and eligible voter is unable to provide proof of identity as required, the person shall be allowed to vote a provisional ballot pursuant to section 17-19-24.2. The local board shall determine the validity of the provisional ballot pursuant to section 17-19-24.3. Summary of section 17-19-24.3: The local board shall examine each provisional ballot application to determine if the signature matches the signature on the voter's registration. If the signatures match, the provisional ballot shall count. If the signatures do not match, the ballot shall not count and shall be rejected as illegal. |
| <b>South Dakota</b><br>§12-18-6.1 and 6.2 | -South Dakota driver's license or nondriver identification card<br>-U.S. passport<br>-Photo ID issued by an agency of the U.S. government<br>-Tribal ID card, including a photo<br>-Student ID card, including a photo, issued by an accredited South Dakota school  | If a voter is not able to present a form of personal identification as required, the voter may complete an affidavit in lieu of the personal identification. The affidavit shall require the voter to provide his or her name and address. The voter shall sign the affidavit under penalty of perjury.  |
| <b>Tennessee</b><br>§2-7-112 (c)          | -TN driver's license<br>-Valid photo ID card issued by Tennessee<br>-Valid photo ID license issued by TN Dept. of Safety<br>-Valid U.S. passport<br>-Valid U.S. military ID with photo<br>-TN handgun carry permit with photo  | If a voter is unable to present the proper evidence of identification, then the voter will be entitled to vote by provisional ballot in the manner detailed in the bill. The provisional ballot will only be counted if the voter provides the proper evidence of identification to the administrator of elections or the administrator's designee by the close of business on the second business day after the election.<br>However, "A voter who is indigent and  |

| State   | Acceptable Forms of ID   | Voters Without ID   |
|---|--|---|
|   |  | <p>unable to obtain proof of identification without payment of a fee or who has a religious objection to being photographed shall be required to execute an affidavit of identity on a form provided by the county election commission and then shall be allowed to vote." §2-7-112(f)</p>  |
| <p><b>Texas</b><br/>Election Code §63.001 et seq.</p> | <p>TX driver license or personal identification card issues by the Department of Public Safety (DPS)<br/> -TX Election Identification Certificate issued by DPS<br/> -TX license to carry a handgun issued by DPS<br/> -U.S. military identification card containing the person's photograph<br/> -U.S. citizenship certificate containing the person's photograph<br/> -U.S. passport</p> <p>With the exception of the U.S. citizenship certificate, the identification must be current or have expired no more than 4 years before being presented for voter qualification at the polling place.</p> | <p>Voters who do not possess an acceptable form of photo ID and cannot obtain one of the forms of acceptable photo ID listed due to a reasonable impediment, may present a supporting form of ID and execute a Reasonable Impediment Declaration, noting the voter's reasonable impediment to obtaining an acceptable form of ID.</p> <p>Supporting forms of ID that can be presented if the voter does not possess one of the forms of acceptable photo ID and cannot obtain one due to a reasonable impediment:</p> <ul style="list-style-type: none"> <li>· Valid voter registration certificate</li> <li>· Certified birth certificate (must be an original)</li> <li>· Copy of or original current utility bill</li> <li>· Copy of or original bank statement</li> <li>· Copy of or original government check</li> <li>· Copy of or original paycheck</li> <li>· Copy of or original government document with your name and an address (original required if it contains a photograph)</li> </ul> <p>After presenting a supporting form of ID, the voter must execute a Reasonable Impediment Declaration.</p> |

