

ATTACHMENT ONE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION
CAUSE NO: 1:05-CV-0634-SEB-VSS

INDIANA DEMOCRATIC PARTY, et al.,)
)
Plaintiffs,)
)
v.)
)
TOD ROKITA, et al.,)
)
Defendants.)
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WILLIAM CRAWFORD, et al.,)
)
Plaintiffs,)
)
v.)
)
MARION COUNTY ELECTION BOARD,)
)
Defendant,)
)
and)
)
STATE OF INDIANA,)
)
Intervenor.)

The deposition upon oral examination of DORIS ANN SADLER, a witness produced and sworn before me, Sherri L. Sego, Notary Public in and for the County of Johnson, State of Indiana, taken on the 2nd day of August, 2005 at 2:25 p.m. in the offices of the INDIANA CIVIL LIBERTIES UNION, 1031 East Washington Street, Indianapolis, Indiana, pursuant to the Indiana Rules of Trial Procedure. This deposition was taken on behalf of WILLIAM CRAWFORD, et al. in the above-captioned matter.

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Indianapolis, Indiana 46204
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1 Q And I believe I asked for any documents, on the top
2 of page 3, bottom of page 2, top of page 3, any
3 documents concerning the new voter identification
4 law, interpretation, and how it is to be
5 implemented.

6 Are there any such documents that you are
7 personally aware of?

8 A No, none that have been used.

9 Q Do you have a position with the Marion County
10 Election Board?

11 A I'm the secretary of the Marion County Election
12 Board.

13 Q And is that by virtue of your position as the
14 Marion County clerk?

15 A It is.

16 Q And what is the Marion County Election Board?

17 A The Marion County Election Board is the statutory
18 body that is responsible for the oversight of
19 elections in Marion County.

20 Q And what is your position as secretary?

21 A My primary position is as the election
22 administrator. The board itself makes decisions
23 within statutory requirements about policy, but I
24 run the day-to-day administration of the elections.

25 Q And who is on the Marion County Election Board?

1 A Currently the chairman is Frank Otty, Jr., and the
2 Democratic member vice-chairman of the board is
3 Steven Eicholtz (phonetic).

4 Q And as secretary you are the third member; is that
5 correct?

6 A That's correct.

7 Q In Marion County what entity is responsible for
8 supervising voter registration?

9 A There is a separate board of voter registration in
10 Marion County.

11 Q And who heads the voter registration board?

12 A There are two members. The Republican member is
13 Kyle Walker and the Democratic member is Joel
14 Miller.

15 Q And do you as the clerk have any responsibilities
16 with the voter registration board?

17 A There is only one instance that I'm aware of in
18 which the Marion County Election Board actually
19 statutorily interacts and that is by virtue -- if
20 the members of the voter registration board
21 disagree as to the interpretation of law, then the
22 Marion County Election Board would settle the
23 disagreement.

24 Q Interpretation of law as to voter registration
25 issues?

1 A Yes, yes.

2 Q I've marked as an exhibit Exhibit 10 which is the
3 Indiana Voter Registration Application.

4 Are you familiar with this application?

5 A Yes.

6 Q Is this the current application being used in
7 Marion County, to the best of your knowledge?

8 A I believe it is.

9 Q And it's my understanding that under the law
10 registration can occur in various places, in your
11 office, is that correct, or in the voter
12 registration office; is that correct?

13 A In the voter registration office.

14 Q License branches, public assistance agencies, Armed
15 Services recruiting offices, agencies that serve
16 the disabled, are those all places that
17 registration is possible?

18 A That is correct.

19 Q And can also occur by mail; is that correct?

20 A That is correct.

21 Q Are you aware of what the requirements are if one
22 registers to vote in person at the voter
23 registration board in terms of identification, what
24 I have to show for identification purposes?

25 A There's one exception to -- and that's the federal

1 law. But currently for in-person registration
2 there's no requirement for identification.

