

**UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

No. 06-2218:)	
)	
WILLIAM CRAWFORD, et al.,)	
)	
Plaintiffs-Appellants,	)	Appeal from the United States
	)	District Court for the Southern
	)	District of Indiana, Indianapolis
v.	)	Division
)	
MARION COUNTY ELECTION	)	Cause below: No. 1:05-CV-634
BOARD, et al.,)	
)	
Defendant-Appellee.	)	Hon. Sarah Evans Barker, Judge

No. 06-2317:)	
)	
INDIANA DEMOCRATIC PARTY,)	
et al.,	)	Appeal from the United States
	)	District Court for the Southern
Plaintiffs-Appellants,	)	District of Indiana, Indianapolis
	)	Division
)	
v.	)	Cause below: No. 1:05-CV-634
)	
TODD ROKITA, et al.,)	
)	
Defendants-Appellees.	)	Hon. Sarah Evans Barker, Judge

**BRIEF OF THE LEAGUE OF WOMEN VOTERS OF INDIANA, INC. AND THE
LEAGUE OF VOTERS OF INDIANAPOLIS, INC. AS AMICI CURIAE
IN SUPPORT OF PLAINTIFFS-APPELLANTS AND REVERSAL**

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CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 06-2218 & 06-2317

Short Caption: Crawford et al. v. Rokita, et al. & Marion Co. Democratic Party, et al. v. Rokita, et al.

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League of Women Voters of Indiana, Inc. and the League of Women Voters of Indianapolis, Inc.

- (2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

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- (3) If the party or amicus is a corporation:

- i) Identify all its parent corporations, if any; and

None

- ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

None

Attorney's Signature:  Date: June 25, 2006

Attorney's Printed Name: Karen Celestino-Horseman

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). Yes No

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IDENTITY, INTEREST AND AUTHORITY TO FILE AS AMICI

With the consent of all parties and pursuant to F.R.A.P. 29(a), the League of Women Voters of Indianapolis, Inc. and the League of Women Voters of Indianapolis, Inc. (“League”) respectfully submit this brief as amici curiae in support of the Appellants and urges reversal of the district court’s judgment.

The League is a nonpartisan political organization. It is nonpartisan in that it neither supports nor opposes candidates for office at any level of government nor does it support or oppose any political party. The League is political only in the sense that it seeks to influence policy through education and advocacy. It is a grassroots organization directed by its members who work to “provide[] statewide voter services resources and information”; “monitor[] state governmental activity”; and, “advocate[] for governmental policies and procedures that support League positions.” The League has evolved from an organization focused upon the needs of women and the voter training of women to an organization concerned with the voter training of Hoosiers. The League of Women Voters is committed to assisting all persons in exercising their fundamental right to vote, regardless of political affiliation.

ARGUMENT

As discussed in the principal briefs of appellants, while the U.S. Constitution does not expressly provide that the right to vote is a fundamental right, the ability to vote by Americans is the cornerstone of our democracy as granted to all age-appropriate citizens by the First and Fourteenth Amendments. The Democratic Party argues that this Court should analyze SEA 483 (“Photo ID Law”) under a strict scrutiny analysis as the Photo ID Law directly impacts the right to vote while the remaining plaintiffs in the other

principal brief appear to accept the analysis set forth in *Burdick v. Takushi*, 504 U.S. 533, 534 (1992) (citations omitted). The Democratic Party also argues that the Photo ID Law is facially invalid in that it is void-for-vagueness and is overly broad.

Regardless of what analysis is used, the League maintains that the burden upon voters is greater than what is allowed by the U.S. Constitution.

I THE PHOTO ID LAW UNNECESSARILY BURDENS VOTERS

Indiana law now provides that a voter shall be challenged and required to vote a provisional ballot if: (1) “the voter is unable or declines to present the Proof of Identification or (2) a member of the precinct election board determines that the Proof of Identification provided by the voter does not qualify as Proof of Identification under IC 3-5-2-40.5.” I.C. 3-11-8-25.1(d)(1)-(2). *See also*, I.C. 3-10-1-7.2(c)(1)-(2). “Proof of Identification” is defined as follows:

"Proof of identification" refers to a document that satisfies all the following:

- (1) 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.
- (2) The document shows a photograph of the individual to whom the document was issued.
- (3) 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.
- (4) The document was issued by the United States or the state of Indiana.

