

STATE OF INDIANA)
)ss:
COUNTY OF MARION)

IN THE MARION SUPERIOR COURT
ROOM NO.
CAUSE NO.

WILLIAM CRAWFORD, UNITED SENIOR)
ACTION OF INDIANA, INDIANAPOLIS)
RESOURCE CENTER FOR INDEPENDENT)
LIVING; CONCERNED CLERGY OF)
INDIANAPOLIS, INDIANAPOLIS BRANCH)
OF THE NAACP, INDIANA COALITION)
ON HOUSING AND HOMELESS)
ISSUES, JOSEPH SIMPSON,)

Plaintiffs,)

v.)

MARION COUNTY ELECTION BOARD,)

Defendants.)

No.

**Complaint for Declaratory and Injunctive Relief / Notice of Claim
of Unconstitutionality of Indiana Statute**

Introduction

1. This case challenges Senate Enrolled Act No. 483, a recently enacted Indiana statute which requires that some, but not all, voters provide a photo identification before their vote can be counted in any election. The new requirement violates the Voting Rights Act, 42 U.S.C § 1971, the United States Constitution, as well as Art. 2, § 1 of the Indiana Constitution. The federal claims are brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under state law, of rights secured by the laws and Constitution of the United States. Appropriate injunctive and declaratory relief is requested.

Parties

2. William Crawford is an adult resident of Marion County, Indiana.
3. United Senior Action of Indiana is an organization which is headquartered in Indianapolis.
4. Indianapolis Resource Center for Independent Living is an organization headquartered in Indianapolis.
5. Concerned Clergy of Indianapolis is an organization headquartered in Indianapolis.
6. The Indianapolis Branch of the NAACP is the Indianapolis branch of a national civil rights organization.
7. The Indiana Coalition on Housing and Homeless Issues is a state wide organization located in Indianapolis.
8. Joseph E. Simpson is an adult resident of Marion County, Indiana.
9. The Marion County Election Board is created pursuant to Indiana Code § 3-6-5-1, *et seq.*, and is charged, with among other things, conducting all elections, and administering all election laws, in Marion County. Indiana Code § 3-6-5-14.

Statutory Background

10. Indiana law, Indiana Code § 3-7-13-1, provides that:

A person who:

- (1) will be at least eighteen (18) years of age at the next general, municipal, or special election;
- (2) is a United States citizen, and
- (3) resides in a precinct continuously before a general, municipal, or special election for at least thirty (30) days;

may, upon making a proper application under this article, register to vote in that precinct.

11. Additionally, Indiana law disenfranchises certain prisoners. Indiana Code § 3-7-13-4.
12. Senate Enrolled Act No. 483 amends existing Indiana law to provide that some Indiana voters who wish to vote in either a primary or regular election must provide proof of identification. *See*, Senate Enrolled Act No. 483, Sections 2-4, adding Indiana Code §§ 3-10-1-7.2, 3-11-8-25, 3-11-8-25.1 (effective July 1, 2005). (Senate Enrolled Act No. 483 is attached as Attachment 1).
13. Senate Enrolled Act No. 483 notes that “proof of identification” refers to a document that satisfies all of the following:

- the document shows the name of the individual to whom the document was issued, and the name conforms to the name in the individual’s voter registration record

- the document shows a photograph of the individual to whom the document was issued

- the document includes an expiration date, and the document:

- (A) is not expired; or

- (B) expired after the date of the most recent general election

- the document was issued by the United States or the state of Indiana

Senate Enrolled Act No. 483, Section 1, adding Indiana Code § 3-5-2-40.5 (eff. July 1, 2005).

14. Current law requires that a voter’s signature be compared to that on the voter registration list. *See e.g.*, Indiana Code § 3-11-8-25.1. If it does not match, the voter may be challenged and the voter may make an appropriate affidavit under the penalties of perjury. *See, e.g.*, Indiana Code §§ 3-11-8-20 through 3-11-8-23.

15. Under Senate Enrolled Act No. 483, if a prospective voter does not have the required picture identification issued by the State or federal government he or she will be allowed to vote with a provisional ballot if the voter signs an affidavit under Indiana Code § 3-11-8-22. Senate Enrolled Act No. 483, Section 2, 3, 4, adding or amending Indiana Code §§ 3-5-2-40.5, 3-10-1-7.2, 3-11-8-25.

