

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

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

No. 1:05-CV-00634 SEB-VSS

Answer Memorandum by Plaintiffs William Crawford, United Senior Action of Indiana, Indianapolis Resource Center for Independent Living, Concerned Clergy of Indianapolis, Indianapolis Branch of the NAACP, Indiana Coalition of Housing and Homeless Issues, Joseph Simpson in Opposition to the Motions for Summary Judgment filed by the Marion County Election Board and the State of Indiana and Reply Memorandum in Support of Plaintiffs' Motion for Summary Judgment

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I. Introduction

Neither the State of Indiana (“State”) nor the Marion County Election Board (“County”) disagree that the new Voter ID law that requires a particular form of identification will make it impossible, or at least very difficult, for some persons to be able to vote. Nor do they disagree that some voters will be discouraged by the prospect of what is necessary to obtain the requisite identification: first attempting to obtain a birth certificate and the other information required by the Bureau of Motor Vehicles (“BMV”); then going to the BMV; and, if the voter has voted via provisional ballot, then going to the Clerk’s office to fill out the necessary paper work. The ultimate response to this by the State is to argue that any deterrence of voters “while unfortunate” is justified by the need to have in place the new law to prevent voter fraud. (State’s Memorandum at 23). However, denying persons the right to vote, or erecting such obstacles that they become deterred, is not “unfortunate.” For the reasons demonstrated in Representative Crawford’s, Joseph Simpson’s and the interested groups’ (Rep. Crawford and the interested groups) original memorandum, this is both unconstitutional and unlawful. They should therefore be granted summary judgment.

II. Additional Statement of Material Facts

Constance Andrews is employed by the BMV in a Marion County license branch and is responsible for determining if people have with them sufficient documents to meet the BMV’s requirements to obtain a license or state identification. (State’s Summary Judgment Exhibit [State SJE] 55 [“Andrews”] 8-9, 37). She has noted that people have difficulty in meeting all the requirements necessary to obtain an identification card or

license from the BMV. (Andrews at 8-12). Indeed, she estimates that out of the 50 people who she deals with each week who are trying to obtain a license or state identification card, 30 are turned away because they do not have the appropriate documents. (Andrews at 28-29). They are therefore not issued photo identification. (Andrew at 29). Once refused “[s]ometimes they leave out the door and they turn right around and come back almost in tears just trying to find out what else can we use besides what’s on this list because they just don’t have what’s on this list.” (Andrews at 30).

David Harrison is a Marion County resident who is a 75 year old veteran.(State SJE 54 [“Harrison”] at 7-8, 17). He is a registered voter but he does not have either a license or identification card. (Harrison at 13). He also does not have an original birth certificate or the money to get a birth certificate, although he thinks a church would help him with the money. (Harrison at 12-16). He does not want to vote absentee because he does not trust that system of voting. (Harrison at 13).

Barbara Smith is 71 and resides in Marion County. (State SJE 56 [“Smith”] at 5-6, 13). She also does not have a license or state issued photo identification card, although she has been active in Democratic politics. (Smith at 7-9). She intends to vote in the May primary and does not want to vote absentee. (Smith at 14).

Imogene Chapman is an 84-year-old resident of Marion County who has worked at the polls for 15 years. (State SJE 57[“Chapman”] at 6-7, 10). She has no license or photo identification from either Indiana or the United States. (Chapman at 7). In reference to the Voter ID law and its requirements she noted that “[t]his is an infringement of my Civil Rights to vote. Is voter registration not valid?” (Chapman at 6).

Ernest Pruden is a 74 year old Marion County resident who has worked at the polls previously and does not have the identification necessary to vote under the new law. (State SJE 58 [“Pruden”] at 7, 12-15). He does not have a birth certificate. (Pruden at 19-20). He did not realize that even though he works the polls in the apartment building (Lugar Towers) where he lives, he cannot vote there without showing identification. (Pruden at 17-18). He typically votes in both the primary and general election. (Prudent at 24).

Lois Holland is 69 and lives in Indianapolis. (State SJE 59 [“Holland”] at 4-5). She has no identification containing her photograph. (Holland at 16). The only birth certificate that she has is copied from the family Bible. (Holland at 19). She votes in both the primary and general elections. (Holland at 13).

The Indianapolis Resource Center for Independent Living (“IRCIL”) is a center for independent living that is funded by the federal government through Title 7 of the Rehabilitation Act. (Deposition of Melissa Madill at 72, Rep. Crawford and the interested groups’ Summary Judgment Attachment [“Crawford SJA”] 9). It assists its clients in obtaining identification cards from the BMV, although it does not pay the cost of the underlying documents, such as birth certificates. (Affidavit of Melissa Madill, attached to Supplemental Evidentiary Material, filed on this date, as Supplemental Attachment (“Supplemental Attachment”) 1, ¶¶ 2,3). With the passage of the Voter ID law IRCIL will have to devote more of its staffing resource on working with clients to try to collect the information necessary to obtain an identification card. (*Id.* ¶¶ 4,5). This will inevitably mean that staff will be less able to devote their time to other issues of importance to IRCIL’s clients. (*Id.* ¶ 5).

Horizon House is a member of the Indianapolis Coalition of Housing and Homeless Issues. (Declaration of Michael Reinke, Supplemental Attachment 2).

Concerned Clergy of Indianapolis has elected officers and members who join after being voted into membership. (Deposition of Oakley at 10-13 and Ex. G (Interrogatories), Crawford SJA 13). One of its officers, and members, is Rev. Leroy Dinkins, the current vice president of the organization. (Declaration of Rev. Leroy S. Dinkins ¶1, Supplemental Attachment 3). Although he has a valid driver's license, he is strongly opposed to any law that requires him, or any other person, to show photo identification in order to vote. (*Id.* ¶¶ 3, 4). He would like not to have to show his identification in order to vote. (*Id.* ¶ 6). He feels that once a person is registered to vote, there is no need for any other identification other than the voter's signature. (*Id.* ¶ 5). He also is concerned that prospective voters will not be able to obtain the identification necessary to vote or that it will require extraordinary effort and the prospective voters will therefore not be able to vote or will be discouraged from voting. (*Id.* ¶ 7). The passage of the Voter ID law will require Concerned Clergy to expend limited financial resources to assist persons with the costs of birth certificates so that they can vote. (Affidavit of Margie Oakley, Supplemental Attachment 4 ¶¶3, 5). Concerned Clergy will also have to divert limited organizational resources to assist persons with transportation so they can get to the license branch and the Health Department so that they can obtain the identification card and the documentation necessary to obtain the identification card. (*Id.* ¶¶ 4, 5).

