

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

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

The deposition upon oral examination of J. BRADLEY KING, 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 10:00 a.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 the Indiana Democratic Party in the above-captioned matter.

ASSOCIATED REPORTING, INC.
Two Market Square Center, Suite 940
251 East Ohio Street
Indianapolis, Indiana 46204
(317) 631-0940

EXHIBIT:

1 roles that people play on election day in those
2 states.

3 Q I think you're aware that the state of Georgia, the
4 legislature down there, also passed a photo I.D.
5 law in the last session --

6 A Yes.

7 Q -- which bears a lot of similarities to Indiana's.

8 During the legislative process did you have
9 any discussions with any -- possibly a counterpart
10 of yours in Georgia or any Georgia legislator?

11 A No, not at all. I did read the news accounts on
12 *electionline* and perhaps some other national news
13 services, but I don't recall seeing the text of the
14 bill, just a general discussion of its contents and
15 progress.

16 Q You've mentioned that you had discussions during
17 the legislative process with the legislators. Did
18 you have discussions with any officials of the
19 Republican party either state or federal?

20 A Certainly not federal. And in terms of state
21 officials, Representative Luke Messer, of course,
22 serves as executive director. I can think of one
23 or two occasions where I would have had discussions
24 with Representative Messer about legislation but
25 not in his capacity as executive director and not

1 with the chairman of the party or any other party
2 officers.

3 Q And Luke Messer I believe in addition to his role
4 as a Republican party official is also a state
5 legislator?

6 A He is a state representative who is a member of the
7 House Elections Committee.

8 Q And Representative Murphy in addition to his role
9 as a state legislator is also a Republican party
10 official in Marion County?

11 A County official, county chairman, yes.

12 Q Were there any other measures passed by the General
13 Assembly in 2005 which affect any of the changes to
14 Indiana's voter identification process contained in
15 SEA 483?

16 A Yes. There were several.

17 Q Could you briefly tell us what those are.

18 A Certainly. House Enrolled Act 1407, Section 56
19 provided for the extension of several postelection
20 deadlines by seven days. The particular provision
21 that I referenced extends the deadline for a county
22 election board to make determinations regarding the
23 validity of provisional ballots from noon of Monday
24 following the election to noon on the second Monday
25 following the election. That procedure is

1 Q The person who -- I'll read it.

2 A Please:

3 Q "A person who knowingly votes or makes application
4 to vote in an election in a name other than the
5 person's own or having voted once at an election
6 knowingly applies to vote in the same election in
7 the person's own name or any other name commits a
8 class D felony."

9 A I believe that's correct, yes.

10 Q And would another one of the criminal provisions
11 dealing with misrepresenting one's identity for
12 purposes of voting be contained in 3-14-2-16?

13 A I believe that's correct. I think that's a fairly
14 longer provision, if I remember it correctly. But,
15 yes, that's where the provisions concerning that
16 sort of criminal violation are contained. And as I
17 said, I believe whenever they're knowingly
18 committed they're class D felonies.

19 Q And you said federal law also contains criminal
20 provisions that would make it illegal
21 misrepresenting one's identity for purposes of
22 voting?

23 A I don't believe the federal law is quite that
24 specific. There are a number of federal laws that
25 only apply to elections where a federal candidate

- 1 A That's correct.
- 2 Q And that began with the 2002 election?
- 3 A It would have been in the May 2002 election.
- 4 Q And then HAVA took that a step further by requiring
5 at some point in time that every voter be assigned
6 a VIN?
- 7 A Yes, that's correct.
- 8 Q And when -- is there an effective date or a
9 deadline by which every voter in the state of
10 Indiana will have to have a VIN assigned to him or
11 her?
- 12 A Yes. That date would be January 1st, 2006. HAVA
13 requires that the statewide voter registration
14 system be operational by that date, and part of the
15 process required under federal HAVA for the
16 operation of that state VR system is for the system
17 to have the ability to verify by comparison with
18 Bureau of Motor Vehicles records or federal Social
19 Security Administration records that a number that
20 has been given appears to be valid.
- 21 Q So if I have not provided a VIN, one is going to be
22 assigned to me by the state?
- 23 A Yes, that's correct.
- 24 Q And will I be told what that number is?
- 25 A There's no provision in law requiring the voter to

1 Q And such a voter list maintenance program has been
2 periodically employed in Indiana to weed out
3 duplicate registrations?