| State                                   | Acceptable Forms of ID  | Voters Without ID   |
|---|---|---|
|   |   | <p>If a voter possesses an acceptable form of photo ID but does not have it at the polling place, the voter will still be permitted to vote provisionally. The voter will have six (6) days to present an acceptable form of photo identification to the county voter registrar or the voter's ballot will be rejected.</p> <p>Voters with a disability who do not have an acceptable form of photo ID may also apply with the county voter registrar for a permanent exemption.</p> <p>Voters who have a consistent religious objection to being photographed and voters who do not present any form of acceptable photo identification as a result of certain natural disasters as declared by the President of the United States or the Texas Governor, may vote a provisional ballot, appear at the voter registrar's office within six (6) calendar days after election day, and sign an <u>affidavit</u> swearing to the religious objection or natural disaster, in order for your ballot to be counted.</p> |
| <p><b>Virginia</b><br/>§24.2-643(B)</p> | <ul style="list-style-type: none"> <li>-Valid United States passport</li> <li>-Valid Virginia driver's license or ID card</li> <li>-Valid Virginia DMV issued Veteran's ID card</li> <li>-Valid tribal enrollment or other tribal ID issued by one of 11 tribes recognized by the Commonwealth of Virginia</li> <li>-Valid student ID card from within Virginia if it includes a photo</li> <li>-Any other identification card issued by a government agency of the Commonwealth, one of its political subdivisions, or the United</li> </ul> | <p>Any voter who does not show one of the forms of identification specified in this subsection shall be offered a provisional ballot marked ID-ONLY that requires no follow-up action by the registrar or electoral board other than matching submitted identification documents from the voter for the electoral board to make a determination on whether to count the ballot. In order to have his or her ballot counted, the voter must submit a copy of one of the forms of identification to the</p>   |

| State  | Acceptable Forms of ID   | Voters Without ID  |
|--|--|--|
|  | <p>States</p> <p>-Employee identification card containing a photograph of the voter and issued by an employer of the voter in the ordinary course of the employer's business</p>   | <p>electoral board by facsimile, electronic mail, in-person submission, or timely United States Postal Service or commercial mail delivery, to be received by the electoral board no later than noon on the third day after the election.</p>  |
| <p><b>Wisconsin</b><br/>§5.02(6m)<br/>and 6.79(2)(a)</p> | <p>-Wisconsin driver's license</p> <p>-ID card issued by a U.S. uniformed service Wisconsin non-driver ID</p> <p>-U.S. Passport</p> <p>-Certificate of naturalization issued not more than 2 years before the election</p> <p>-ID card issued by a federally recognized - Indian tribe in WI</p> <p>-Student ID card with a signature, an issue date, and an expiration date no later than 2 years after the election</p> <p>-- A photo ID card provided by the Veteran's Health Administration</p> <p>All of the above must include a photo and a name that conforms to the poll list.</p> <p>If the ID presented is not proof of residence, the elector shall also present proof of residence.</p> | <p>An elector who appears to vote at a polling place and does not have statutory ID shall be offered the opportunity to vote a provisional ballot.</p> <p>An elector who votes a provisional ballot may furnish statutory ID to the election inspectors before the polls close or to the municipal clerk no later than 4pm on the Friday following Election Day.</p> |

## Appendix B

Governor Scott Walker Photo-Identification Press Conference and Signing

May 25, 2011 at WI State Capitol

Full video can be found at: [https://www.youtube.com/watch?v=zN5pTH\\_zX9Q](https://www.youtube.com/watch?v=zN5pTH_zX9Q)

[Governor Walker Enters]

Good morning. It's good to see a big crowd. Yes, I guess it's afternoon. I have to remember the time we're at.

It is a pleasure to be here today. Actually, we've had a number of bill signings throughout the week and this one's obviously kinda special—not only because we got a great group here, but it was just about a decade ago that I first introduced a photo ID requirement. It was very similar to what we're passing today, and I want to thank particularly Representative Jeff Stone and Senator Joe Liebham for their leadership on this, obviously a whole bunch of other co-sponsors and folks that voted in the Assembly and the Senate—not only Republicans but one Independent and a number of Democrats that voted for this measure.

And I think it's important. Because when we think about this—the integrity of each and every vote cast here in the state of Wisconsin is imperative. And some people would question, you know, the impact, but to me, something as important as a vote is important in whether it's one case, a hundred cases, or a hundred thousand cases. Making sure we have legislation that protects the integrity for an open, fair, and honest election. In every single case, it's important protecting in that case and that case alone.