I.C. 3-5-2-40.5.

The challenges of most concern to the League are those challenges to a voter regarding a claim that 1) the name fails to “conform” to the name listed in the poll book used by the precinct election board on election day; 2) the document does not contain a photo that appears to be a photo of the voter; and 3) there is no direction regarding use of other information contained within the Proof of Identification. These concerns, coupled with the fact that the persons enforcing the Photo ID Law are political appointees of political parties sponsoring candidates in the elections utilizing the Photo ID Law, means that voters will be unduly burdened by a system that allows each precinct to develop its own standards to determine who will be allowed to vote. Further, voters who are required to cast a provisional ballot are unnecessarily burdened because they will be required to take additional time away from work, home and family just to make certain that their vote is counted.

This brief examines the mechanism of enforcement, the Photo ID Law itself and the impact of provisional balloting, all of which, when taken together, unduly burden voters.

A. THE PERSONS CHARGED WITH ENFORCING THE PHOTO ID LAW ARE POLITICAL APPOINTEES OF POLITICAL PARTIES PUSHING POLITICAL AGENDAS

When determining the constitutionality of the Photo ID Law, one must necessarily also examine the means by which it will be enforced. On Election Day in Indiana, the precinct election board members charged with overseeing the election in each precinct and the partisan political challengers posted at each precinct will be the persons seeking

enforcement of the Photo ID Law. The League maintains that the partisan politics involved in enforcing the Photo ID Law coupled with the failure of the Photo ID Law to provide uniform standards to guide enforcement, increases the undue burden imposed upon voters.

By statute, a member of the precinct election board can challenge the voter based upon the Proof of Identification. I.C. 3-10-1-7.2(c); I.C. 3-11-8-25.1(d). The precinct election board consists of one inspector and two judges. I.C. 3-6-6-1(b). The chairmen of the Republican and Democratic parties for the county each are entitled to select one judge. I.C. 3-6-6-1(c). The inspector is selected by “[t]he county chairman of the major political party whose candidate for the office of secretary of state received the highest vote in the county at the last election.” I.C. 3-6-6-8. It is the inspector who serves as chairman of the precinct election board. I.C. 3-6-6-1(e). Thus two of the three members of the precinct election board are appointees of the same major political party.

The requirements to be a member of the precinct election board are minimal. The individual must be able to read, write and speak English; not have bet on the outcome of the election; not be a candidate for office nor be closely related to a candidate for office nor be the campaign chairman or treasurer for a candidate.¹ I.C. 3-6-6-7(a)(1)-(5).

¹ Additionally, I.C. 3-6-6-7(b) requires the precinct election board members to attend training required by the County Election Board. While I.C. 3-6-6-40(b) requires the County Election Board to mandate inspectors to attend the training, each County Election Board is left to decide whether to require the other precinct election board members to attend the training. I.C. 3-6-6-40(b). Indiana law requires the County Election Board to provide training “regarding [the] making [of] polling places and voting systems accessible to elderly voters and disabled voters; and . . . the voting systems used in the county.” As regards training on duties involving the Photo ID Law, it is completely discretionary with the County Election Board as to whether the precinct election boards will be trained in how to enforce the law. I.C. 3-6-6-40(c).

In addition to appointments of the precinct election board made by the major political parties, each political party with a candidate on the ballot in that precinct is entitled to appoint a challenger. I.C. 3-6-7-1. In 2005, the Indiana legislature changed the law to allow the political challenger access to inside the polling place which means the political challenger can stand with the precinct election board when the voter is showing Proof of Identification to the precinct election board. I.C. 3-11-8-15(a)(5). Further, the requirements to serve as a challenger are even more minimal than the requirements to serve as a member of the precinct election board. A challenger is only required to be at least 18 years of age, I.C. 3-6-7-1(c), and a registered voter in the county containing the precinct where the challenger is stationed. I.C. 3-6-7-1.7.²