4 A Yes. The duplicate voter registration program was
5 conducted for several years, I believe in
6 even-numbered years, throughout Indiana. The
7 Election Division hired a contractor to do the
8 preparation to identify potential duplicates and
9 then notices were sent to those duplicate voter
10 registration address in an attempt to clean up the
11 rolls.

12 Q And is it anticipated that when the statewide voter
13 registration file becomes fully operational that
14 the state, the election officials, should be able
15 to eliminate all or virtually all duplicate
16 registrations?

17 MR. WEBBER: Objection. That would call for
18 speculation on the part of Mr. King.

19 You can go ahead and answer, if you want.

20 A In my personal opinion, it would significantly
21 reduce the number of duplicate registrations and
22 the length of time that those duplicate
23 registrations were on the rolls. When an
24 individual voluntarily supplies their previous
25 address in another county there is -- it's much

1 statewide voter registration file also facilitate
2 weeding out voters who have died?

3 A Yes, it will.

4 MR. GROTH: By the way, we've been going for
5 about an hour, if anyone needs a break please speak
6 up. Otherwise, I'll keep going for three hours if
7 somebody doesn't stop me.

8 Q Let me ask you what happens at the polls when a
9 voter presents himself or herself to vote and is
10 challenged. Okay?

11 A Okay.

12 Q Who can make such a challenge under Indiana law?

13 A A number of individuals are entitled to challenge a
14 voter. Any member of the precinct election board,
15 which consists of the inspector and the two judges,
16 are entitled to execute a challenge of the voter.
17 Poll clerks have a special right of challenge in
18 that theirs is focused on determining the validity
19 of the signature.

20 Q Maybe we should just back up just a second.

21 A Okay.

22 Q The precinct election board consists of, and
23 correct me if I'm wrong, the inspector and the two
24 judges?

25 A That's correct.

1 can they also lodge a challenge?

2 A A political party challenger may do so. A watcher,
3 on the other hand, is not entitled to challenge a
4 voter.

5 Q Okay. I've used those terms synonymously and I was
6 mistaken.

7 A watcher is separate from a challenger?

8 A A watcher is separately credentialed. The other
9 term sometimes used is *poll book holder*, but only
10 the challenger is the primary representative of the
11 political party for purposes of challenging.

12 Q And where would that challenger be situated?

13 A Based on a change in Indiana statute in 2005, the
14 challenger is entitled to enter the polling place
15 and leave the polling place subject to the
16 instructions of the inspector to prevent any
17 obstruction of voters who are proceeding to vote,
18 and, of course, respect the privacy of the voter in
19 casting their ballot.

20 Q Where would I look to find that change, which bill?

21 A That I believe was in Senate Bill 341.

22 Q So would that be another bill in addition to the
23 ones you've already given us that is impacted by
24 SEA 483 or has a relationship to it?

25 A I would say there's a relationship to it in the

1 sense that challenging is involved in Senate
2 Enrolled Act 483 as well.

3 Q So explain to me what changes what Senate Bill or
4 Senate Enrolled Act 341 makes with respect to the
5 placement of challengers.

6 A Under former law the challengers were required to
7 be stationed immediately outside the polls, which
8 refers to the room in which voting occurs at the
9 end of the shoot going into the room where the
10 voting occurs. Traditionally they were a team with
11 the poll book holder who literally held the poll
12 book. But as a practical matter the challengers
13 when they were present were stationed by themselves
14 at the entrance into the room where the voting
15 occurred.

16 Q So how did the challenger communicate the challenge
17 as to the precinct --

18 A That became one of the arguments for the enactment
19 of Senate Bill 341 in that although party watchers,
20 of course, could come and go and therefore could
21 presumably convey information, there was no way for
22 the precinct election board to leave the polls and
23 there is no way for the challenger to enter the
24 polls.

25 Q So as a practical matter, how were those challenges

1 for their challenge in an affidavit form.

2 I believe it's the PRE-2. But in any event,
3 the state-prescribed form, the person making the
4 challenge then presented to the individual wishing
5 to vote. If the individual wishing to vote was
6 willing to swear out a counteraffidavit, which was
7 printed on the back of the same form, the voter was
8 then allowed to sign the poll list and proceed to
9 vote.

