

Amicus Briefs filed in Crawford v. Marion County Election Board

Briefs Demonstrating the Absence of In-Person Voter Fraud

Brief of Brennan Center for Justice; Demos: A Network for Ideas and Action; Lorraine C. Minnite; Project Vote; and People for the American Way Foundation. This brief examines the national evidence and studies of in-person voter fraud, demonstrates the extremely rare incidence of such fraud, debunks supposed examples of such fraud, and argues that Indiana's law is not justified by the facts or the law. The law firm of Paul, Weiss, Rifkind, Wharton & Garrison is co-counsel on this brief.

Brief of Secretaries of State. This brief, joined by Secretaries of State Jennifer Brunner of Ohio, Robin Carnahan of Missouri, and Deborah Markowitz of Vermont, and former Secretaries Cathy Cox of Georgia and John Willis of Maryland, draws on the Secretaries' experience in running elections and argues that in-person voter fraud is extremely rare (and has not occurred in their jurisdictions), that voter ID is not needed to ensure fraud-free elections, and that voter ID requirements both disenfranchise voters and burden election officials. The law firm of Davis, Polk & Wardwell is counsel on this brief.

Brief of ACORN. This brief discusses the partisan attacks on voter registration efforts, including those run by ACORN, and demonstrates that those attacks are baseless and have been used to deceive the public and state governments into thinking that voter impersonation fraud is a true problem.

Briefs Demonstrating the Disenfranchising Impact of Voter ID Laws

Brief of Political and Social Scientists. This brief, filed by Professors Michael Alvarez, Lonna Rae Atkeson, Delia Bailey, Thad Hall, and Andrew Martin, puts forward all the extant evidence of the impact of photo ID requirements for voting and concludes that racial minorities and older people are less likely to have such photo ID, photo ID requirements depress voter turnout, and voter ID laws are subject to arbitrary and discriminatory enforcement by poll workers.

Brief of Historians and Social Scientists. This brief, whose signatories include 29 historians and social scientists (a veritable "who's who" in the scholarship of race and politics), presents an overview of post-Reconstruction election laws, primarily in the South, pointing to the disjuncture between the often high-minded arguments presented by their proponents and the laws' actual highly partisan or racial effects. It then draws striking parallels between some of those laws and the supporting arguments and probable effects of the 2005 Indiana photo ID law, the most stringent current voter ID law in the nation. The Campaign Legal Center and Law Professor Charles Ogletree are counsel on this brief.

Brief of the League of Women Voters of Indiana. This brief describes the struggles of individual Hoosiers who want to vote but are unable to do so because of the Indiana voter ID Law. Among others, it includes the stories of 92 year-old Indiana businesswoman Mary Eble, daughter of a suffragist, who cannot cast her ballot in person because she has no Indiana driver's

license or ID card and Karen Webster, a newly married working mom, who was required to cast a provisional ballot that was ultimately not counted even though she had ID in her new name and copy of her marriage certificate.

Brief for the Lawyers' Committee for Civil Rights Under Law, Service Employees International Union, American Federation of State, County and Municipal Employees, Common Cause, Jewish Council for Public Affairs, National Council of Jewish Women, and American Jewish Committee. This brief, on behalf of labor, civic, religious, and civil rights groups, describes the disenfranchising impact of voter ID laws, especially on people of color, low-income citizens, senior citizens, and students, including the difficulties many individuals face in obtaining appropriate ID.

Brief of the AARP. This brief discusses the negative impact strict photo ID laws have on older Americans and those with disabilities.

Brief of the NAACP Legal Defense and Education Fund. This brief discusses the severe impact of voter ID laws on African American communities, in particular in areas of concentrated poverty.

Brief of the Asian American Legal Defense and Educational Fund and 25 Other Groups. This brief, filed on behalf of AALDEF and twenty-five Asian American groups that have monitored elections across the country over the last decade, contends that voter ID requirements have discriminatory impacts on Asian American voters. The brief cites numerous examples from 2004, when the groups monitored 200 poll sites and conducted a multilingual exit poll of 10,789 Asian American voters in 23 cities in eight states, of how voter ID checks have been used to disenfranchise eligible Asian American voters.

Brief of the Asian American Justice Center and 25 Other Japanese, Chinese, Filipino, Korean, Hmong, South Asian, Pacific Islander, Cambodian, Laotian, and Vietnamese American Public Interest Groups. This brief argues that Indiana's voter ID law disproportionately deprives Asian Americans of the right to vote and provides an invitation to discriminate against Asian American voters.