3 Q But if I register by mail there is a requirement;
4 is that correct?

5 A If you are a first-time registered voter, yes.

6 Q And it's my understanding that at that point I have
7 to show a copy of a photo I.D. or other
8 identification such as a utility bill, bank
9 statement, government check, paycheck, or a
10 government document showing my name and address?

11 A That's correct.

12 Q But currently if I come in to register in person I
13 just fill out this form, sign it, and then I am
14 registered; is that correct?

15 A That's correct.

16 Q Provided I meet all the requirements on the form?

17 A Yes, that's right.

18 Q And the form is then signed under oath; is that
19 correct?

20 A Yes.

21 Q At least under the penalties of perjury; is that
22 correct?

23 A Yes.

24 Q And to the best of your knowledge, that
25 registration requirement has not changed with the

1 new I.D. law that went into effect July 1st?

2 A To the best of my knowledge, that's correct.

3 Q At the current time if I'm going to vote in person
4 at my polling place, what voting officials are
5 there?

6 A In Marion County there are actually five officials;
7 the inspector, one inspector, and that person is
8 appointed by the political party whose candidate
9 for Secretary of State won that county in the most
10 recent election.

11 Q Okay.

12 A Then there are two clerks, one appointed by each
13 party; and two judges, one appointed by each party.
14 And I should say major political parties.

15 Q And what are the functions of each of those five --
16 three offices?

17 A They have various statutory functions. In short,
18 the inspector is the final decision maker about
19 policy at the polling place and how those laws are
20 administered. The clerks are actually in charge of
21 the poll book and their job is to check voters in,
22 make sure they're on the poll list, and to issue
23 the ballot, now that we have a ballot-driven
24 system. And the judges are responsible for
25 administering the machine itself, standing not too

1 close but far enough away if there's a problem with
2 the machine, to handle that situation.

3 If there is a dispute within the ranks of the
4 poll board, the two judges and the inspector then
5 vote on how to handle those particular situations.

6 Q Now, you used the words *poll board*. Is that
7 something different or is that just --

8 A It's the same thing. The poll board is actually
9 the three-member body, the inspector and the two
10 judges.

11 Q Now, prior to July 1st, if I was going in to vote,
12 would I have to show anything in order to vote?

13 A No.

14 Q I would have to sign my name --

15 A Yes.

16 Q -- in the poll book; is that correct?

17 A That's correct.

18 Q And my signature would be there from when I
19 registered to vote?

20 A That's correct. There would a photographic copy of
21 the signature.

22 Q Which would allow people to compare?

23 A That's correct.

24 Q Would I ever have to give an I.D. number, my voter
25 I.D. number, to vote?

1 A The poll clerks are required to ask for an
2 identification number, not identification, but
3 identification number, which might be the last four
4 digits of the Social Security number, driver's
5 license number. The voter is not required to give
6 that number.

7 Q Now, there's a procedure whereby I'm a voter and I
8 could be challenged; is that correct?

9 A That's correct.

10 Q Now, can any one of these five people, three
11 offices, inspector, two clerks, two judges, could
12 challenge me?

13 A Yes. But the clerk has a limited circumstance by
14 which they can challenge.

15 Q The clerk can challenge me only if they think I'm
16 not the person who I say I am; is that correct?

17 A Yes.

18 Q Or other identification issues; is that correct?

19 A That's correct.

20 Q And it's my understanding from the earlier
21 deposition we did today of J. Bradley King that
22 prior to July 1st if there was to be a challenge,
23 the person challenging would fill out an affidavit.
24 I at that point as a voter would have the
25 opportunity to fill out a counteraffidavit, both on

1 state forms, and at that point I would be allowed
2 to vote; is that correct?

3 A In Marion County, yes.

4 Q Are there different procedures in other counties
5 that you're aware of or were there prior to July
6 1st of 2005?

7 A There was a difference of opinion, I believe, from
8 Marion County to other -- to the state, to the
9 State Election Commission or Division, that a
10 person would receive a provisional ballot under
11 those circumstances.

