

STATE OF INDIANA )  
 )  
 )ss:  
COUNTY OF MARION )

IN THE MARION COUNTY SUPERIOR COURT  
CAUSE NO: 49D02-0806-PL-027627

LEAGUE OF WOMEN VOTERS )  
OF INDIANA, INC., and LEAGUE OF )  
WOMEN VOTERS OF INDIANAPOLIS, INC. )

Plaintiffs, )

-vs- )

TODD ROKITA, in his official capacity )  
as Indiana Secretary of State, )

Defendant. )

**FILED**  
248 JUL 29 2008  
*Elizabeth J. White*  
CLERK OF THE MARION CIRCUIT COURT

### AMENDED COMPLAINT FOR DECLARATORY JUDGMENT

Come now Plaintiffs, the League of Women Voters of Indiana, Inc. and League of Women Voters of Indianapolis (hereinafter collectively "League"), and for its Amended Complaint for Declaratory Relief against Defendant, Todd Rokita, state as follows:

### PARTIES

1. The League is a nonpartisan community-based organization, formed in 1920 immediately after the enactment of the Nineteenth Amendment to the U. S. Constitution granting women's suffrage. The League is dedicated to encouraging its members and fellow Hoosiers to exercise their right to vote as protected by the Indiana Constitution. The mission of the League is to impact public policies, promote citizen education, and make democracy work by, among other things, removing unnecessary and unconstitutional barriers to full participation in the electoral process. Currently, the League has 18 local leagues and over 1,100 members, each of whom,

on information and belief, is a registered voter in Indiana. The League is affiliated with the League of Women Voters of the United States, which was also founded in 1920 as an outgrowth of the 72-year struggle to obtain voting rights for women. The League has evolved from an organization focused upon the needs of women and the voter training of women to an organization concerned with the voter training of all Hoosiers.

2. Defendant, Todd Rokita, is the Indiana Secretary of State, and in that capacity is the chief election officer of the State of Indiana. He is the highest State official responsible for implementing and/or instructing precinct officials and election administrators throughout Indiana concerning the Indiana Photo ID Law, also known as Senate Enrolled Act 483. In that regard, Rokita, along with the Indiana Election Division, publishes the Election Administrator's Manual, among other things, which is intended to instruct election administrators and precinct officials on how to interpret and enforce the Indiana Photo ID Law.

### **STANDING**

3. The League has associational standing to bring this constitutional challenge to the Indiana Photo ID Law because (a) its members would otherwise have standing to bring this challenge in their own right; (b) the interests it seeks to vindicate are germane to the League's organizational purposes and mission; and (c) neither the claim asserted herein nor the relief requested requires the participation in this lawsuit of any of its individual members.

4. In addition, the Indiana Photo ID Law will cause the League to expend resources educating voters regarding the Indiana Photo ID Law, and assist voters to procure the necessary documents needed to obtain the required form of photographic identification from the Indiana Bureau of Motor Vehicles (“BMV”).
5. Further, many members of the League, though they possess a driver’s license, have philosophical objections, grounded in the Indiana Constitution, to being compelled to produce at the polls the restrictive form of identification the Indiana Photo ID Law now requires.

#### **THE INDIANA PHOTO ID LAW**

6. The Indiana Photo ID Law applies to in-person voting at both primary and general elections, but not to absentee ballots submitted by mail. It also contains an exception for persons living and voting in a state-licensed facility such as a nursing home. Ind. Code §3-11-8-25.1.
7. A voter who is “indigent” or who has a religious objection to being photographed may cast a provisional ballot that will be counted only if he or she executes an appropriate affidavit before the circuit court clerk within 10 days following the election. Ind. Code §§3-11.7-5-1, 3-11.7-5-2.5(c).

8. A voter who has photographic identification but who is unable or unwilling to present that identification on election day at the polls may file a provisional ballot that will be counted only if she brings the specified form of photographic identification to the circuit court clerk's office within 10 days following the election. Ind. Code §3-11.7-5-2.5(b).
  