10 The challenge form was then at the end of the
11 election process referred to the prosecuting
12 attorney for investigation and any appropriate
13 action.

14 Q Let me hand you what we'll ask the reporter to mark
15 as Plaintiff Democrats' Deposition Exhibit 2, and
16 would ask if you can identify that for me.

17 (Plaintiff Democrats' Deposition Exhibit
18 No. 2 was marked for identification.)

19 A Yes. This appears to be similar to the form that I
20 referenced earlier. It has the designation of
21 PER-4 in the upper right-hand corner, which I think
22 is the correct designation I was trying to recall.
23 It appears to be similar to the most recent version
24 of the PRE form. The only reason I hesitate is
25 that forms approved by the Election Commission have

1 a designation in the upper left corner which
2 indicate either the approval date or the revision
3 date. It will say R/1204 or something of that
4 sort, and I don't see that here. But it appears to
5 be similar to what I recognize as a form that was
6 approved by the commission as the latest version of
7 a PRE-4.

8 Q I think you had mentioned that at one time they
9 were on opposite sides, the affidavit of the
10 challenger and the affidavit of the challenged
11 voter. But were they then subsequently put on the
12 same side of the page?

13 A Yes. This version has put them on the same side of
14 the page.

15 Q So if I am a challenged voter and I wanted -- under
16 prior law again -- and I wanted to cast a vote and
17 I was defending the challenge, then I would have to
18 fill out the bottom half of this affidavit?

19 A Yes, that's correct.

20 Q And I would have to swear under the penalties of
21 perjury that I'm a citizen of the U.S., what my
22 date of birth is, that I've been a resident of the
23 precinct for 30 days prior to the election or I'm
24 otherwise qualified under the failsafe provisions,
25 what my name is that I'm generally known as, that I

1 haven't voted in any other precinct in this
2 election, what my present address is, and if I've
3 moved what my prior address was; is that correct?

4 A Yes, that's correct.

5 Q And I'd have to provide all that information and I
6 have to sign it under oath?

7 A Yes, that's correct.

8 Q Under penalties of perjury?

9 A Uh-huh, that's correct.

10 Q And then under previous law I would be permitted to
11 vote?

12 A Under previous law you would receive an official
13 ballot and would proceed to vote.

14 Q But this affidavit would then be turned over to the
15 prosecuting attorney for investigative purposes?

16 A Yes, that's correct.

17 Q And would that be automatic? Was that required by
18 law that the affidavit be turned over --

19 A Yes.

20 Q -- to the prosecutor?

21 A Yes. That's under Indiana Code 3-14-5, I believe
22 it's 2 and 3. There's one procedure that
23 references the Grand Jury, which, of course, works
24 with the prosecuting attorney.

25 Q Now, prior to HAVA did Indiana recognize the

1 This affidavit, this PRE-4, was still in use
2 2004, was it not?

3 A A different version. But, yes, it's in use --

4 Q The same questions were asked on whatever version
5 was being used?

6 A The same questions to the challenged voter would
7 have been asked, yes.

8 Q So I fill out the affidavit of the challenged
9 voter. I'm permitted to vote by regular ballot at
10 that point, am I not?

11 A No, not under the provisional ballot procedure
12 under Indiana law. Instead of being furnished with
13 a regular official ballot based on the challenge,
14 in my opinion, the voter is required to be
15 furnished with a provisional ballot.

16 Q Was that opinion shared by your codirector,
17 Ms. Robertson?

18 A A publication was issued at the instructional
19 conference in December 2003 that at least in
20 general terms indicated that that was the procedure
21 to be followed.

22 Q Was that opinion shared by all of the county
23 Circuit Court clerks around the state?

24 A I can't speak for all of them, no.

25 Q Was it shared by the clerk in Marion County?

1 A I'm aware from press reports that the Marion County
2 clerk authorized the election in Marion County to
3 be administered differently. Whether that was
4 based on legal advice, that I can't tell you.

5 Q But you're aware that at least with respect to the
6 instructional manuals that Clerk Sadler issued
7 prior to the 2004 election that the position she
8 took is that if a voter would have been challenged,
9 was willing to fill out an affidavit and sign that
10 affidavit, that that voter could vote by regular as
11 opposed to provisional ballot?