Roderick Bohannon, a member of the Indianapolis Chapter of the NAACP also strongly objects to being forced to show his BMV issued identification in order to vote.

(Affidavit of Roderick Bohannon, Supplemental Attachment 5, ¶¶ 1, 3, 4). The Indianapolis Chapter of the NAACP does not have the resources to pay for birth certificates so that persons may obtain identification cards so that they can vote. (*Id.* ¶ 5). However, the Chapter will be involved in educational and outreach efforts to inform the public about the law so as to maximize the number of persons who will be able to vote. (*Id.*). These efforts will divert the Chapter from engaging in other activities inasmuch as it has limited time and membership resources (*Id.*)

III. Statement of Material Facts in Dispute

Plaintiff Crawford and the interested groups do not believe that there are material facts that are in dispute here. However, all the plaintiffs in this cause have filed motions to strike portions of the affidavit of Wendy Orange on the grounds that her opinions are not admissible under either Federal Rule of Evidence 701 or 702 and portions of the State Defendants' appendix and memorandum on the grounds that the unsworn and/or hearsay materials contained therein are inadmissible. Those motions are incorporated herein. Accordingly, plaintiff Crawford and the interested groups dispute all of the factual assertions that are founded upon these inadmissible materials not because the factual assertions are disputed material facts, but because they are not admissible. There are no disputed facts based on admissible evidence in this case that preclude the issuance of summary judgment.

IV. Argument

A. All the plaintiffs have standing to bring this action

1. Plaintiffs Crawford and Simpson have standing

The County, and the State through incorporation of the County's arguments, contends that Rep. Crawford and Mr. Simpson do not have standing as candidates or voters and further that they cannot raise the claims of voters. The County errs.

In their original memorandum (at 33-34) Representative Crawford and the interested groups cited numerous cases demonstrating that because of their close relationship, and dependency upon, voters, a candidate has standing to assert the interests of voters as well as his own. The County argues that a candidate can assert voters' interest only where the candidate is directly injured by the challenged practice and not where the injury flows from the initial injury to the voter. However, this is not the law. In *Majors v. Abell*, 317 F.3d 719 (7th Cir. 2003), the challenged statute did make the conduct of the candidate unlawful. However, the court stressed that "a candidate can be harmed if his supporters are deterred" because of the challenged statute. 317 F.3d at 722. This was the holding also of the First Circuit in *Walgren v. Board of Selectmen of the Town of Amherst*, 519 F.2d 1364, 1365 n. 1 (1st Cir. 1975), where the court noted, in response to a challenge by a candidate to the decision to hold an election at a time when most of the town's electorate, college students, would be out of town, "that a candidate has standing to raise the constitutional rights of voters." Injury that deters voters from voting for a candidate is injury to the candidate as well as the voter. Therefore the court's conclusion in *Bay County Democratic Party v. Land*, 347 F. Supp.2d 404, 422 (E.D. Mich. 2004) that "political parties and candidates have standing to represent the rights of voters" is not, as argued by the County and State, erroneous, but is instead an articulation of a well-settled principle of law.

Moreover, as voters, both Representative Crawford and Joseph Simpson are injured by being forced to produce photo identification as required by the challenged law. The County argues that this is not a sufficient “identifiable trifle” to allow standing. *United States v. Student Challenging Regulatory Agency Procedures (SCRAP)*, 412 U.S. 669, 690, n. 14 (1973). However, injury in fact has been deemed to be present when defendant’s action causes personal inconvenience, *Cramer v. Skinner*, 931 F.2d 1020, 1026 (5th Cir. 1991), *cert. denied*, 502 U.S. 907 (1991)¹, or where the defendant’s actions have caused the plaintiff to be subjected to unwelcome confrontation with the objected to practice. *Doe v. County of Montgomery*, 41 F.3d 1156, 1159 (7th Cir. 1994) (concerning confrontation with the objected to religious display). The injury that Representative Crawford and Mr. Simpson face here is no less significant. They are being forced to engage in the objected to act of showing their identification to vote. This is injury in fact.

Therefore, as voters, both Representative Crawford and Mr. Simpson have suffered “some actual or threatened injury as a result of the putatively illegal conduct.” *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 99 (1979), *as cited in*, *Valley Forge Christian College v. Americans United for Separation of Church and State*, 454 U.S. 464, 472 (1982). Clearly, the injury that they complain of, having to comply with the challenged law, is fairly traceable to the County and State and will be redressed by a favorable decision. They therefore have standing. *Id.*

¹ *Cramer* concerned the constitutionality of a federal law that prohibited sale of interstate flights from a Texas airport other than to the four states contiguous to Texas. 931 F.2d at 1023. Cramer argued that his rights were violated because travel agents at the airport would not volunteer information concerning how to travel beyond this four state area and that, therefore, his ability to plan trips was inconvenienced. This was deemed to be injury. 931 F.2d at 1026-1027.

They also have standing to raise the injuries faced by voters in their districts. Rep. Crawford is aware that there is a significant minority of persons in his district who do not have the necessary identification in order to vote under the challenged law. (Crawford Deposition at 22, 29-30, 80, Crawford SJA 17). Similarly, Mr. Simpson has been informed by persons in his district that they had voted in the past and objected to the new identification requirements and felt that it was designed to suppress their vote. (Simpson Deposition at 80-81, Crawford SJA 16).

It is true, as repeatedly noted by the State and County, that at this point the plaintiffs cannot demonstrate that a particular person is not going to be able to vote in May of 2006 or is going to have his or her right to vote seriously burdened. The fact that the exact identity of the voters who are facing injury cannot be determined does not prevent their claims from being raised where it is certain that injury will occur. *See e.g., Bay County Democratic Party*, 347 F.Supp.2d 422. Representative Crawford and Joseph Simpson have demonstrated that there are voters in their districts who, in order to vote now, will have to attempt to navigate the maze created by the BMV in order to obtain identification. Some will simply not pursue their right to vote.² Others may not, because of lack of information or funds, be able to meet the BMV requirements. These people are suffering injury and Representative Crawford and Mr. Simpson may raise their claims.