16. However, in order for the provisional ballot to be counted, the voter must personally appear before the circuit court clerk or county election board before noon on the Monday following the election and:

-present the requisite photo identification and execute an affidavit that the voter is the same person who cast the ballot; or

-execute an affidavit that the voter is indigent and unable to obtain proof of identification without payment of a fee; or

-execute an affidavit that he or she has a religious objection to being photographed

Senate Enrolled Act No. 483, Section 13, adding Indiana Code § 3-11.7-5-2.5 (eff. July 1, 2005).

17. If the voter personally appears and executes the appropriate affidavits as described in the preceding paragraph, the provisional ballot shall be determined to be valid unless the county election board determines that the voter had been challenged for a reason in addition to failing to provide the requisite identification. *Id.* In the latter case, the county election board shall determine if the remaining challenges are appropriate. *Id.*

18. Senate Enrolled Act No. 483 provides that the Indiana Bureau of Motor Vehicles must issue identification cards without charge to persons who do not have a valid identification card and will

be at least eighteen (18) years of age at the time of the next general, municipal, or special election. Senate Enrolled Act No. 483, Section 15, amending Indiana Code § 9-24-16-10 (effective July 1, 2005). Presumably, therefore, no one will be able to verify that he or she was unable to obtain proof of identification without payment of a fee.

19. Senate Enrolled Act No. 483 provides that an absentee voter is not required to provide proof of identification either when mailing, delivering or transmitting an absentee ballot pursuant to Indiana Code § 3-11-10-1 or if the individual appears to vote before an absentee board pursuant to Indiana Code § 3-11-10-26. Senate Enrolled Act No. 483, adding Indiana Code § 3-11-10-1.2 (effective July 1, 2005).
20. Senate Enrolled Act No. 483 provides that a voter who votes in person at a polling place that is located at a state licensed care facility where the voter resides is not required to provide proof of identification. Senate Enrolled Act No. 483, Sections 2-4, adding or amending Indiana Code §§ 3-5-2-40.5, 3-10-1-7.2, 3-11-8-25, 3-11-8-25.1.

Factual allegations

General Allegations:

21. Although Senate Enrolled Act No. 483 provides that the Bureau of Motor Vehicles must supply identification cards without cost, Bureau of Motor Vehicle rules, *see* Attachment 2, require that in order to obtain an identification card an individual must present a stamped or sealed certificate of birth or other record such as a certification of citizenship or naturalization.
22. Many persons do not have originals of their birth certificates and there is a cost to obtain stamped or sealed copies of such documents. For example, the Health and Hospital Corporation of Marion

County charges \$10 to obtain a birth certificate for those persons born in Marion County. If the individual was born out of state, it may cost much more to obtain a birth certificate with a seal.

23. Additionally, in order to obtain an identification card from the Bureau of Motor Vehicles, an Indiana resident must present what the Bureau has termed a “secondary document.” These are listed as:

- Bank Statement
- Certified Academic Transcript
- Confirmation of Registration Letter from an Educational Institution
- Court documentation with stamp or seal in applicant's name
- Foreign Consulate-Issued ID Card
- Government-Issued License or ID Card
- Hoosier RX Plan Card w/ imprinted name
- Indiana County Pre-sentence Investigation Report with clerk stamp or seal
- Indiana Gun Permit (Valid)
- Indiana Probation Photo ID Card
- Indiana Professional/Occupational license (Valid)
- Indiana BMV Title Application w/BMV Valid Stamp
- Indiana BMV Title or Registration (Valid)
- Insurance Card

- Letter from Probation Officer or county caseworker on letterhead stationary, certified with court or county stamp or seal with the applicant's name, and signature of the probation officer
- Major Credit or Bank Card (MC, VISA, AE, and Discover ONLY) (Valid)
- Original Out-of-State Driver Record
- Out-of-State Driver License, Identification Card or Permit with photograph
- Pay Check Stub - Computer generated
- Prison Release Documentation/Photo ID
- School Report Card (dated within 12 mos.)
- School Photo ID Card

- Selective Service Acknowledgement Card-SSS Form 3A
- U.S. Divorce Decree certified by court of law with stamp or seal
- U.S. Application of Marriage/Record of Marriage (Certified copy.) Must contain the stamped seal and be signed by the Clerk.
- U.S. District Court Pre-sentence Investigation Report with clerk stamp or seal
- U.S. Military Discharge or DD214 Separation papers
- U.S. Veterans Universal Access ID card with photo
- W-2 Form (Federal or State) or 1099 Federal tax form

(Attachment 2).