9. The State offers "free" identification to qualified voters but only to those who are also able to establish their residence and identity by presenting the original or a certified copy of their birth certificate, a certificate of naturalization, a U.S. veterans photo identification, a U.S. military photo identification, or a U.S. passport. Ind. Admin. Code tit. 140, §7-4-3 (2008).
  
10. Indiana counties charge between \$3 to \$12 for a birth certificate, and in some other States the cost is much higher. The total fees for a U.S. passport are approximately \$100.

## **LEGAL AND FACTUAL ALLEGATIONS**

### **COUNT I**

11. The League adopts and incorporates paragraphs 1-10 herein.
  
12. The Indiana Constitution, Art. 2, Sec. 2, states that an Indiana citizen need only meet the age, citizenship and residence requirements in order to cast a vote in a public election and have that vote count.

13. The Indiana Supreme Court has held that Art. 2, §2 is mandatory and “precludes the Legislature from modifying its requirements or from imposing on persons therein designated any additional qualifications which shall be prerequisite to their exercise of the right of suffrage.” *Board of Election Commissioners of City of Indianapolis v. Knight*, 117 N.E. 565, 567 (Ind. 1917), citing *Morris v. Powell*, 125 Ind. 281, 25 N.E. 221 (Ind. 1890).
14. Although Art. 2, §14 of the Indiana Constitution allows the General Assembly to impose registration requirements, “any effort on the part of the General Assembly to establish a public electorate which would differ from that defined in article 2, § 2, of the Constitution must necessarily be in conflict with the manifest purpose of that section to designate the voters entitled to participate in all elections ‘not otherwise provided for by the Constitution’”. *Board of Election Commissioners v. Knight*, 117 N.E. at 569.
15. “The principle is elementary that when the constitution defines the qualifications of voters, that qualification cannot be added to or changed by legislative enactment.” *Morris v. Powell*, 25 N.E. at 223. The right to vote “cannot be abridged or denied...through direct legislative enactment, except as such limitation upon the privilege is authorized by other provisions within the organic law of the state”. *State ex rel. McGonigle v. Madison Circuit Court*, 193 N.E.2d 242, 249 (Ind. 1963).

16. The Indiana Photo ID Law imposes a new substantive qualification on the right to vote, not authorized by the Indiana Constitution, which is the requirement that an otherwise registered and constitutionally qualified voter display at the polls on election day, or within 10 days of the election at the circuit court clerk's office, a specific document—usually an Indiana driver's license, a U.S. passport, or a photo ID card issued by the BMV--some of which are not possessed by all Indiana registered voters.
  
17. The Photo ID Law has prevented or discouraged an indeterminate number of citizens in Marion County and throughout the State from casting a vote that counts.
  
18. For instance, in the 2007 municipal election in Marion County, at least 34 persons arrived at the polls and presented themselves for voting without the form of photographic identification required by Ind. Code §3-11.7-5-2.5. Each cast a provisional ballot, but of those 34 provisional ballots, 32 did not produce the required form of photographic identification and thus their votes were not counted. Most of those voters had voted for several years at the same location.
  
19. In the 2008 primary election, 12 nuns in St. Joseph County, Indiana, who were each retired and in their 80's and 90's, were not allowed to cast a regular or provisional ballot because the nuns did not have the required form of photographic identification required by the Indiana law.

20. An indeterminate number of Indiana citizens have been denied the right to vote because their driver's license or other form of compliant photographic identification were lost or stolen, or the voter forgot to bring the required form of identification to the polls on Election Day. A further indeterminate number of Indiana citizens have been discouraged or dissuaded from voting by the Photo ID Law's extra-constitutional requirements.

21. The Indiana Photo ID Law violates Art. 2, §2 of the Indiana Constitution.

## COUNT II

22. The League incorporate the allegations in paragraphs 1-10 and 15-19 as paragraph 21 of Count II.

23. The Indiana Photo ID law disparately treats different classes of voters. While it requires all persons who vote in-person on Election Day to display the required form of photographic identification, it imposes no such requirement upon voters who vote by mailing in an absentee ballot. It thus confers a privilege upon mail-in absentee voters (exempting them from the photo ID requirements) not accorded to voters who vote in-person on Election Day.