² At no point in their memoranda does the County or State contest the fact that when voters are challenged they are likely to leave the polls without voting rather than respond to the challenge. (Affidavit of Aaron Haith 2-10, Crawford SJA 14; Deposition of Rod Bohannon at 50-54, Crawford SJA 10; Deposition of Margie Oakley at 20-21, Crawford SJA 13; Deposition of Joseph Simpson at 62-64, Crawford SJA 16).

2. The organizations have standing as well

a. The Indianapolis Resource Center for Independent Living, the Indiana Coalition of Housing and Homeless Issues and Concerned Clergy of Indianapolis are not precluded from having organizational standing

The County, and the State by incorporation, of course acknowledge that an organization has standing to raise the claims of its members if “its members can sue in their own right, the interests at stake are germane to the organization’s purpose, and neither the claim nor the relief requested required the participation of individual members in the lawsuit.” *Bensman v. United States*, 408 F.3d 945, 949 n. 2 (7th Cir. 2005). However, the County and State argue that the Indianapolis Resource Center for Independent Living (IRCIL), the Indiana Coalition of Housing and Homeless Issues (ICHHI), and Concerned Clergy of Indianapolis (CCI) unilaterally designate their members and therefore cannot assert the right of their members through organizational standing. The County cites no authority for this view of organizational standing. The County errs.

First, as to CCI, the County errs in its representation of the organization. CCI has elected officers and members who join after being voted in to membership. (Deposition of Oakley at 10-13 and Ex. G (Interrogatories), Crawford SJA 13).

IRCIL is a center for independent living funded by Title 7 of the Rehabilitation Act. 29 U.S.C. § 796f-4. The statute requires that each center promote and practice the independent living philosophy for disabled persons. 29 U.S.C. § 796f-4(b). Further, each center must “be designed and operated within local communities by individuals with disabilities, including an assurance that the center will have a Board . . . a majority of which shall be composed of individuals with significant disabilities and in each center

“the majority of the staff, and individuals in decisionmaking positions . . . are individuals with disabilities.” 29 U.S.C. § 796f-4(c)(2), (6). IRCIL considers its members to be the disabled persons to whom it provides services. (Deposition of Melissa Madill at 19, Crawford SJA 9). In *Oregon Advocacy Center v. Mink*, 322 F.3d 1101, 1105 (9th Cir. 2003), the plaintiff (“OCA”), challenging the delays in evaluating and treating mentally ill defendants, was a non-profit organization that was funded to provide services to mentally incapacitated persons under the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (“PAMII”). The defendants argued that OAC could not raise the claims of the members to whom it provided services under organizational standing. The court disagreed.

Given OAC’s statutory mission and focus under PAMII, its constituents--- in this case, the mentally incapacitated defendants – are the functional equivalent of members for purposes of associational standing. In so holding, we agree with the only other circuit to have addressed the question. *See Doe v. Stincer*, 175 F.3d 879, 886 (11th Cir. 1999)

322 F.3d at 1110. Similarly, IRCIL may raise the claims of its members, those within its statutory mission and focus.

ICHHI members consist of organizations that provide services to homeless persons such as shelters and mental health centers as well as homeless persons receiving services from its members. (Affidavit of Michael Reinke at 10-12, Crawford SJA 4). In *Capital Area Immigrant’s Rights Coalition v. United States Department of Justice*, 264 F.Supp.2d 14 (D.D.C. 2003), a non-profit immigrant rights advocacy organization (“CAIR”) brought a challenge on behalf of immigrants. The organization “combine[d] the efforts of more than one hundred advocates, community organizations, immigrants and other individuals working together to meet the legal needs and promote the civil

rights of immigrants in the Washington, D.C. metropolitan areas.” 264 F.Supp.2d at 20. The court concluded that “CAIR has associational standing to assert claims on behalf of its members who are immigrants.” *Id.* Similarly, ICHHI, a non-profit advocacy organization for homeless persons, has standing to raise the claims of its homeless members.

b. The organizational plaintiffs have standing because they have members who have standing

The County argues that the organizational plaintiffs do not have standing in this matter because they have no records demonstrating that the new law will adversely affect their members. This is erroneous.

Contrary to the County’s argument, in order to have organizational standing there is no need that “the association name the members on whose behalf suit is brought. As we have stated, ‘neither unusual circumstances, inability of individual members to assert rights nor an explicit statement of representation are requisites.’” *Doe v. Stincer*, 175 F.3d 879, 882 (11th Cir. 1999) (internal citation omitted).

The only question is whether or not the organizations in this case have demonstrated that they have at least one member who is “suffering immediate or threaten injury.” *Warth v. Seldin*, 422 U.S. 490, 511 (1975). The injury here is that members will be subjected to the requirement that they must produce the required photo identification and/or that they will not be able to vote or will, because of the need to obtain the proper identification prior to being able to vote, have their right to vote burdened. Evidence has been introduced to demonstrate that members of each organization are facing injury.

As indicated above, ICHHI includes members who are homeless persons. ICHHI conducted a survey of its members that disclosed that clients, also members of ICCHI, had neither licenses nor identification cards. (Deposition of Michael Reinke at 60-67, Ex. 1, Crawford SJA 4). The evidence is uncontested that it is very difficult, if not impossible, for homeless persons to obtain identification from the BMV because the BMV imposes documentation requests that simply cannot be met by the homeless persons receiving services from shelters who are members of ICHHI. (*See e.g.*, Affidavit of Robert Ford ¶ 13, Crawford SJA 5).³ Thus, it is clear that members of ICHHI will have their right to vote burdened, if not precluded, by the challenged statute.

Rev. Dinkins, a member of CCI, is opposed to showing photo identification in order to vote. (Declaration of Dinkins ¶¶ 3, 4, 6, Supplemental Attachment 3). As indicated above, this is sufficient to give Rev. Dinkins standing, and it is therefore sufficient to give standing to the organization of which he is a member. The same is true of Rod Bohannon, a member of the NAACP. (Affidavit of Bohannon ¶¶ 1, 3, 4, Supplemental Attachment 5). Similarly, IRCL had 10-15 members contact the organization to indicate that the Voter ID law would create barriers for them voting, although no one indicated they were not going to be able to vote. (Madill Deposition at 22-23, Crawford SJA 9). These members have standing and therefore the organizations have standing.

³ This is not merely a monetary issue, although inability to purchase a birth certificate may be a concern for all poor persons, not just homeless persons. The BMV requirements are such that a homeless person may be precluded from obtaining the documentation necessary. Thus, Kristjan Kogerma, a homeless person, presented a birth certificate and Social Security card to the BMV but could not receive identification because he had nothing with an address on it. (Affidavit of Kogerma, Crawford SJA 15).