24. Not all potential persons applying for the identification card from the Bureau of Motor Vehicles will have one of the secondary documents and there may not be a way to obtain the documents.
25. Even if an applicant has a secondary document, if the applicant's address has changed they must provide a document which provides their actual address. (Attachment 2).
26. It may therefore be difficult, time-consuming, and expensive for applicants for an identification card through the Bureau of Motor Vehicles to collect the information necessary to obtain an identification card and this will deter persons, otherwise eligible, from voting or from taking the steps necessary to assure that their votes are counted.

Plaintiff Crawford:

27. William Crawford was first elected to the Indiana House of Representative in 1972. He represents District No. 98 which is in the near northside area of Indianapolis.
28. His district contains many minorities, poor persons and elderly persons.
29. He is aware of the fact that there are persons in his district who have voted in the past who do not have the picture identification required by Senate Enrolled Act No. 483.
30. He also is aware of the fact that there are persons in his district who are of voting age and are citizens, but who have not voted in the past.
31. There are those in his district who will have difficulty in collecting and/or paying for the information necessary to obtain a state identification card and will not vote or be discouraged from voting because of the identification requirements contained in Senate Enrolled Act No. 483.
32. As a result, Senate Enrolled Act No. 483 will prevent some potential voters in his district from voting.

33. Representative Crawford plans to stand for reelection in 2006 and therefore has an interest in insuring that as many persons in his district as possible have the opportunity and ability to vote.
34. Additionally, as a citizen he desires that as many persons vote as are eligible to do so and Senate Enrolled Act No. 483 will prevent this from occurring.
35. Moreover, as a citizen he is offended by, and objects to, having to show picture identification to vote in the district that he has represented, lived in, and voted in for more than 30 years and he does not wish to show identification.

Plaintiff United Senior Action of Indiana

36. United Senior Action of Indiana is a senior citizen public policy organization which has more than 15,000 members, many of whom live in Marion County, Indiana.
37. Its membership is primarily made up of senior citizens.
38. Many senior citizens may not have valid driver's licenses or state identification cards
39. Many of its members will be discouraged from voting because of the new identification requirements imposed by Senate Enrolled Act No. 483 even though they have voted in the past.
40. Many of its members may find it difficult to obtain the information necessary to procure an identification card from the Bureau of Motor Vehicles.
41. United Senior Action of Indiana is dedicated to aggressively addressing issues of concern to senior citizens and any dilution of senior citizens' ability to vote will injure not only the interests of its senior citizen members but will injure the viability of United Senior Action of Indiana inasmuch as it will diminish its ability to affect public policy.

Plaintiff Indianapolis Resource Center for Independent Living

42. Indianapolis Resource Center for Independent Living is a private, nonprofit, consumer-controlled, community-based organization which provides services and advocacy by and for persons in the Indianapolis area who have disabilities
43. The goal of the Indianapolis Resource Center for Independent Living is to assist individuals with disabilities to achieve their maximum potential within their families and communities.
44. Indianapolis Resource Center for Independent Living serves as a strong advocacy voice on numerous issues of interest to the disabled community.
45. Many of the members of the Indianapolis Resource Center for Independent Living do not drive and may not have the valid photo identification required by Senate Enrolled Act No. 483.
46. It is particularly difficult for some disabled persons to travel around Indianapolis to collect the information required by the Bureau of Motor Vehicles to obtain a state identification card.
47. It is in the interest of the Indianapolis Resource Center for Independent Living for its members to be politically active voters so that its members, and the organization, may advance their interests.
48. Many of the members of the Indianapolis Resource Center for Independent Living will be discouraged from voting or from voting in person by Senate Enrolled Act No. 483.
49. It is vitally important to the Indianapolis Resource Center for Independent Living, and its members, to be able to access voting areas and to vote to the maximum extent possible.
50. Therefore, to the extent that Senate Enrolled Act No. 483 will make it more difficult for disabled persons to vote it will directly injure not only the members of Indianapolis Resource Center for Independent Living, but it will injure the organization itself inasmuch as it will diminish the ability of the organization to effect its goals and purposes.