12 Q But in Marion County you would receive an actual
13 ballot?

14 A An actual ballot, yes.

15 Q And even in a situation where you would receive a
16 provisional ballot, then after that provisional
17 ballot was executed the election authorities would
18 determine at some point whether the person's vote
19 would be counted. The person would not have to go
20 back to the clerk's office or go somewhere else to
21 present evidence. It would be decided based on the
22 affidavit; is that correct?

23 A Correct.

24 Q Okay.

25 A Although if I may add...

1 correct?

2 A I have not heard of that situation.

3 Q So you don't know why the voter would not have
4 filled out the affidavit?

5 A I don't know why the voter would not have filled
6 out the affidavit when they in fact did vote a
7 provisional ballot. They should not have even
8 received the ballot until this affidavit was
9 complete.

10 So other than the poll worker was just busy
11 and did not get all of the paperwork done, I have
12 not heard of a situation where the voter walked
13 away not voting a provisional ballot. I don't
14 think we actually received any paperwork.

15 Q Sure. You may not have known one way or the other,
16 I presume?

17 A Exactly.

18 Q How long does the challenge process take, do you
19 know?

20 A Well, it depends on how busy the polling place is,
21 if the inspector has a number of people who were
22 there. It also depends on how quickly the voters
23 themselves fill out their portion. So it can be a
24 very quick, it can be a very lengthy process.

25 Q And I've been told by some people it can be up to a

1 half hour or more; is that correct?

2 A It might be if there's long lines at the polling
3 places, yeah.

4 Q Now, if a voter votes but is not physically present
5 at the polling place, they have to vote through
6 what's called an absentee ballot; is that correct?

7 A That is correct.

8 Q What is the absentee voter board?

9 A The absentee voter board is -- this isn't a legal
10 description but my own -- is sort of a subcommittee
11 of the Marion County Election Board. Obviously, in
12 Marion County we have a great deal of absentee
13 voters, and therefore, we appoint members of each
14 party to actually oversee and be the in-office poll
15 board, if you will.

16 So if the Marion County Election Board cannot
17 do it themselves, which we can meet and conduct
18 that activity ourselves, we can appoint members to
19 conduct the necessary activities related to
20 absentee ballots.

21 Q And who is the absentee voter board in Marion
22 County?

23 A Well, officially it is the Marion County Election
24 Board. There is a whole number of absentee voter
25 boards. In fact, it's typically a group of ladies

1 A That's correct. Once that person is verified --
2 let's assume we don't have that HAVA issue -- then
3 a ballot is mailed to them within 24 hours.

4 Q And then when I'm the absentee voter I fill out the
5 ballot, I seal it. And is there some sort of
6 verification that I signed my signature to send
7 back --

8 A Yes. On the outside of the envelope itself there
9 is a place for the voter to sign that they were
10 indeed the person who filled out the ballot. There
11 is some language that is also a state form.

12 Q And that comes in then to the election board?

13 A Yes.

14 Q And if for some reason the signature doesn't seem
15 to match what you have on file, then that can be
16 challenged at that point?

17 A That's correct. But we actually have a process,
18 and I believe that the process itself is done
19 differently in various counties based on volume.
20 We have staff that goes through and identifies
21 various issues with those particular envelopes
22 because, of course, at that point the ballot itself
23 is sealed in the envelope.

24 So a pile is made if there is no signature,
25 for instance, or if the group looking at it thinks

1 there may be a problem with the signature that they
2 don't match, all of those are collected. Then
3 depending again how the presidential election
4 falls, we have to have several meetings. The
5 county election board or some of its designates
6 would go through and examine firsthand each one of
7 those ballots or ballot envelopes and make a
8 determination. If a signature was not on there, it
9 was rejected.

10 Now, the final word is not held with the
11 Marion County Election Board. Basically the county
12 election board simply decides to make a
13 recommendation to the precinct level election
14 board. And so notes are attached to it that
15 suggests that we think the signatures don't match,
16 but it's ultimately the precinct election board
17 that makes the decision about signatures matching
18 or not matching.