The Executive Director of United Senior Action (“USA”), Michelle Niemier, testified that, based on her experience with the organization and conversations over the last 16 years with its members, many senior citizens may not have driver’s licenses or state identification cards, although she could not estimate how many of her members fell into this category. (Niemier Deposition at 23-24, Crawford SJA 7). But, given the fact that specific members do not have to be identified, USA has standing as well.

c. The organizations are also being directly threatened with injury by the challenged statute and therefore have standing in their own right

In *Havens Realty Corporation v. Coleman*, 455 U.S. 363, 379 (1982), an organization, HOME, argued that racial steering violated the Fair Housing Act and further argued that it had standing because of the injury caused to it. The Court noted that:

[i]f as broadly alleged, petitioners’ steering practices have perceptibly impaired HOME’s ability to provide counseling and referral services for low-and moderate-income home seekers, there can be no question that the organization has suffered injury in fact. Such concrete and demonstrable injury to the organization’s activities—with the consequent drain on the organization’s resources—constituted far more than simply a setback to the organization’s abstract social interests.

455 U.S. at 379. The Court noted “[t]hat the alleged injury results from the organization’s noneconomic interest in encouraging open housing does not effect the nature of the injury suffered . . . and accordingly does not deprive the organization of standing.” *Id.*, n. 20.

Thus, if the challenged action directly burdens the organization, even in non-economic ways, the organization has standing. *See, e.g., El Rescate Legal Services v. Executive Office of Immigration Review*, 959 F.2d 742, 748 (9th Cir. 1991); *Johnson v.*

Mortham, 915 F.Supp. 1529, 1540 (N.D.Fla. 1995); *Mississippi State Chapter, Operation PUSH v. Allain*, 674 F.Supp. 1245, 1261 (N.D.Miss. 1987). In this instance, the question is whether the organization will have to suffer a “diversion of its resources to combat” the problems created by the Voter ID law. *Smith v. Pacific Properties and Development Corp.*, 358 F.3d 1097, 1104 (9th Cir. 2004), *cert. denied*, --U.S.--, 125 S.Ct. 106 (2004).

CCI, IRCIL and the NAACP will all have to expend limited resources to assist persons with collecting documents so that they can obtain the necessary identification to vote. (Affidavit of Oakley, Supplemental Attachment 4, ¶¶ 3-5; Declaration of Madill, Supplemental Affidavit 1, ¶¶ 2-5; Affidavit of Bohannon, Supplemental Attachment 5, ¶ 5). CCI will actually have to expend monetary resources, IRCIL will have to expend limited staff time, and the Indianapolis Chapter of the NAACP will have to expend organizational resources. (*Id.*). All three organizations will have to divert themselves from other issues of import to membership and focus on assisting persons with obtaining identification so they can vote. (*Id.*). Therefore, these organizations have “discrete programmatic concerns [that] are being directly and adversely affected’ by the challenged action.” *National Taxpayers Union, Inc. v. United States*, 68 F.3d 1428, 1433 (D.C.Cir. 1995) (internal citation omitted). They therefore have standing.

Moreover, all the organizations have noted that they will lose effectiveness if the law stands because they will be weakened as their members’ and clients’ political clout is weakened. *People Organized for Welfare and Employment Rights (P.O.W.E.R.) v. Thompson*, 727 F.2d 167 (7th Cir. 1984), cited by the County, does not preclude standing on this ground. In *P.O.W.E.R.* an organization dedicated to increasing the political power of the poor and unemployed brought an action claiming that the First Amendment

required the State of Illinois to allow it to send persons into welfare offices waiting rooms to try to persuade persons to register to vote with third party registrars in the room. The State did not prohibit persons from the organization from entering the waiting rooms, it only prevented the third-party registrars from entering the waiting rooms. The Seventh Circuit found that P.O.W.E.R. suffered no injury because “[t]he State of Illinois never interfered with P.O.W.E.R.’s efforts to persuade the people in the waiting rooms to register. It only prevented a third party, the city’s election board, from registering people there.” 727 F.2d at 171. This failure of the State to assist P.O.W.E.R was not deemed to be an injury. 727 F.2d at 172.

The contrast here is clear. The challenged law will directly frustrate the organizations’ goals and will reduce the organizations’ effectiveness as advocacy organizations. (Deposition of Michelle Neimier, Ex. D- Interrogatories ¶7, Crawford SJA 7; Deposition of Melissa Madill, Ex. E – Interrogatories ¶ 8, Crawford SJA 9; Deposition of Margie Oakley, Ex. G – Interrogatories ¶ 8, Crawford SJA 13; Deposition of Roderick Bohannon, Ex. H – Interrogatories ¶ 9, Crawford SJA 10; Deposition of Michael Reinke at 8-9. Crawford SJA 4). This imminent threatened injury is sufficient to provide standing for the organizations. “In order to satisfy the ‘injury in fact’ requirement of standing, a plaintiff need not wait for an injury to occur. An allegation of future injury satisfies this prong of standing so long as the alleged injury is ‘imminent’ or ‘real and immediate’ and not merely ‘conjectural’ or ‘hypothetical.’” 31 *Foster Children v. Bush*,

329 F.3d 1255, 1265 (11th Cir. 2003), *cert. denied*, 540 U.S. 984 (2003) (internal citations omitted).⁴ The organizations therefore have standing.

B. The challenged statute violates 42 U.S.C. § 1971

Marion County, and the State by incorporation, argues that Representative Crawford and the interested groups may not proceed with their claim that the Voter ID law violates 42 U.S.C. § 1971 because the statute is not enforceable by private parties. And, even if it could be enforced, Marion County argues that the challenged statute does not violate the substantive requirements of the statute. Marion County errs.

1. Section 1971 can be enforced by private individuals

In their original memorandum (at pages 47-50), Representative Crawford and the interested groups demonstrated that Section 1971 was enforceable by private individuals. They argued that the Supreme Court has already found that other statutes subsumed within the Voting Rights Act were enforceable by private parties, despite the fact that these sections, like 42 U.S.C. § 1971, only explicitly provided for enforcement by the Attorney General. *Morse v. Republican Party of Virginia*, 517 U.S. 186 (1996)(plurality opinion) (concerning 42 U.S.C § 1973h(b)); *Allen v. State Board of Elections*, 393 U.S. 544 (1969) (concerning 42 U.S.C. § 1973c). Representative Crawford and the interested groups also demonstrated that the use of the analysis mandated by the Supreme Court to determine if a statute is enforceable through 42 U.S.C. § 1983, *see e.g., Blessing v.*

⁴ Given that the organizations have standing on their own, they may also, as noted by Representative Crawford and the interested groups, raise the interests of third parties who are not members but are hindered in the ability to raise their own arguments. (Plaintiffs' Summary Judgment Memorandum at 36). In this way the interests of such persons as David Harrison, Ernest Pruden, Barbara Smith, Imogene Chapman, and Lois Holland can be raised.

