

WISCONSIN SUPREME COURT
TUESDAY, FEBRUARY 25, 2014
9:45 a.m.

2012AP584-AC [League of Women Voters v. Scott Walker](#) and
2012AP1652 [Milwaukee Branch of the NAACP v. Scott Walker](#)

These cases, arising from two Dane County Circuit Court decisions, deal with two closely related aspects of a single, overriding issue: the validity of 2011 Act 23's photo identification requirements under the suffrage provisions in Wis. Const. Art. III.

Wis. Const. Art. III, § 1 provides: "Every United States citizen age 18 or older who is a resident of an election district in this state is a qualified elector of that district."

Wis. Const. Art. III, § 2 provides that laws may be enacted:

- (1) Defining residency.
- (2) Providing for registration of electors.
- (3) Providing for absentee voting.
- (4) Excluding from the right of suffrage persons:
 - (a) Convicted of a felony, unless restored to civil rights.
 - (b) Adjudged by a court to be incompetent or partially incompetent, unless the judgment specifies that the person is capable of understanding the objective of the elective process or the judgment is set aside.

Subject to ratification by the people at a general election, extending the right of suffrage to additional classes.

Some procedural background: This is the fourth time that voter ID issues have been before this court, but the first time the Court has voted to review the underlying issues.

In March 2012 the Court of Appeals certified 2012AP584-AC, [League of Women Voters of Wisconsin Education Network, Inc. v. Scott Walker](#) (LWV). The Supreme Court denied certification on April 16, 2012. On Aug. 21, 2012, the state filed a petition to bypass in LWV and in [Milwaukee Branch of the NAACP v. Scott Walker](#) (NAACP). The bypass petition was denied on Sept. 27, 2012. On Nov. 7, 2012, the state filed a petition to bypass in NAACP and also moved this court to take jurisdiction of and consolidate NAACP with LWV. The Supreme Court denied the petition to bypass and consolidation motion on Jan. 14, 2013.

On Nov. 20, 2013, the Supreme Court issued an order granting the petition for review in LWV, and took jurisdiction of NAACP, which was fully briefed and awaiting oral argument in the Court of Appeals. The Supreme Court also ordered that the cases be heard at oral argument on the same day, scheduled for Feb. 25, 2014.

Some general background: Gov. Scott Walker signed Wis. 2011 Act 23 into law on June 6, 2011. Prior to Act 23, an eligible Wisconsin elector voting in person or by absentee ballot was not required to present an identification document, other than proof of residence in some circumstances. Act 23 requires, with certain exceptions, that an elector must present an acceptable form of photo identification to an election official, who must verify that the name on the identification conforms to the name on the poll list and that any photograph on the identification reasonably resembles the elector. Section 6.79(2)(a), Stats. An elector must present proof of identification to vote either in person or by absentee ballot. There are various

forms of acceptable photo identification, including a Wisconsin driver's license or state identification card issued by the Wisconsin Department of Transportation.

The LWV case focuses on whether Act 23's photo identification requirements established a new qualification for voters that, under Wis. Const. Art. III, §§ 1 and 2 can only be created by a constitutional amendment, rather than by ordinary legislation, and NAACP focuses on whether the photo identification requirements impose an unconstitutional burden on voting rights under Wis. Const. Art. III, § 1.

In LWV, the circuit court declared the photo ID requirements of Act 23 "unconstitutional to the extent they serve as a condition for voting at the polls." The circuit court ruled that the photo identification requirement provisions of Act 23 were facially invalid under Art. III.

The Court of Appeals' reversed, providing analysis of three cited cases and concluding that the League of Women Voters failed to meet its burden of proving beyond a reasonable doubt that the voter ID is unconstitutional under Art. III, § 2.

The League of Women Voters says in so holding, the Court of Appeals gave short shrift to its analysis of the scope and meaning of Art. III, § 2. The League of Women Voters raises the following issues for Supreme Court review:

- Do the portions of 2011 Wisconsin Act 23 that require constitutionally qualified and registered voters to display a specified form of government-issued photo identification at the polling place as a prerequisite to voting constitute an impermissible additional qualification to vote in violation of Wis. Const. Art. III, § 1?
- Do the portions of 2011 Wisconsin Act 23 that require constitutionally qualified and registered voters to display a specified form of government-issued photo identification at the polling place as a prerequisite to voting exceed legislative authority under Wis. Const. Art. III, § 2?
- Did the League of Women Voters and its president, Melanie G. Ramey, have standing to bring this action challenging the facial constitutionality of the Voter ID provisions?

The NAACP case commenced on Dec. 16, 2011, when the plaintiffs filed a complaint seeking a declaratory judgment and injunctive relief. On July 17, 2012, the Dane County Circuit Court issued an order for judgment and judgment granting declaratory and injunctive relief. Among its 10 conclusions of law, the circuit court found the photo ID requirement creates a substantial burden for potential voters who do not already have photo IDs and impairs the constitutional right to vote.

The permanent injunction issued by the circuit court in NAACP is broader and declared that "the defendants shall cease immediately and permanently all and any effort to enforce or implement the photo identification requirements of 2011 Wisconsin Act 23."

In NAACP, the state argues in briefs filed on behalf of Walker that the circuit court's decision in this case is incorrect for six reasons.

- The court erred as a matter of law by holding that the voter identification requirements are subject to strict scrutiny.
- The court erred by holding that the right to vote should be treated differently under the Wisconsin Constitution than it is treated under the federal Constitution.
- The court erred by facially invalidating the voter identification requirements as to all voters in spite of the undisputed evidence that those requirements do not burden the vast majority of voters.

- The court erred both in accepting the statistical conclusions of Plaintiffs' expert witness and in finding those statistics sufficient to establish a severe burden on the right to vote.
- The court erred in finding the anecdotal testimony of the individual fact witnesses sufficient to establish a severe burden on the right to vote.
- The court erroneously failed to recognize that the voter identification requirements are reasonably calculated to advance the state's compelling interests in preventing electoral fraud and promoting voter confidence in the integrity of elections.