Concerned Clergy of Indianapolis

51. Concerned Clergy of Indianapolis is an Indianapolis organization which is dedicated to advancing social justice issues, particularly issues affecting the poor in Indianapolis.
52. Among its members are poor persons in the City of Indianapolis.
53. It advocates for such things as safe, affordable housing and adequate health care and education, for example.
54. It also advocates for voting rights and that persons exercise their right to vote.
55. It is extremely important that poor persons exercise their right to vote inasmuch as issues of interest to the poor are often ignored because of their perceived lack of political power.
56. Senate Enrolled Act No. 483 will discourage poor persons from voting.
57. Poor persons may not have a driver's license or state identification cards and may not have the resources necessary to pay for a birth certificate and may not be able to collect the information required to obtain a state identification card from the Bureau of Motor Vehicles.
58. Additionally, having to vote, sign an affidavit, and then obtain an identification card and go to the Clerk's office and sign another affidavit may be so daunting that poor persons, and others, may choose not to vote.
59. It is essential to Concerned Clergy of Indiana that the political power of poor persons be maximized to the greatest extent possible, not only because this will maximize the ability of poor persons to have issues of interest to them heard, but also because this will increase the organization's ability to effect its goals and purpose.
60. Therefore, to the extent that Senate Bill 483 will discourage poor persons from voting, it will

directly injure Concerned Clergy of Indianapolis.

Plaintiff Indianapolis Branch of the NAACP

61. The Indianapolis branch of the NAACP is the local branch of one of the oldest civil rights organizations in the United States.
62. The NAACP is dedicated to protection and enhancement of the civil rights, including voting rights, of African Americans and other minorities.
63. The NAACP has many members in Marion County.
64. The NAACP believes it is essential to mobilize voters to participate in elections so as to ensure continued enforcement and expansion of civil rights laws and so as to ensure the continued protection of minorities.
65. Senate Enrolled Act No. 483 will make it more difficult for NAACP members and other voters to participate in elections because it will impose artificial barriers onto those who wish to vote but who do not have the appropriate identification.
66. The NAACP is vehemently opposed to any fee which smacks of a “poll tax” and inasmuch as persons will have to pay to obtain original copies of birth certificates in order to exercise the right to vote, this is strongly objected to by the NAACP.
67. The NAACP therefore has an interest in ensuring that as many persons as possible are able to vote and ensuring that elections are actually free and open.
68. Senate Enrolled Act No. 483 impedes the ability of persons to vote. This negatively impacts not only the members of the Indianapolis Branch of the NAACP, but it directly, and negatively, impacts the interests of the Indianapolis Branch of the NAACP inasmuch as it dilutes and diminishes its

political effectiveness because it is unable to mobilize as many voters to effectuate its goals and purposes.

Indiana Coalition on Housing and Homeless Issues

69. Indiana Coalition on Housing and Homeless Issues (ICHHI) is a statewide non-profit organization that is committed to assisting Indiana residents in obtaining safe, decent, affordable housing, and in combating homelessness.
70. Its members consist of both service providers and homeless and impoverished individuals in Marion County and the remainder of the State of Indiana.
71. ICHHI is aware that many homeless and impoverished persons do not have valid driver's licenses and state identification cards.
72. Obtaining these from the Bureau of Motor Vehicles will be expensive and time consuming because of the documents required by the Bureau of Motor Vehicles.
73. Moreover, homeless persons may not have the documents required by the Bureau of Motor Vehicles to establish their identities
74. If the individual was born out of state and needs to procure a new birth certificate it may be particularly difficult and expensive to procure the birth certificate.
75. Homeless persons frequently have transportation difficulties and therefore it will be extremely difficult and it will be expensive for a homeless person who is allowed to vote on a provisional ballot to get to where he or she can obtain identification and then to the Clerk's office to present that identification.
76. This will certainly discourage homeless persons from voting.