Firestone, 520 U.S. 329 (1997), compelled a conclusion that the statute was enforceable by private parties.

The County fails to utilize the *Blessing* analysis and fails to address this argument. Instead, it argues that relying on the earlier Supreme Court cases that found private rights of actions where the statutes only mentioned enforcement by the Attorney General was not applicable here because 42 U.S.C. § 1973gg-9(b) does create a private right of action. The County appears to argue that this statute therefore provides a private right of action for the statutes in *Morse* and *Allen* and therefore these statutes are not apposite to 42 U.S.C. § 1971 that contains no explicit private right of action. However, 42 U.S.C. § 1973gg-9(b), passed in 1993, only creates a private right of action for violations of “this subchapter,” *i.e.*, Subchapter I-H of Chapter 20, the National Voter Registration Act, 42 U.S.C. § 1973gg, *et seq.* It therefore has no application to the statutes referred to in *Morse* and *Allen*⁵. Thus, in both *Allen*, 393 U.S. at 555, and *Morse*, 517 U.S. at 230, the Court noted that the relevant statutes did not explicitly authorize private parties to seek relief, but in both case the Court nevertheless found that a private cause of action could be maintained.

Schwier v. Cox, 340 F.3d 1284, 1294-98 (11th Cir. 2003), properly used the applicable Supreme Court analysis and found that 42 U.S.C. § 1971 can be enforced by private parties through 42 U.S.C. § 1983. Therefore, 42 U.S.C. § 1971(a)(2)(A) and (B) both create rights enforceable by Rep. Crawford and the interested groups.

⁵ 42 U.S.C. § 1973c, the statute involved in *Allen*, is part of Subchapter I-A of Chapter 20 in Title 42 as is 42 U.S.C. § 1973h, the statute implicated in *Morse*.

2. The Voter ID law violates 42 U.S.C. § 1971(a)(2)(A) because it subjects those attempting to vote in Marion County to different standards as to their qualifications to vote

The statute, 42 U.S.C. § 1971(a)(2)(A) prohibits the use of different standards, practices, or procedures on individuals in the same county to determine their qualifications to vote. The Voter ID law imposes a new qualification to vote on those voting in-person. They must now have the requisite identification. It is important to note that this is not a general requirement of identifying oneself. It is not enough to be personally known by the poll workers, the prospective in-person voter must have the proper form of photo identification. This is therefore a new substantive requirement to vote. However, there is no similar substantive requirement imposed on nursing home residents voting in nursing homes where the home is a polling place. Nor is any similar restrictive identification requirement imposed on those who vote via absentee ballot. This violates the federal statute.

The County notes that the statute was designed to protect against race discrimination and not to what the County characterizes as “common sense exceptions.” (County Summary Judgment Memorandum at 43). As Representative Crawford and the interested parties noted in their original memorandum (at 46-47), numerous cases note that 42 U.S.C. § 1971 can be applied to redress non-racial discrimination. The County’s remaining argument is essentially that this provision of Section 1971 only applies to discrimination among similarly situated voters and that in-person voters, nursing home voters, and those voting absentee are not similarly situated. This is erroneous.

First, there is nothing in the statute that would allow a new substantive requirement to be imposed on one class of voters (those who are voting in-person and

who do not vote in the nursing homes in which they reside) and not to impose the substantive requirement on other voters. If, for example, Indiana changed its statute to provide that only those who voted in-person had to be 25 years of age and remaining voters could be 18, the State could not be heard to argue that this was legitimate under § 1971(a)(2)(A).

Moreover, there is nothing “common sense” about the exceptions carved out from the Voter ID law. The County argues that it makes sense to dispense with the new substantive identification requirement in nursing homes because the nursing homes are heavily regulated and “everybody knows your name.” (County Summary Judgment Memorandum at 44). Yet, the poll workers who work in the poll in the nursing home are not likely to be nursing home residents and there is therefore no rational reason to conclude that identification is less necessary than in other polling places. For example, Ernest Pruden lives in Lugar Towers where his polling place is located, works the polls there, and will have to show valid identification card if he wishes to vote there. (State SJE 58, at 7, 12-15, 17-18). Where is the common sense in requiring Mr. Pruden to show identification to the persons with whom he is working the polls, but not requiring a nursing home resident to show any identification to strangers at the polls?

What the County appears to be arguing is that it makes sense to dispense with the rigid identification card requirement in a situation where it is not necessary. What this recognizes is that there are other valid forms of identification besides a photo identification, with an expiration date, issued by the State or federal government. Representative Crawford and the interested groups agree.

One of these forms of identification, used for years in Indiana for in-person and absentee voters alike, has been a signature. The County argues that it makes sense to continue to allow signatures to be used for the identification of absentee voters, but not for those who vote in person. The County and the State spend much time arguing that the Voter ID law could not usefully be applied to absentee voters. While certainly not conceding this, this argument misses the point. The County and State argue that the new Voter ID law, adding a new substantive requirement to vote in Indiana, is necessary to combat fraud, although they admit there is no evidence of voter fraud in in-person voting in Indiana. Yet, there has been no similar substantive requirement crafted for those who vote absentee, even though Indiana has clearly been victimized previously by voter fraud in the absentee ballot area. Even assuming the fraud risk in in-person voting, the two groups of voters, in-person and absentee, are similarly situated in that both are subject to fraud. Yet, only one group has had a new substantive identification standard added. Therefore, different substantive standards of voting eligibility are being applied in violation of 42 U.S.C. § 1971(a)(2)(A).

3. The Voter ID law violates 42 U.S.C. § 1971(a)(2)(B) because it denies the right to vote because of a failure to have the prescribed identification which is not material to whether the individual is qualified to vote

If in-person voters, who are not residents at the nursing homes where they vote, do not present the form of identification required by the Voter ID law, they will not be able to vote on a regular ballot, and if they fail to take steps to procure a valid identification, or indigency or religious waiver, they will be denied the right to vote. The statute, 42 U.S.C. § 1971 (a)(2), prohibits denying the right to vote because of an

omission on any record or papers relating to any act that is a requisite to voting. Clearly, in the example above, the in-person voter will be denied the right to vote because of the omission of identification, a requirement that is now a requisite to voting for some Indiana voters.