12 A I believe that's correct.

13 Q And do you know whether that position was shared by
14 -- that is, Clerk Sadler's position was shared by
15 any other election officials in other counties in
16 Indiana?

17 A Not to my recollection.

18 Q At least there was a difference of opinion between
19 you and her with respect to that issue?

20 A I would say that's correct. The material that the
21 Election Division published again in December of
22 2003 was the statement made by the Election
23 Division in interpreting that statute, and I
24 understood her opinion to be at variance from that.

25 Q Now, in 2004 a voter who was challenged and filled

1 The provisional ballot envelopes when cast
2 were kept separate from all of the other regular
3 official ballots. At the end of the day those
4 provisional ballots were returned to the county
5 election board which then proceeds to process them.
6 There are a number of different tasks that the
7 county election board may have to perform depending
8 upon the basis of the challenge. So, for example,
9 if one involves an alleged registration at a voter
10 registration agency such as a license branch,
11 contacting the license branch.

12 But in any event, the county election board
13 was required to make its determination regarding
14 the validity of each provisional ballot by noon on
15 the Monday following election day.

16 Q Which deadline has now changed, as I understand it.

17 A Which the deadline has changed.

18 Q With respect to a challenge having to do with a
19 question concerning the voter's identity, was the
20 procedure that you just described the one that
21 would be followed in 2004?

22 A Yes, that's correct. There would be no appreciable
23 difference.

24 Q And would the challenged voter affidavit still be
25 submitted to the prosecuting attorney for

1 investigation purposes?

2 A Yes. That statute was and still remains in effect.

3 Q Would the voter who was challenged and who signed
4 the challenged affidavit, challenged voter
5 affidavit, would that voter be required to appear
6 before the county election board?

7 A No. There's no requirement in the statute for the
8 voter to appear before the county election board
9 with regard to that proceeding. However, the
10 county election board is subject to the Open Door
11 Law and therefore any voter who wished to do so
12 could certainly do that.

13 Q Right.

14 MR. GROTH: Does anyone want to take a short
15 break?

16 MR. FALK: It's up to you.

17 MR. GROTH: I'm fine.

18 Q Now, Senate Enrolled Act 483 and the other measures
19 that we've discussed, would you agree is going to
20 change the way this procedure operates in future
21 elections with respect to challenging and
22 challenged voters?

23 A Yes. Certainly it will have an impact or a change
24 in that procedure.

25 Q For example, it will require a voter who refuses to

1 produce a required form of photo identification or
2 who doesn't possess it when he or she reports to
3 the polls to vote provisionally if he or she
4 wishes?

5 A Yes, that's correct.

6 Q And then to make a trip to the county election
7 board offices in order to produce the required form
8 of photo identification?

9 A Yes, that's correct. I think it says Circuit Court
10 clerk or county election board. But, yes, in most
11 counties those are synonymous.

12 Q And you mentioned earlier that precinct officials
13 can be in some instances criminally prosecuted for
14 either not -- well, let me ask it this way: Can a
15 precinct election official be criminally prosecuted
16 for not enforcing an election law?

17 A Yes. If that was a knowing failure to enforce,
18 yes.

19 Q So if under the new law I appear at the polls and I
20 voted in this precinct for 30 years and everyone on
21 the board knows me but I left my wallet at home and
22 I don't have any form of photo identification and
23 the inspector who's known me for years says don't
24 worry about it, just go ahead and vote, is that
25 inspector subject to criminal prosecution?

1 executed by the voter saying that they are for the
2 two reasons we've discussed exempt from the basis
3 of the challenge. So, no, I don't think under
4 3-14-5 there's an explicit requirement to refer
5 that affidavit over to the prosecutor.

6 Q But there's nothing that would prevent an election
7 official from turning one of these affidavits over
8 to a prosecuting attorney?

9 A I assume there's no restriction on it, making that
10 available to a prosecuting attorney. All of the
11 documents on election day are new public record
12 under 3-10-1-31.1 except for the ballots.

13 Q Do the statutes, SEA 483 or any of the related
14 statues, define indigency for purposes of this
15 particular exception?

