

INDIANA COURT OF APPEALS

APPELLATE CASE NO. 49A02-0901-CV-00040

LEAGUE OF WOMEN VOTERS)	Marion County Superior Court
OF INDIANA, INC. and)	Civil Division-02
LEAGUE OF WOMEN VOTERS)	
OF INDIANAPOLIS, INC.)	
)	
Appellants)	
)	Trial Court
vs.)	Cause No. 49D02-0806-PL-027627
)	
TODD ROKITA, in his official)	The Honorable S. K. Reid
capacity as Indiana Secretary of State)	
)	
Appellee)	

**APPELLANTS' REPLY IN SUPPORT OF
PETITION TO TRANSFER**

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**APPELLANTS' REPLY IN SUPPORT OF
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1. As explained in the League's Court of Appeals Reply Brief, at pages 17-19, Article 2, Section 1, was intended to expand and not restrict the right of suffrage by abolishing all unnecessary impediments to voting. Even if Article 2, Section 1 is a source of the State's authority to regulate elections for the prevention of fraud, such regulations must be "reasonable." Whether a particular election law is "reasonable," or, on the other hand, carries such burdens as to constitute a new "qualification" is always a matter for judicial inquiry. *Blue v. State ex rel. Brown*, 206 Ind. 98, 188 N.E. 583, 587-88 (1934).

The State claims that the Law is justified as a cure for the evil of imposter voting. However, it offers no evidence that imposter voting even exists, much less that it is a problem that has "diluted" the votes of Hoosiers. Moreover, the mere perception of such dilution is no cause for burdening a fundamental right. *Weinschenk v. State*, 203 S.W.3d 201, 218 (Mo. 2006). At the very least, the existence of fraud by persons who vote in person is a genuine question of material fact, making the trial court's dismissal of the League's Complaint inappropriate.

2. Rokita makes no claim that the Law is a voter registration law mandated by Article 2, Section 14. Rather, he claims only that the Law is "akin" to a registration law and thus subject to the "grossly unreasonable" standard of *Simmons v. Byrd*, 192 Ind. 274, 136 N.E. 14, 18 (1922). The purpose of registration laws is to provide *prima facie*

evidence, well in advance of the pressures and intensity of Election Day, that a voter possesses the constitutional qualifications to vote. *Blue*, 188 N.E. at 586. The Voter I.D. Law has at best a remote and attenuated relationship to registration, and none of the multiple components of the Law is codified in Article 7 of Title 3 which contains all of Indiana’s voter registration laws.

This Court in *Blue* did not use the deferential *Simmons* standard to uphold the signature comparison and challenge procedures. Rather, because those fraud-prevention devices were reasonable and imposed no burdens, they were deemed not to constitute additional qualifications under Article 2, Section 2. 188 N.E. at 591-92. *Simmons*’ deferential review of a *registration* law mandated by the Article 2, Section 14, is in stark contrast to this Court’s more recent pronouncements that much closer review is warranted of certain legislative encroachments on the fundamental right to vote. *State v. Alcorn*, 638 N.E.2d 1242, 1244-45 (Ind. 1994); *Gallagher v. Indiana State Election Board*, 598 N.E.2d 510, 514 (Ind. 1992) (citing *Dunn v. Blumstein*, 405 U.S. 330 (1972)). The Court should use this case to clarify that it never intended *Simmons*’ “practically impossible” and “grossly unreasonable” standard of review be applied to all election laws, much less those that directly “impede [the] exercise” of the constitutional right to vote without any showing of necessity. *Blue*, 188 N.E. at 588.

3. Rokita asserts that so long as an election regulation has *any* “connection to”

combating fraud, “[n]o proof is necessary” that the type of fraud it is meant to address exists. However, the fact that an election law is labeled as a fraud-prevention device does not insulate it from careful judicial review. *Dunn* struck down a Tennessee durational residency requirement, observing that the record was devoid of evidence that the law was “necessary to identify bona fide residents.” 405 U.S. at 345-46. Likewise, *Harman v. Forssenius*, 380 U.S. 528 (1965), affirmed a lower court ruling declaring unconstitutional a law requiring voters to produce a certificate of residency Virginia claimed was necessary to prevent fraud, but which the Supreme Court adjudged to be an impermissible voting qualification.

4. Allowing a voter lacking the required form of identification to sign an affidavit at the polls would not, as Rokita claims, “neuter the Law completely.” Election officials and challengers, many of whom live in the precinct in which they work on Election Day, who in good faith aver that they reasonably believed a voter without identification is an imposter, could challenge that voter, who would then be required to cast a provisional ballot. Ind. Code §3-11-8-23.5. Rokita blithely asserts that the number of “trips” a voter may be required to make to cast a valid ballot is immaterial. However, this requirement impinges upon the right to vote of those on society’s margins, particularly otherwise qualified voters who don’t own a motor vehicle. If “[a]rbitrary economic discrimination in the halls of justice is wrong,” *Campbell v. Criterion Group*,

605 N.E.2d 150, 159 (Ind. 1992), it is equally wrong when economic discrimination is manifested in the voting booth. Section 10 of the Voting Rights Act of 1965, 42 U.S.C. §1973h, condemned the poll tax because it “impose[d] its unreasonable financial hardships as a precondition of [voters’] exercise of the franchise.”

5. By imposing these tangible burdens on voting, particularly without a showing of necessity, the Legislature has abridged the right to vote and added a new qualification to vote in violation of Article 2, Section 2. The Voter I.D Law far more resembles a property ownership requirement or poll tax than it does a registration law. As the earlier briefs of the League and its *amici* show, obtaining state or federal government-issued identification is deceptively complicated and difficult. Under the law struck down in *Harman v. Forssenius, supra*, Virginia also provided a “free” certificate when it required proof of residence, and it was enough for a Virginian to swear in front of a witness or notary that she was a resident. By contrast, Hoosiers must first travel to a BMV office and some, including the indigent and those with religious objections, also to the county seat in order to cast a vote that will count.

CONCLUSION

Appellants request that this Court grant their petition and declare the Law void under Article 2, Section 2.

Respectfully Submitted,

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WORD COUNT CERTIFICATE

I affirm that this brief contains no more than 1,000 words.

William R. Groth

CERTIFICATE OF SERVICE

I certify that on November 24, 2009, a copy of the forgoing brief was mailed, via first class U. S. mail, to Christopher Francis Zoeller, Thomas Molnar Fisher, Heather Lynn Hagan and Ashley E. Tatman, Office of Indiana Attorney General, 219 Statehouse, Indianapolis, Indiana 46204.

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