Yet, the identification requirement as imposed by the Voter ID law is certainly not a material requirement. Clearly, some form of identification is material. For the absentee voter a signature is enough. For the nursing home voter, faith that the poll workers will recognize them is deemed to be sufficient. Yet, neither personal recognition nor signature is sufficient for those other voters voting in-person. Clearly, the specific identification requirement imposed by the challenged statute cannot be deemed to be material.

C. The Voter ID law severely burdens the right to vote and is unconstitutional

1. Introduction

In responding to the federal constitutional arguments raised by Representative Crawford and the interested groups, the State notes that the source of the Voter ID Law is Art. I § 4 cl. 1 of the United States Constitution and that it does not impose substantive voting criteria (State Summary Judgment Memorandum at 18-22). The relevance of this argument at this juncture is not clear. Regardless of its origin and whether the law is considered substantive or procedural, it is not disputed by the State that the more burdensome any law impacting suffrage is, the greater the constitutional scrutiny, and that laws that impose “ ‘severe’ restrictions . . . must be ‘narrowly drawn to advance a state interest of compelling importance.’” *Burdick v. Takushi*, 504 U.S. 428, 433 (1992). And, it is not disputed that any economic burden imposed on the right to vote must also

be subjected to the strictest of constitutional scrutiny. *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966). The Voter ID law imposes an economic cost on the right to vote. Aside from economic cost it imposes a severe burden on the right to vote. It is not justified under the required rigorous scrutiny. The statute is unconstitutional under all applications and, therefore, *United States v. Salerno*, 481 U.S. 739, 745 (1987) is not an impediment to this Court entering judgment for the plaintiffs in this cause.

2. The Voter ID law imposes an economic cost to those who wish to vote

Since the filing of plaintiffs' summary judgment motion, the BMV has changed its policy once again and has indicated that it will now issue an identification card without cost to any Indiana resident who does not have a valid driver's license and who will be 18 at the time of the next election. (State SJE 72). Even though the card is free, there is an obvious cost to obtaining the identification. This entails, at least, the purchase of a birth certificate. The State argues that this incidental cost cannot be deemed to be an unconstitutional burden on the right to vote.

It is clear that there is a new substantive requirement for an Indiana resident to vote. In addition to being an 18 year old citizen of the United States who meets residency requirements, who has not been disenfranchised, and who has registered to vote, Indiana Constitution Art. 2, §§ 2, 14, an in-person voter (except one who votes in the nursing home in which they live) must present the photo identification required by the Voter ID law. Therefore, when the cost of voting is analyzed, it is proper and necessary to include the cost of obtaining the necessary identification, including the cost of obtaining the documents, such as the birth certificate, that are necessary to procure the identification.

Ironically, the State implicitly concedes that such costs as the birth certificate are costs that must be considered as part of the cost of obtaining proof of identification. For, it argues that a person who cannot afford to purchase a birth certificate and therefore cannot afford to obtain a “free” identification card can have the identification card requirement waived through the indigency exception in Indiana Code § 3-11.7-5-2.5(c)(2)(A)(ii) that allows a waiver if the indigent person is “unable to obtain proof of identification without a fee.”⁶ The State therefore considers the birth certificate costs to be part of the fee necessary to obtain identification.

The question, therefore, is whether the State can impose a fee as a condition of voting. The key principle is not just that the State cannot impose a direct poll tax, it is that the State cannot “make the affluence of the voter or payment of any fee an electoral standard.” *Harper*, 383 U.S. at 666. There is therefore a “principle that denies the State the right to dilute a citizen’s vote on account of his economic status.” 383 U.S. at 668. It is true that “ ‘a State may exact fees from citizens for many different kinds of licenses.’ . . . For example, the State ‘can demand from all an equal fee for a driver’s license.’ But voting cannot hinge on ability to pay . . . for it is a ‘fundamental political right . . . preservative of all rights.’” *M.L.B. v. S.L.J.*, 519 U.S. 102, 124 n. 14 (1996) (internal citations and quotation marks omitted). Those who need to obtain an identification card to vote now have to pay at least for the birth certificate that is required. This is a fee in order to vote .

⁶ It is not at all clear that those who cannot pay for a birth certificate and cannot therefore obtain identification will be able to have a waiver issued under the above statute. At this point there is no definition of indigency and there is no certainty as to whether the cost of a birth certificate is part of the “fee” that can be waived. (Deposition of Sadler at 37-39, Crawford SJA 1).

The State argues that this fee, unlike those in *Harper and Harman v. Forssenius*, 380 U.S. 528 (1965), is not imposed on all citizens. Surely, if persons under the age of 25 had to pay a fee to vote, but not other voters, a poll tax would still be present. And if costly procedural burdens are imposed on some, but not other voters, the Twenty-fourth amendment's and the general prohibition against poll taxes would be implicated because the constitutional prohibition "hits onerous procedural requirements which effectively handicap exercise of the franchise' by those claiming the constitutional immunity." *Harman*, 380 U.S. at 541 (internal citations omitted).

Those who are unable, or unwilling, to pay for a birth certificate in order to obtain an identification card, will not be able to vote. This is clearly a material requirement imposed on persons who are unable or refuse to pay a fee to vote.

3. Even without considering the economic requirements imposed by the Voter ID law, it is unconstitutional because it imposes a severe burden on the right to vote

Kristjen Kogerma is a homeless man who went to the BMV to attempt to obtain identification and was turned away because he is homeless. (Kogerma Affidavit, Crawford SJA 15). This is a common problem for homeless persons. ICHHI's members have noted that they have clients, also members of ICHHI, who have neither licenses nor identification cards. (Reinke Deposition at 60-67, Ex. 1, Crawford SJA 4). And, it is extremely difficult, if not impossible, for homeless persons to get the documentation necessary to obtain a birth certificate or state identification card. (Ford Affidavit ¶¶ 11, 13, Crawford SJA 5).