16 A No, it does not. No, they don't.

17 Q Does it provide for a situation where I am trying
18 to get my birth certificate from the state of
19 Virginia and I haven't been able to obtain it yet
20 because I didn't ask for it until after the
21 election and my provisional ballot has to be
22 determined by Monday, the second Monday following
23 the election?

24 Can I swear out an affidavit of indigency
25 under those circumstances and have my ballot, my

1 A The affidavit involved here would not be completed
2 at the polls. It would be completed at the county
3 election board, because one component in the
4 affidavit is that the person swears they are the
5 same person who appeared at the polls to cast the
6 provisional ballot.

7 Q So if I don't have the photo I.D. and I can't get
8 it because of indigency or I haven't been able to
9 get it up to that point because of indigency, I
10 can't simply swear out that affidavit at the polls
11 on election day and vote?

12 A Not vote a regular ballot. You would vote a
13 provisional ballot.

14 Q There's no way I could avoid making a second trip,
15 this one to the county election board?

16 A For the completion of that affidavit, that's
17 correct.

18 Q And do I have to make the trip to the county
19 election board offices in the county that I reside
20 in in order to obtain one of those affidavits and
21 sign it? For example, do any of the counties have
22 satellite offices?

23 A There are satellite offices that are established
24 for absentee voting purposes. I don't think --
25 there's an explicit reference in the election code

1 filed --

2 A Yes.

3 Q -- all of those were changed as well?

4 A Yes, many of them were changed. As I said, I'm not
5 aware of any that were omitted, but I noted that
6 many were changed.

7 Q So it sounds as if these changes are going to delay
8 at least by a week the ability of election
9 officials to certify results?

10 A As being final, yes, in terms of the processing of
11 provisional ballots.

12 Q Let me hand you what I'll mark as Plaintiff
13 Democrats' Deposition Exhibit 4.

14 (Plaintiff Democrats' Deposition Exhibit
15 No. 4 was marked for identification.)

16 Q I'll tell you what it is and where I got it. I got
17 it from a fellow who was a Korean War veteran who
18 doesn't drive and I asked him to show me any photo
19 identification card that he had in his possession,
20 and this is the one he pulled out. It's his
21 Veterans Administration card, which is issued I
22 think because we agree it's by the federal
23 government and it contains a photograph.

24 Would this, based on your familiarity with the
25 requirements of Senate Enrolled Act 483, would this

1 be an acceptable form of photo identification to
2 allow a person to vote nonprovisionally or to have
3 the provisional ballot counted?

4 A No, I don't believe so. I don't see an expiration
5 date of any sort. So that element by itself would
6 not meet the definition in proof of identification.

7 Q What about Doug's state-issued photo I.D., does
8 that meet the requirements?

9 MR. WEBBER: For the record, I'm showing
10 the --

11 MR. FALK: Here, I'll run a copy.

12 MR. WEBBER: We'll run a copy afterwards
13 and we will substitute a copy after this
14 deposition.

15 MR. GROTH: We'll make it Exhibit No. 5.

16 MR. WEBBER: It's a State of Indiana
17 identification card, Douglas Webber, ATG.

18 Q Would that card meet the requirements of Senate
19 Enrolled Act 483?

20 A No, in my opinion it would not because there is no
21 expiration date and I'm not sure it is the
22 photograph of the individual to whom it was issued,
23 but that's --

24 Q That person is much better looking.

25 (Laughter.)

1 MR. GROTH: Kia?

2 MS. COLOM: Kia.

3 MR. GROTH: Kia. I'm sorry.

4 Q -- who is at the end of the table there who is an
5 IU Indianapolis law student has graciously provided
6 us with a copy of her current photo I.D., front and
7 back. And I would like for you to look at it and
8 give us your opinion as to whether this would
9 suffice for purposes of establishing her identity
10 under SEA 483.

11 A No, I believe it would not because although it
12 contains a date of issuance it doesn't contain an
13 expiration date or any way to determine that.

14 Q What if a voter is listed on the poll book as let's
15 say Jane Smith and let's say Jane gets married
16 between elections and her name is now Jane Davis
17 and she gets a photo I.D. card or has a driver's
18 license which lists her name as Jane Davis, her new
19 married name, but on the poll book her name is
20 still listed as Jane Smith because she didn't
21 notify voter registration that she got married.