19 Q Who is the precinct election board?

20 A Again, the inspector and the two judges.

21 Q So you will -- I voted absentee ballot, you think
22 there's a problem with my signature, you figure out
23 where I live, and you then refer this back to where
24 I would be voting in person and you say, It's up to
25 you guys if you want to do a challenge or not?

1 A That's right.

2 Q And then they go through the regular challenge
3 procedures?

4 A That's right. And those ballot envelopes with the
5 ballot inside is physically sent to that precinct
6 election board on election day for determination.

7 Q Is there a challenge procedure when my application
8 first comes in and I'm saying I'm going to be out
9 of town that day, I would like to be able to vote
10 absentee?

11 A There has not been.

12 Q But there could theoretically be?

13 A There theoretically could be, I believe, under the
14 new law.

15 Q How many polling places are there in Marion County,
16 if you know?

17 A There are 914 precincts, and depending on the
18 location cycle, approximately 610 to 630 polling
19 place locations. So there are several locations
20 that have multiple precincts housed within one
21 building.

22 Q Are any of them in nursing homes or state licensed
23 facilities, that you're aware of?

24 A I believe we do have some in nursing homes, yes.

25 Q How are they selected, by the way?

1 Q -- at least two weeks after the election?

2 A Yes.

3 Q Okay.

4 A Which corresponds with the new certification for
5 the elections themselves.

6 Q Realistically, however, many voters will just say,
7 Look, I'm not going to do something that my vote's
8 not going to be counted for two weeks when
9 everyone's going to know the election is over with
10 by then; is that correct?

11 A I don't know.

12 Q Is that a concern, from your standpoint?

13 A Of course, of course.

14 Q Because I think we can think all remember elections
15 where we've had to wait two weeks to see who won or
16 not. But that certainly is --

17 A Yeah. I had to wait three days to see if I had
18 one. So, yes, it's not a good thing to be in.

19 Q Are you aware of the identification requirements
20 that are imposed by the Bureau of Motor Vehicles
21 currently or to get identification?

22 A I'm not familiar with them, no.

23 Q I'm showing you what's been marked as Exhibit 3
24 from earlier this morning, which is I'll represent
25 to you a summary of what the Bureau of Motor

1 certificate?

2 A I don't know what that law is.

3 Q And whose decision would that be as to whether that
4 does or does not apply? Would that be the Marion
5 County Election Board?

6 A That's a good question.

7 Q They taught us that in law school.

8 A I think that the first step in making that
9 determination is to decide whether it is the Bureau
10 of Motor Vehicles' decision in terms of issuing
11 I.D. So I don't know the answer to that question,
12 no.

13 Q Well, let's assume hypothetically that the Bureau
14 of Motor Vehicles requires you to have a birth
15 certificate, you have to have it, they don't waive
16 that, you have to have that. But then, of course,
17 they'll give you free identification.

18 How would that affect your decision as to
19 whether someone comes in and says, Look, I know I
20 can get a free I.D., but I just can't get the ten
21 bucks or so it costs to get a birth certificate?

22 A I think under those circumstances it would be the
23 Marion County Election Board's decision as to
24 whether that form of indigency falls within the
25 statute.

1 Q And that's, obviously, a decision that has to be
2 made between now and May?

3 A Yes.

4 Q What about this notion of indigency. Do you know
5 what indigency is?

6 A The technical definition or what I think it is?

7 Q Well, obviously, if you ask any of us around this
8 table whether we have money, we're all going to
9 tell you we have no money. Maybe not Doug, but
10 everyone else.

11 (Laughter.)

12 Q Next door is a homeless shelter where there are
13 people who have zero money. There are other people
14 out there who may be getting five hundred or six
15 hundred dollars a month in Social Security and
16 there's a whole range in between.