77. Senate Enrolled Act No. 483 will prohibit members of ICHHI from voting because they will not be able to timely satisfy the identification requirements or they will not be able to navigate the steps necessary to have their vote counted.
78. In addition to denying members of ICHHI the opportunity to vote, Senate Bill No 483 will also directly injure ICHHI. If homeless persons are even more politically marginalized, ICHHI's general effectiveness as their voice and advocate will be reduced as well.

Joseph Simpson

79. Joseph E. Simpson is a member of the Washington Township Board in Marion County, to which he was elected by the voters of the Township. most recently in the general election in 2004. He has served three terms.
80. Joseph Simpson is also a precinct committee person, to which he was elected at the primary election in 2003.
81. He is aware that there are voters in his district who have voted in the past without possessing the identification now required by Senate Enrolled Act No. 483.
82. He is aware that some of these voters will be discouraged from obtaining the identification required by Senate Enrolled Act No. 483 because of the cost and/or inconvenience of obtaining the underlying documents necessary to obtain an identification card from the Bureau of Motor Vehicles.
83. He is interested in maximizing the number of persons voting in his precinct both because he wants to continue in office and because, as a citizen, he is interested in maximizing the number of persons who exercise their right to vote.

84. As a citizen, Joseph Simpson is opposed to having to show identification to vote inasmuch as he is a long term registered voter and has a voter registration card issued by the County which imposes criminal penalties for misuse. He therefore does not see the need to present picture identification, especially inasmuch as he has resided in his district for quite some time. He objects to having to display picture identification in order to vote.

General allegations

85. On information and belief there has not been any widespread identity fraud in Indiana among voters personally appearing to vote and the proponents of Senate Enrolled Act No. 483 did not produce evidence of any such fraud.

86. Senate Enrolled Act No. 483 will impede the ability of persons to vote.

87. Under Indiana law, the Marion County Election Board is responsible for conducting all elections in Marion County, Indiana Code § 3-6-5-14, and will therefore enforce the Act in the County.

88. The actions of the Marion County Election Board will cause plaintiffs irreparable harm for which there is no adequate remedy at law.

89. At all times defendants have acted, and will act, under color of state law.

Legal claims

90. Senate Enrolled Act No. 483 requires some, but not all, voters to produce “proof of identification.” Inasmuch as all citizens are not required to produce “proof of identification” the requirement violates the Voting Rights Act, 42 U.S.C. § 1971(a)(2)(A), which does not allow officials:

in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice or procedure different from the standards, practices, or procedures applied under such law or

laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote.

91. Senate Enrolled Act No. 483 requires some, but not all, voters to produce “proof of identification.”

Inasmuch as all citizens are not required to produce “proof of identification” the requirement of such identification is therefore not an essential requirement to vote in Indiana. Senate Enrolled Act No. 483 therefore violates the Voting Rights Act, 42 U.S.C. § 1971(a)(2)(B) which prohibits officials from denying:

the right to any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such an election.

92. Although Senate Enrolled Act No. 483 provides that the Bureau of Motor Vehicles will provide a state identification card without cost, there are costs attendant to obtaining the documents which the Bureau of Motor Vehicles requires in order to obtain the card. This is a *de facto* poll tax which violates the Equal Protection Clause of the United States Constitution.

93. Regardless of the cost, Senate Enrolled Act No. 483 imposes unreasonable and irrational burdens and requirements on the fundamental right to vote and is unconstitutional as violating the Fourteenth Amendment to the United States Constitution.

94. Senate Enrolled Act No. 483 creates an election system which is neither free nor equal in violation of Art. 2, § 1 of the Indiana Constitution.

WHEREFORE, plaintiffs request that this Court:

1. Enter a declaratory judgment that Senate Enrolled Act No. 483 is unlawful for the reasons noted above.

2. Enter a preliminary injunction, later to be made permanent, enjoining Senate Enrolled Act No 483 insofar as it requires the “proof of identification” as defined in Section 1 of the Bill.
3. Award plaintiffs their costs and reasonable attorney’s fees pursuant to 42 U.S.C. § 1988.
4. Award all other proper relief.

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