22 Can she appear at the polls and vote by
23 regular ballot?

24 A Based on presenting the identification that you
25 discussed, no, in my opinion, because the name does

1 county registration record to reflect that new
2 name.

3 And in that scenario I would guess that the
4 individual could make that change of name indicated
5 on the poll list and present the identification
6 that otherwise conformed to the definitions in
7 3-5-2.

8 Q But if someone, a challenger, decided differently
9 or felt differently, that person could be
10 challenged and be required to vote provisionally?

11 A Certainly. The individual could be challenged and
12 then it would be up to the county election board to
13 determine if there were good cause and proper
14 grounds for the provisional ballot.

15 Q But that voter would have to make a personal
16 appearance before the county election board?

17 A Yes. If the precinct election board determined
18 that the document presented did not conform with
19 the requirements in 3-5-2-40.5.

20 Q What about a first time voter who registered by
21 mail, and this is subsequent to HAVA, who appears
22 at the polls without a photo I.D. but has a utility
23 bill, is that -- is a utility bill sufficient to
24 establish one's identity under the provisions under
25 the federal HAVA law for that sort of a person, a

1 Q But the two are -- the voter registration board is
2 across the hall --

3 A Across the hall.

4 Q -- from the offices of the election board?

5 A Yes, that's correct.

6 Q What if I present a state-issued photo
7 identification card, let's say my driver's license,
8 and I've lost -- this doesn't apply to me -- 40
9 pounds and all of a sudden I've got a thin face
10 rather than a relatively rotund face and the
11 precinct worker says I don't think that's the same
12 person, I'm going to challenge you.

13 Is that permitted under this law?

14 A The statute in terms of the requirements for proof
15 of identification states the document shows a
16 photograph of the individual to whom the document
17 was issued.

18 Yes, I think a voter -- a precinct election
19 officer could challenge someone if they had
20 reasonable doubt to think it was the same person.

21 Q Even though the name on the identification card
22 matched the name on the poll book and even though
23 the address matched?

24 A Yes.

25 Q So there's nothing in this law that prohibits or

1 A Not during the legislative process. I might add,
2 if I could, that every election day the Election
3 Division is, of course, open for business and
4 receives phone calls from counties or from
5 individuals who have left a polling place and are
6 calling to raise questions or suspicions about
7 activity, and that activity does sometimes include
8 accusations of misrepresentation. But typically
9 those typically are not pursued by the individuals
10 involved. We refer them to the prosecuting
11 attorneys and don't hear anything further regarding
12 specifics or the follow-up on the action.

13 Q And when I asked you whether you're aware of anyone
14 who has ever been accused of misrepresenting, I
15 should have been more precise. I meant in the
16 sense of being charged criminally with one of those
17 offenses.

18 A I'm not aware of an indictment of that sort.

19 Q And indictment or criminal information?

20 A Criminal information, no.

21 Q So in the history of Indiana, as far as you know,
22 there's never been any voter formally charged with
23 impersonating someone else for purposes of voting?

24 A In terms of formally charged, no, that I'm aware
25 of.

1 Q And, therefore, there have been no convictions, I
2 assume.

3 A I'm not aware of any convictions.

4 Q Are you familiar with instances of voters violating
5 the election laws who voted absentee?

6 A There are criminal informations, indictments, that
7 are currently pending, I believe, in Lake County
8 with regard to the East Chicago mayoral primary of
9 May 2003, and I don't know if further charges will
10 be brought, obviously. But, yes, in that
11 particular case I'm aware of situations involving
12 absentee ballot fraud. Also, with regard to --

13 Q Excuse me. Did that involve in some instances
14 voters allegedly voting more than once by absentee.

15 A I believe that's correct.

16 Q And are those -- many of those instances or maybe
17 perhaps all of them, were they made the subject of
18 a civil lawsuit that ended up in the Indiana
19 Supreme Court?

20 A I believe they arose out of a recount and contest
21 proceeding that followed that mayoral primary that
22 did eventually go to the Indiana Supreme Court
23 which ordered a special election as the remedy in
24 that case.

25 Q As a result of among other things the nature and

1 that was in turn modified by SEA 15; is that
2 correct?