17 So who in those are indigent for purposes of
18 getting a free I.D. once we define what free I.D.
19 means?

20 A I don't know.

21 Q How are we going to determine that?

22 A Well, again, I think that's probably going to be a
23 situation where the Marion County Election Board is
24 going to have to set up some sort of
25 decision-making process to apply under those

1 circumstances. I'm well aware because I'm the
2 clerk that courts and judges make those decisions
3 all the time based on a number of issues. And
4 sometimes, you know, a person getting three hundred
5 dollars is described as being indigent.

6 Q Yeah, but sometimes they're not.

7 A And sometimes they're not, that's right. The point
8 being that is nothing that I'm aware of that is set
9 in stone that says that applies. So I think we're
10 going to have to make some decisions.

11 Q Okay. That's fair.

12 If I am challenged and I vote a provisional
13 ballot and decide that I want to go through with it
14 even though it's two weeks to find out what
15 happens, I'm going to have to physically come down
16 to your office; is that correct?

17 A Yes.

18 Q And you're in the City-County Building; is that
19 correct?

20 A That's correct.

21 Q There's no free parking for the City-County
22 Building; is that correct?

23 A No. We've got the new judicial center to build.
24 Maybe we can take care of that.

25 (Laughter.)

1 remember offering testimony on this particular
2 bill. I may have offered my opinion to individual
3 legislators, but I don't remember offering actual
4 testimony at a committee hearing.

5 Q Is your opinion favorable or in favor of this
6 particular concept, photo I.D. concept?

7 A Yes.

8 Q I'm a little bit unclear as to your testimony
9 regarding the number of provisional ballots that
10 are cast in Marion County.

11 The problem that I think you identified with
12 regard to the provisional ballot affidavits being
13 on a separate sheet that somehow ended up inside
14 the envelope.

15 A That was in the spring --

16 Q That was the spring.

17 A -- of 2005 in the primaries?

18 Q And about how many provisional ballots were cast in
19 the spring in the primaries?

20 A Obviously, not as many as in November. As I
21 recall, it was about a thousand cast in May.

22 Q In the May primary?

23 A Yes.

24 Q And about how many of those were not counted due to
25 poll worker error?

1 A The vast majority were not counted in May.

2 Q And in November how many were cast, provisions?

3 A Well, I want to -- I would have to check.

4 Obviously, we have those records and I didn't bring
5 them. But just from memory, I want to say three
6 thousand were cast. And the reason the 18 percent
7 sticks out in my head is that, as I recall, about
8 15 percent statewide were counted and Marion County
9 was criticized for the number that we counted and
10 ours was actually above the state average in
11 numbers that were actually counted.

12 Q More than 15 percent?

13 A More than 15 percent. And that's why I believe
14 it's 18 percent that were actually counted.

15 Q Statewide for the fall 2004 election the average
16 was about 85 percent not being counted for whatever
17 reason?

18 A Yes.

19 Q And have there been any studies or analyses to
20 determine why that high percentage of provisional
21 weren't counted?

22 A I believe other counties experienced the same
23 issues that we did with poll worker error on the
24 form itself. Now, I also believe that was
25 addressed in the legislative session in that the

1 affidavit doesn't -- we had made the interpretation
2 that the affidavit had to be filled out, every
3 piece of it had to have both the poll worker's
4 signature and the voter's signature.

5 I believe, although I'm not sure because I
6 haven't reviewed that statute, that that was
7 untightened, if you will, so that poll worker error
8 would not be such a factor in making the
9 determination as to whether it be counted; in other
10 words, siding with the voter that if the poll
11 worker had made an error, that it would not be
12 detrimental to the voter for casting that ballot.

13 Q But you're unsure of the precise number of those
14 legislative changes?

15 A No, I'm sorry. I'm not, Bill.

16 Q Do you know approximately how many absentee ballots
17 were cast by mail in the fall 2004 election in
18 Marion County?

19 MR. OSBORN: I'm sorry. Which election
20 again, please?

21 MR. GROTH: The fall 2004 election.

22 A We thought we would hit 30,000. I think we didn't
23 quite hit. I would think about 28,000, something
24 like that.

25 Q And that's roughly what percent?