24. While there are inherent differences between mail-in absentee voters and Election Day voters in that mail-in absentee voters are not exposed to the extensive precautions followed by Election Day officials to guard the integrity of the ballots,

*Horseman v. Keller*, 841 N.E.2d164, 172 (Ind. 2005), that inherent difference is not reasonably related to the disparate treatment and privilege the Photo ID Law accords voters who mail in an absentee ballot, in that Indiana has no history of Election Day voter impersonation whereas there is a substantial and documented history of voter fraud by those who mail in absentee ballots. E.g., *Pabey v. Pastrick*, 816 N.E.2d 1138 (Ind. 2004).

25. Any governmental interest in requiring Election Day voters, where there are extensive precautions present to guard the integrity of the ballot box, to obtain and display at the polls a prescribed form of photographic identification does not justify the disparate treatment accorded to voters who cast their ballot by mail and who are not required to bear the burdens associated with obtaining the limited type of photographic identification in order to vote and have their vote counted.
26. The disparate treatment accorded by the Indiana Photo ID law to mail-in absentee voters and those who live and vote in a state-licensed residential facility is not reasonably related to or justified by the inherent differences between Election Day voters and mail-in absentee voters.
27. The Indiana Photo ID law also violates Art. 1, §23 of the Indiana Constitution.

WHEREFORE Plaintiffs the League of Women Voters of Indiana, Inc. and the League of Women Voters of Indianapolis, Inc., pray for the following relief:

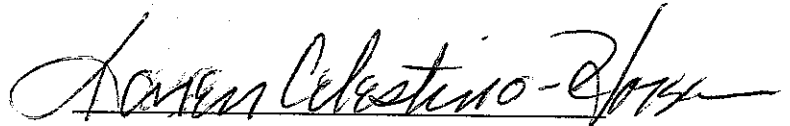
- a. That the Court order a speedy hearing and advance this case on its calendar pursuant to Indiana Trial Rule 57 so as to grant the relief sought by Plaintiff in time to be effective prior to the November 2008 general election;
- b. A declaration by this Court that the Indiana Photo ID Law violates Art. 2, §2 and Art. 1, §23 of the Indiana Constitution; and
- c. Judgment for its costs and any other or further relief which the Court may deem appropriate and just.

Respectfully submitted,



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William R. Groth, #7325-49  
Fillenwarth Dennerline Groth  
& Towe, LLP  
429 E. Vermont, Suite 200  
Indianapolis, IN 46202  
Telephone: (317) 353-9363



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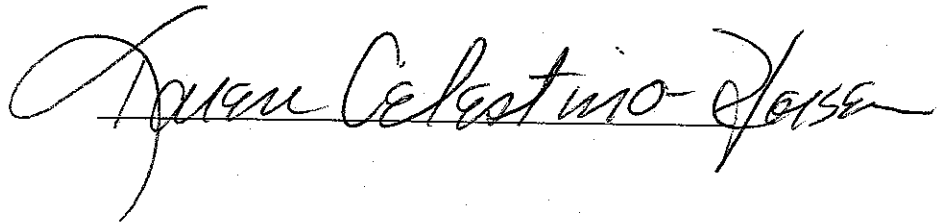
Karen Celestino-Horseman, #15762-49A  
Of Counsel, Austin & Jones, P.C.  
One North Pennsylvania St., Ste. 220  
Indianapolis, IN 46204  
Telephone: (317) 632-5633

*Attorneys for the League of Women Voters of Indiana, Inc. and  
the League of Women Voters of Indianapolis, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on July 29, 2008, a copy of the foregoing document has been served, via first class mail, postage prepaid, upon:

Mr. Thomas M. Fisher  
Ms. Heather L. Hagan  
Indiana Government Center South, Fifth Floor  
302 W. Washington St.  
Indianapolis, IN 46204-2270

A handwritten signature in black ink, reading "Juan Celestino Jerez". The signature is written in a cursive style and is positioned above a horizontal line.