3 A Yes, I believe that's correct.

4 Q And SEA 15, as I understand it, preserved the
5 general exception but limited it to voters who vote
6 by absentee by mail as opposed to appearing before
7 the absentee voter board?

8 A Actually, there's a slightly different distinction.
9 What Senate Enrolled Act 15 as it became, provided
10 that an individual who appeared in person at a
11 Circuit Court clerk's office was required to
12 present the proof of identification in accordance
13 with 483. And the exception was not individuals
14 who voted by mail but individuals who voted by
15 traveling board, I believe, also.

16 Q I believe you're correct.

17 A Yeah.

18 Q So a person under combination of SEA 483 and 15,
19 current law, who votes by absentee can apply for an
20 absentee ballot by mail. Correct?

21 A That's correct.

22 Q And can receive that absentee ballot and mark it
23 and mail it back in to the election board?

24 A Yes, that's correct.

25 Q And all of that can take place without the absentee

1 voter being required to produce any sort of
2 identification, photo or otherwise?

3 A That's correct.

4 Q Now, is that correct as to all absentee voters who
5 apply for and then vote by mail?

6 A It would be true with regard to all who vote by
7 mail, but keeping in mind the federal HAVA
8 additional documentation requirements you may be
9 referring to.

10 Q Right. So if I'm affected by HAVA because I've
11 registered by mail and I'm voting for the first
12 time and I choose to vote by absentee ballot and I
13 apply for my absentee ballot by mail and I mail it
14 in, I am at some point in that process required to
15 produce the required form of photo identification
16 under the new law, am I not?

17 A No, I don't believe so, if I'm understanding your
18 question correctly, because what the individual in
19 that scenario is required to produce under federal
20 HAVA is the additional documentation requirement
21 that shows the residence, as we've discussed
22 before. That can be presented when the person,
23 first of all, applies to register to vote. If they
24 fail to do so, the registration is nonetheless
25 processed and it's flagged and at each point

1 Democratic legislators?

2 A I don't believe so.

3 Q Were all of the votes throughout the legislative
4 process strictly along partisan lines?

5 MR. WEBBER: Objection to relevance.

6 But go ahead, if you know.

7 A I believe that's correct. I don't recall any
8 variance from the party line on those votes. I
9 would say there were some variances on party line
10 votes with regard to some amendments to both Senate
11 Bill 483 and 1439, but not on the passage of the
12 bill out of committee or off the floor.

13 Q Is your office currently receiving telephone calls
14 from local election officials regarding the new
15 photo identification for voting requirements?

16 A I'm aware of perhaps a couple of e-mails and a
17 couple of phone calls, and I think I produced one
18 example of each of those from Hendricks County
19 voter registration with regard to that
20 implementation of the process in June. Others,
21 again, I can't speak for my colleague and her
22 cogeneral counsel. But certainly my cogeneral
23 counsel and I have had occasional phone calls, not
24 a large number.

25 Q Do you anticipate the number of calls and questions

1 indigent; is that correct?

2 A I don't have a way to know the residents in a group
3 meet the definition of indigency or not.

4 Q And, of course, we don't know what indigency will
5 be in the particular clerk's office; isn't that
6 correct?

7 A Other than what's set forth in the statute, which
8 simply uses the term --

9 Q -- indigency?

10 A -- indigency.

11 Q From your experience and your expertise and your
12 apparent knowledge of the criminal docket relating
13 to voting fraud in Indiana, is it fair to say that
14 fraud can more easily occur with absentee ballots
15 as opposed to in-person voting?

16 A I would answer that by saying I don't claim
17 familiarity with the criminal docket beyond what
18 I've read in media accounts.

19 Q Sure.

20 A But I think it would be fair so say that both in
21 the cases in Anderson and Madison County and in
22 Lake County in East Chicago, allegations in places
23 like Muncie and Pike County, that there are more
24 accusations with regard to absentee ballots.

25 Q Okay. That's fair.



INSTRUCTIONS: After the challenger has completed the top half of the form, the challenged voter may complete the lower half of this form. If the challenged voter completes the lower half, the challenged voter is entitled to cast a provisional ballot. Do not use this form to challenge a voter at a primary election due to the voter's party affiliation. Use PRE-6 form.