When I've talked to individual voters from across the state who've raised concerns about this, they've said more than anything it's what they care about in terms of their own personal vote that makes a difference. Here to make sure that the vote that they cast is one that counts just as much as anybody else's out there. And that every other vote cast here in the state of Wisconsin is cast fairly and under a legal process. And that's one more step towards making that possible with what we're going to be signing in law today. Now, it's interesting when you think about, in the past decade, the evolution of all the work that was put in this. I think about how simple it was when I asked back a decade ago. I was looking for essentially a driver's license or a state-issued ID card. The legislation I'm gonna sign in law in a moment allows for plenty of other venues, it applies for legitimate exceptions, for example, for people who are living in residential care facilities such as nursing home and places like that. It accounts for all those issues out there.

I think the facts are pretty clear. And I asked this week from both the Department of Transportation and from the Government Accountability Board, I asked for two numbers to just put this in perspective. For any complaint you might here about this, keep this in mind: as of right now, there are just under 4.5 million state-issued driver's licenses or state-issued ID cards. 4.5 million. You know how many registered voters there are in the

state of Wisconsin? Just under 3.5 million. So there are essentially a million—approximately a million—more state-issued driver’s licenses or ID cards already in the state of Wisconsin. So for anyone who questions how this is going to be possible, the simple reality there are literally close to a million more of the ID’s out just for that first category. The category I asked for in the legislation a decade ago and obviously there are plenty more examples, whether it’s on our college campuses, whether it’s our military personnel or others on our tribal governments—all of those ID’s are included, as well as part of this legislation. And I’m please to say that. And as we speak, in the coming days, and it was already talked about earlier this week, the joint finance committee is moving forward with the funding to ensure that this legislation is able to go forward and be fully implemented. And it’s something that I’m proud to sign into law. So I’m pleased to be here today.

One other just quick comment while we’re talking about actions that the legislature is apart and is pending in the coming days, many of the folks standing here as well will be voting on this, hopefully in the coming week or so. But we saw legislation introduced this week—the bill to pay the bills, as you call it. Talking about the budget, it’s important to be mindful of that, as well. We’re supportive of the legislature moving forward and taking action to pay our bills here. I’ve pointed out for some time that like families all across the state, you know you get a point where the credit card bill is running up too big. It’s time to cut up the credit card and ultimately pay those bills. And after years and years and years of state government running up the credit card bill, what we’re doing with the revenue that was brought in because of good healthy revenue projections that came out recently, is making sure we’re paying off the bills that are passed due, and the bills that are pending, so that it puts us in a better position—not just for this budget, but for coming budgets, to make sure we make a true commitment to the future. So that are children and our grandchildren don’t face the kind of dire consequences that many of us, here and across the country, have been facing this year as well. So that’s just an aside, as we talk about it, but it’s my thrill to be here today.

The last thing I want to do is not only to thank, as I mentioned, our two key lead sponsors, all the other co-sponsors, who are here, lawmakers who voted for this measure. But many of the people in this room and many of other people across the state have for years, been standing up and saying, “we need to have fair, open, and honest elections in this state.” And while there are a variety of things that have been done, and more things that need to be done in the future to continue to ensure that we have fair, open, and honest elections, one of the most obvious and one of the most sought after things, and one of the things that really the public, in nearly every poll I’ve seen—it’s not just been Republicans, but Republicans, Independents, and Democrats, alike, have repeated said that requiring a photo identification to vote was a common sense solution.

It’s something that we do in just about everywhere else in life—as simple as things like getting cold medicine requires a photo ID, checking out a library book in many of our public libraries, doing just about everything else in life requires it. Doesn’t it make sense for something that’s much more important than cold medicine or a library book, but in protecting the integrity of each and every vote cast in this state certainly is worthy of a

simple requirement that we show photo identification as defined under this bill, which will soon be the law. It's my honor to sign this into law. After we do that, I'll take some questions on this or other topics at the tail end.

[Governor Walker signs AB-7]

[Video Ends]

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