It is not just homeless persons who will experience problems in voting with the new statute. IRCIL's members who live in congregate living situations do not

necessarily have the information necessary to obtain an identification card. (Madill Deposition Ex E (Interrogatories) No. 10). The NAACP has members who have indicated that given the new requirements they will not be able to vote. (Bohannon Deposition at 18, Crawford SJA 10). The AARP survey estimates that 3% of Hoosiers over the age of 60 who are currently registered voters have neither a license nor identification card and therefore will have to obtain identification from the BMV in order to vote. (Lyle Declaration, Attachment at 2). And, 30% of these persons indicate that they are not very likely or not at all likely to obtain the required identification, even if it was necessary to vote. (*Id.*).

It is difficult for persons to accumulate the documentation necessary to satisfy the BMV requirements. Ms. Andrews, a BMV employee, estimated that fully 60% of the persons who she sees each week and who are trying to apply for a license or identification are turned away because they do not have the proper identification. (Andrews Deposition at 28-29, State SJE 55). And although it does not know the number, the BMV concedes that there are persons who do not currently have license or identification cards and who are, or will be, eligible to vote at the time of the next election. (Redman Deposition at 21-22, Crawford SJA 3).

The State argues that the Voter ID law does not impose a severe burden on the right to vote because requiring voters to show identification is not a major burden. But, this is not just a case about requiring persons to show identification cards that they already possess. This is also a case about the erection of an identification requirement that simply cannot be met by some persons or can be met only after multiple trips to government agencies and great expense. This is also a case about imposing barriers and

burdens on a right that is delicate and where it is uncontested that many react to the burdening of the right to vote by determining not to exercise the right. *See*, Plaintiffs' Summary Judgment Memorandum at 20-22.

Given that the statute will prevent some persons from being able to vote and will erect barriers against others, it is clear that the law does impose a serious burden on the right to vote. The only question is whether there is adequate justification to support the law. Although the State argues that such justification exists, the State is incorrect.

4. The Voter ID law is not narrowly drawn to advance a state interest of compelling importance

Burdick notes that if the right to vote is severely burdened, the regulation can be upheld only if it is narrowly drawn to support a compelling state interest. 504 U.S. at 434. The Voter ID law fails this test.

The State argues at length that the Voter ID law supports the compelling state interest in preventing fraud in in-person voting. It is undisputed that the only fraud that the State is aware of taking place in Indiana voting is fraud regarding absentee balloting. (State's Responses to Interrogatories, Crawford SJA 19). Indeed, at least as of September 8, 2005, the date the State answered discovery, it was apparently not aware of any in-person voting fraud anywhere within the United States since 2002. (*Id.*). Since then the State has apparently supplemented its knowledge and has attempted to introduce with its summary judgment materials documents purporting to show that in-person voting fraud is a potential problem and it argues that the General Assembly need not wait for a problem to surface in Indiana to direct legislation towards it. The latter point is certainly true. Thus, in *Munro v. Socialist Workers Party*, 479 U.S. 189, 195-196 (1986), the Court

noted that “[l]egislatures, we think, should be permitted to respond to potential deficiencies in the electoral process with foresight rather than reactively, provided that the response is reasonable and does not significantly impinge on constitutionally protected rights.” Certainly, protecting against fraud is an important, if not compelling, interest in general. But the question is whether the Voter ID law is narrowly tailored, reasonable, and does not significantly impinge on constitutionally protected rights of voters. The Voter ID law fails this test.

Munro is clear; a voting statute cannot be narrowly tailored if it significantly impinges on the right to vote. Obviously, a statute is not narrowly tailored if it makes it impossible for some voters to vote. The State responds that if elderly or disabled persons are not able to obtain identification and are therefore not able to vote in-person, they can vote absentee. Of course this doesn’t address the situation of non-elderly, non-disabled potential voters who are unable to meet the BMV’s requirements and are therefore not able to obtain identification. These persons are not able to vote absentee. *See*, Indiana Code § 3-11-10-24. Moreover, it is not an answer to the denial of a person’s right to vote in-person to relegate him or her to voting absentee. In order to vote absentee, a voter must apply in advance, Indiana Code § 3-11-4-3, and return the ballot in time for it to be delivered to the precinct election board before the closing of the polls on election day. Indiana Code § 3-11-10-3.

The majority of voters—particularly those voters who lack Photo ID—would not plan sufficiently enough ahead to vote absentee ballot successfully. In fact, most voters likely would not be giving serious consideration to the election or to the candidate until shortly before the election itself. Under such circumstances, it simply is unrealistic to expect that most of the voters who lack Photo IDs will take advantage of the opportunity to vote an absentee ballot.

Common Cause/Georgia v. Billups, No. 4:05-CV-0201-HLM (N.D.Ga. 2005), slip op. at 91-92. (The opinion is attached to Rep. Crawford's and the interested groups' summary judgment memorandum.) In *Common Cause* the Georgia legislature had changed its absentee voting requirements to provide that all voters could vote absentee. The court found that this change in law had not been publicized, *Id.* at 90, and this, combined with the prior planning necessary to vote absentee, lead it to find:

that absentee voting simply is not a realistic alternative to voting in person that is reasonably available for most voters who lack Photo ID. The fact that voters, in theory, may have the alternative of voting an absentee ballot without a Photo ID thus does not relieve the burden on the right to vote caused by the Photo ID requirement.

Id., slip. opinion at 92. Therefore, the fact that some, but not all, voters who will be completely barred from voting by the Voter ID law may be able to vote absentee, does not lessen the burden on the right to vote.

Other voters will not be completely barred from voting, but will be discouraged by the steps that now must be taken to exercise the right to vote. The law is simply not narrowly tailored to justify this degree of impingement. The County and State argue mightily that it would not be reasonable to impose an identification requirement on absentee voters, the one area of documented voter fraud in Indiana.⁷ But, the point is that the State has chosen to put onerous conditions on the area of voting in-person, where

⁷ The State and County's protestations that an identification requirement could not be imposed on absentee voters seem curious in light of the identification requirements for absentee voters who previously registered by mail imposed by the Help America Vote Act ("HAVA"), 42 U.S.C. § 15483(b). HAVA provides that if a voter has registered by mail and therefore has never been seen by an election official, he or she must submit with the absentee ballot "(I) a copy of a current and valid photo identification; or (II) a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter." 42 U.S.C. § 15483(b)(2)(A)(ii).

there is absolutely no evidence of fraud, while ignoring fraud prevention procedures in the area of voting absentee, where there is documented proof of fraud. Moreover, the statute dispenses with signature comparison as a fraud safeguard for in-person voters, while trumpeting its utility to detect fraud in the absentee voting area.⁸

As the court noted in *Republican Party of Minnesota v. White*, 416 F.3d 738, 751 (8th Cir. 2005),

[a] narrowly tailored regulation is one that actually advances the state's interest (is necessary), does not sweep too broadly (is not overinclusive), does not leave significant influences bearing on the interest unregulated (is not underinclusive), and could be replaced by no other regulation that could advance the interest as well with less infringement . . .