STATE OF INDIANA - COUNTY OF _____

GENERAL INFORMATION	
I, the undersigned, believe that _____ (Insert name of voter) now offering to vote, is not a legal voter in this precinct, for the following reasons:	
<input type="checkbox"/>	This voter is identified on the poll list as required to present a document that confirms the voter's identity and current residence address, but has not done so.
<input type="checkbox"/>	This voter's name is not included on the poll list, and is NOT entitled to vote by using a "Fail Safe" procedure.
<input type="checkbox"/>	This voter's name is included on the poll list, but this voter does not currently reside in the precinct, and is NOT entitled to vote in this precinct by completing a VRG-4/12 form or a VRG-15 form, or other "Fail Safe" procedure.
<input type="checkbox"/>	This voter will not be 18 years of age or older at the general election.
<input type="checkbox"/>	This voter is not a U.S. citizen.
<input type="checkbox"/>	This voter's signature on the poll list does not match the signature on the voter's registration record.
<input type="checkbox"/>	Other _____ (Insert specific reason for challenging voter)
I obtained the information from _____ (Insert name of persons supplying information for challenge)	

CHALLENGER AFFIRMATION		
I swear (or affirm) that the foregoing statements are true, to the best of my knowledge and belief, and understand that making a false statement on this affidavit is punishable under the penalties of perjury.		
Signature of Challenger	Printed Name	If serving as a precinct officer: <input type="checkbox"/> Inspector <input type="checkbox"/> Judge <input type="checkbox"/> Poll Clerk
Precinct	Township or Ward	City or Town

STATE OF _____)
) SS:
 COUNTY OF _____)
 Subscribed and sworn to before me this _____ day of _____, 20____.

Signature of Notary Public or Other Official Administering Oath _____
 Printed Name and Title _____
 My Commission expires (applies only to Notary Public): _____ County of Residence: _____

AFFIDAVIT OF A CHALLENGED VOTER

STATE OF INDIANA - COUNTY OF _____

GENERAL INFORMATION	
I, the undersigned, state the following:	
1. that I am a citizen of the United States.	
2. that my date of birth is _____ / _____ / _____ (mm/dd/yy) to the best of my information and belief.	
3. that I have been a bona fide resident of this precinct for thirty (30) days immediately before this election or I am qualified to vote in this precinct under IC 3-10-10, IC 3-10-11, or IC 3-10-12.	
4. that I am generally known by the name in which I desire to vote, which is _____	
5. that I have not voted and will not vote in any other precinct in this election.	
6. that my present residence address is _____ and, if applicable, my residence address thirty (30) days before this election was at: _____	
I moved to my residence address in this precinct on the following date: _____ / _____ / _____ (mm/dd/yy)	
CHALLENGED VOTER AFFIRMATION	
I swear (or affirm) that the foregoing statements are true, to the best of my knowledge and belief, and understand that making a false statement on this affidavit is punishable under the penalties of perjury.	
Signature of Challenged Voter	Printed Name
Precinct	Township or Ward
City or Town	

STATE OF _____)
) SS:
 COUNTY OF _____)
 Subscribed and sworn to before me this _____ day of _____, 20____.

Signature of Notary Public or Other Official Administering Oath _____
 Printed Name and Title _____
 My Commission expires (applies only to Notary Public): _____ County of Residence: _____





HARRISON, DAVID DEMOSTHENES

76637C001

For Questions Concerning Medical Benefits:

1-877-222-VETS (8387)

www.myhealth.va.gov



Property of the United States Government. If found, drop in nearest U.S. mail box.

POSTMASTER—RETURN TO:
Health Eligibility Center
2957 Clairmont Road, Suite 200
Atlanta, GA 30329

This card is not a credit card or an insurance card



State of Indiana



Douglas
Webber

ATG

PERICAD-Bayonne, N. J.
EXHIBIT
5

APR 10 10:00 AM

Professional

IUPUI tag

ISSUED: 7/6/04

00002998484

AMOL
AMESHA



INDIANA UNIVERSITY PURDUE UNIVERSITY INDIANAPOLIS

If found, please return to:
Campus Card Services
620 Union Drive, Room #115
Indianapolis, IN 46202

PENGAD-Byronne, M. J.

EXHIBIT

6