Brief of the Mexican American Legal Defense and Educational Fund. This brief discusses the impact of voter ID laws on Latino voters and highlights the Arizona voter ID law as an example of similarly restrictive laws aimed at minority voters.

Brief of the National Congress of American Indians, Navajo Nation, and Agnes Laughter. This brief discusses the severe and disproportionate burden voter ID laws place on American Indian and Alaska Native voters. Many Native American voters, particularly elders, continue to live traditional lifestyles in small communities in rural and remote areas where they rely on a combination of tribal and federal services that do not require any form of identification. Nationally, at least one in five voting-age Native Americans lacks a photo ID issued by a state or the federal government.

Brief of the National Law Center on Homelessness & Poverty. This brief, prepared with the assistance of Sidley & Austin, explains the burden Indiana’s voter ID law places on the right of homeless persons to vote, as many homeless persons cannot obtain state identification cards due to lack of a residence or the documentation needed to obtain such cards.

Brief of Youth and Student Groups. This brief, on behalf of the National Black, Asian, and Latino Law Student Associations, Rock the Vote, and other groups, discusses the disproportionately negative impact voter ID requirements have on young and student voters.

Brief of Congressman Keith Ellison. This brief, supported by other members of the Congressional Black Caucus, explains that Indiana’s voter ID law is an unconstitutional poll tax that especially hurts African Americans and describes Congress’s longstanding disapproval of poll taxes and voter ID requirements.

Brief of the Rutherford Institute. This brief argues that voter ID impinges on citizens’ privacy and discusses the danger to citizen privacy of using REAL ID for voting.

Brief of the Electronic Privacy Information Center. This brief, filed in conjunction with legal scholars and technical experts, explains that, "Not only has the state failed to establish the need for the voter identification law or to address the disparate impact of the law, the state's voter ID system is imperfect, and relies on a flawed federal identification system" called REAL ID.

Brief of the Cyber Privacy Project and Others. This brief, prepared by Bingham McCutchen LLP and coordinated by CPP Director Richard Sobel, argues that, before an election official may demand government-issued photo identification, there must be at least a reasonable suspicion of criminal activity and that this standard is not met for almost all voters. It also applies Section 2 of the Fourteenth Amendment, which calls for a reduction in the size of a state’s Congressional delegation when the state abridges its citizens’ voting rights.

Briefs Discussing the Appropriate Legal Standard

Brief of Professor Rick Hasen. This brief (1) describes the rise in litigation and controversy over election administration since the 2000 Florida election fiasco; (2) explains the requirement under the Supreme Court’s existing precedent that election laws be “reasonably tailored” to address state interests; and (3) argues that the Indiana law is not reasonably tailored to any interest in preventing election fraud, especially given the state’s concession that no one in Indiana has ever been prosecuted for impersonation voter fraud. The law firm of Schulte Roth & Zabel is co-counsel on this brief.

Brief of Professors Christopher Elmendorf and Daniel Tokaji. This brief discusses the appropriate legal standard for deciding election-related cases, explaining that burdens on the right to vote may not be upheld unless reasonably necessary to serve important government interests, arguing that the lower court’s ruling should be vacated and the case remanded, and describing the legal errors made by the Seventh Circuit.

Brief of International Law Scholars. This brief, on behalf of Frederic Schaeffer, Louis Massicote, Toby Moore, and others, argues that the requirements in other countries do not provide support for Indiana’s voter ID law. Amici are represented by the law firm of Munger, Tolles & Olsen.

Brief of Senator Dianne Feinstein and Representatives Robert Brady and Zoe Lofgren. This brief, filed by the chairs of the congressional committees and subcommittee with jurisdiction over election administration, discusses the compromise Congress reached on the issue of voter identification in the Help America Vote Act of 2002 (“HAVA”) and argues that Indiana’s strict photo ID law is unlawful because it is preempted by HAVA’s much more limited voter ID requirement.

Brief In Support of Neither Side Discussing the Appropriate Legal Standard

Brief of Professor Erwin Chemerinsky. This brief argues that the appropriate legal standard for deciding cases involving the fundamental right to vote is the strict scrutiny applied in *Dunn v. Blumstein*. The law firm of Cravath, Swaine & Moore is co-counsel on this brief.