Thus a statute that is underinclusive "raises serious doubts about whether . . . [the state] is, in fact, serving, with this statute, the significant interests" raised by the County and State. *The Florida Star v. B.J.F.*, 491 U.S. 524, 540 (1989).

The statute here is not narrowly tailored. It sweeps too broadly in that it absolutely prevents certain persons from voting. It is underinclusive in that it purports to be necessary to combat fraud, but the area of fraud that has been documented in Indiana is ignored. It ignores the existing mechanisms to combat fraud. It is not narrowly drawn to support the claimed interest of combating fraud.

5. The statute is unconstitutional on its face and therefore summary judgment is not precluded by *United States v. Salerno*

⁸ Both the County and State note as significant the fact that witnesses indicated that they had never seen a signature challenged of an in-person voter. Of course, this could be a function of the fact that there is no in-person voting fraud and the personal appearance of the voter at the polling place where he or she is known to the poll workers. Personal recognition is, of course, also a serious fraud deterrent.

In *Salerno*, 481 U.S. at 745, the Supreme Court noted that in order for a statute to be declared unconstitutional on its face “the challenger must establish that no set of circumstances exists under which the Act would be valid.”⁹ “Under the so-called Salerno standard, a facial challenge would fail if the statute had some constitutional application.” *Karlin v. Foust*, 188 F.3d 446, 483 (7th Cir. 1999). There is no constitutional application of a statute that imposes an economic and other material burden on the right to vote, even if some voters are not concerned about the burden. Thus, in *Harman*, the Court noted that in order to demonstrate that the challenged law was unconstitutional “it need only be shown that it imposes a material requirement solely upon those who refuse to surrender their constitutional right to vote in federal elections without paying a poll tax.” 380 U.S. at 541. The fact that the Voter ID law does not disenfranchise all voters and does not impose a severe burden on all voters does not mean that it is constitutional under certain circumstances. Given that the law does erect such impossible and difficult hurdles for some, on its face, it is unconstitutional under all circumstances.

D. The Voter ID statute violates the Indiana Constitution

1. The challenged law violates Art. 2, § 1 of the Indiana Constitution

⁹ *Salerno*, 481 U.S. at 745, notes that its doctrine is at least not applicable in the First Amendment context where the overbreadth doctrine is available. Therefore, to the extent that a challenge to an election statute implicates rights protected by the First Amendment, *Salerno* is inapplicable. See e.g., *Lerman v. Board of Elections in the City of New York*, 232 F.3d 135 (2nd Cir. 2000), *cert. denied*, 533 U.S. 915 (2001) (successful challenge to statute that required witnesses to a candidate’s “designating petition” be a resident of the political subdivision where the sought after office is located.) Given that the right to vote emanates from, among other things, the First Amendment, see e.g., *Burdick*, 504 U.S. at 434; *Hall v. Simcox*, 766 F.2d 1171, 1173 (7th Cir. 1985), *cert. denied*, 474 U.S. 1006 (1985), arguably *Salerno* should not apply in this context. However, debate on this point is not necessary inasmuch as the Voter ID law cannot be constitutionally applied under any circumstances.

The County, and the State by incorporation, agree that Art. 2, § 1 of the Indiana Constitution allows the legislature to enact election regulations, “so long as what it requires is not so grossly unreasonable that compliance therewith is practically impossible.” *Simmons v. Byrd*, 136 N.E. 14, 18 (Ind. 1922). However, the County argues that the Voter ID law is not grossly unreasonable because there is no evidence that persons will not be able to vote and that persons will be burdened by the statute. However, as indicated above, this law will certainly impose an absolute barrier on voting for those persons who are unable to satisfy the BMV’s requirements to obtain identification and it will impose onerous requirements on others. This is “grossly unreasonable” and violates the Indiana Constitution.

2. The statute also violates the Indiana Constitution, Art. 2, § 2

The explicit requirements to vote are set out by Art. 2, § 2 of the Indiana Constitution. The voter must be a citizen, at least eighteen (18) and must meet residency requirements. Registration requirements are allowed by virtue of Art. 2, § 14. The State is powerless to add new substantive requirements for voters. “The principle is elementary that when the constitution defines the qualification of voters, that qualification cannot be added to or changed by legislative enactment.” *Morris v. Powell*, 25 N.E.221, 223 (Ind. 1890).

The County argues that it is not imposing a new requirement, but is merely insuring that the voter’s identity is correct and that insofar as the signature requirement formerly used for in-person voting was not explicitly allowed by the Constitution but was implicitly constitutionally acceptable, the new voter identification requirement must be as well. This is erroneous.

There is obviously implicit in Art 2, § 2 the notion that the person who is voting is in fact that person. Requiring the person to sign their name to attest to that merely satisfies the basic notion that the “citizen of the United States, who is at least (18) years of age” is actually the person voting. Art. 2, § 2. However, the new Voter ID law goes far beyond mere identification. For, it demands a particular form of identification and, absent that, the vote is not counted. Absent the prescribed form of identification, the fact that the voter is actually identified is legally irrelevant. It is difficult to argue that a new voting requirement, that is concerned with more than mere identification, has not been created when a mother whose five children are working the polls where she is voting, but who does not have the identification required by the Voter ID law, is denied the right to cast a regular ballot. “There are no provisions within our constitution which expressly authorize this limitation upon the right of franchise as guaranteed by Article 2, § 2 of the Indiana Constitution.” *State ex. re. McGonigle v. Madison Circuit Court*, 193 N.E.2d 242, 249 (Ind. 1963). The statute therefore violates the Indiana Constitution.

V. Conclusion

In part, this case concerns the constitutional and statutory tolerance that should be afforded when the fundamental right to vote is blocked or impeded. It is clear that neither the United States and Indiana Constitutions nor federal law allows the severe burdens imposed by the Voter ID law. There are no contested issues of material fact and summary judgment should therefore be entered for Rep. Crawford and the interested groups.

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of December 2005, a copy of the foregoing was filed electronically with the Clerk of this Court. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system and the parties may access this filing through the Court's system.

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