I.C. 3-11-8-20 provides: "If a voter offering to vote is challenged by a challenger or by a member of the precinct election board, the person challenging the voter shall reduce the challenge to affidavit form, setting forth succinctly the reasons for the challenge." I.C. 3-11-8-22 states that a voter challenged under I.C. 3-11-8-20 may vote if

² The District Court declined to take the system of enforcement into account when reviewing the Photo ID Law, stating:

Several of the concerns raised by the LWV are directly related to concerns that political challengers present at the polls could challenge a voter based on a perceived deficiency in their photo identification. As the LWV notes in its brief: "The determination of whether a challenge by a political challenger requires a voter to cast a provisional ballot has not yet been litigated." LWV Brief at 6. The political challenger statute is not at issue in this case. Accordingly, these concerns are not material to our determination and have not been addressed by the Court.

Crawford, et al. v. Rokita, Cause No: 1:05-CV-0634-SEB-VSS, Slip Op. at 113, n. 104 (S.D. Ind. April 14, 2006). The League respectfully disagrees with the District Court in that the potential for increasing the burden upon voters and the arbitrary and capricious enforcement of the Photo ID Law will be increased with challenges made by persons appointed solely for the purpose of promoting the interests of political parties.

the voter completes an affidavit. I.C. 3-11-8-25(d), contained within the Photo ID law, provides that if a voter executes a challenged voter's affidavit pursuant to I.C. 3-11-8-22, the voter is to be given a provisional ballot.

Indiana law sets forth no limitations upon the types of challenges that can be made by a political challenger. It could well be that voters will be challenged by the political challenger and forced to cast a provisional ballot even if no member of the precinct election board decides to challenge the voter. The possibility of challenges being made for political reasons already exists among the members of the precinct election board who serve at the behest of the county party chairman. Add to that mix an individual who is titled "challenger" and who is there only to represent a political party, and the possibility of extensive challenges exist under the Photo ID Law.

B. THE PHOTO ID LAW UNNECESSARILY BURDENS VOTERS IN THAT IT FAILS TO PROVIDE A UNIFORM SYSTEM OF DEFINING AND ENFORCING CONFORMANCE

The first issue raised is what does it mean for a name on the Proof of Identification to "conform" with the poll list.

Webster's II New College Dictionary defines "conform" to mean "to be similar in form or character" or "to . . . be in compliance." Or, as observed by the District Court: "Similarly, the American Heritage Dictionary of the English Language (4th Ed. 2000) defines "conform" as: "To correspond in form or character; be similar." *Crawford, et al.*, Slip Op. at 107, n. 101. However, given the advent of the internet, there are many online dictionaries which define "conform." In addition to being similar or corresponding in

form or character, “conform” has also been defined to mean “to be the same as or very similar” *Encarta, available at* <http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861599525> (Last visited 6/21/06) (emphasis added); “of the same form” *Onelook, available at* <http://www.onelook.com/?other=web1913&w=Conform> (Last visited 6/21/06) (emphasis added); “[t]o shape in accordance with; to make like; to bring into harmony or agreement with.” *Everything2.com available at* http://everything2.com/index.pl?node_id=1379037 (Last visited 6/21/06) (emphasis added).

Because there is no statutory definition of “conform,” each individual with the authority to make a challenge will decide for himself or herself whether “conform” means “the same as” or “like” or “of the same form” or whether it means “similar.” The individuals making these decisions are not required to have legal training or any type of advanced education. *See*, I.C. 3-6-6-7(a)(1)-(5). Without a statutory definition of “conform,” the precinct election boards can act with unbridled discretion, including applying varying definitions to different individuals, from precinct to precinct.

For example, each precinct will determine its own definition of “conform” in the cases of voters whose name changes because of marriage. I.C. 3-7-41-2 allows a voter to correct his or her name on the poll list on election day.³ However, even with a statute expressly covering this type of situation, according to Brad King, co-director of the

³ I.C. 3-7-41-2 provides:

A voter who wishes to indicate that the voter's name has changed may also write the necessary information concerning the name change on the poll list under IC 3-11-8-25 before the person receives a ballot. The person may then vote if otherwise qualified.

Indiana Election Division of the Office of the Secretary of State, a challenge could result, depending upon how one interprets the word “conform”:

Q But if all she has is a driver's license and her name on the driver's license is now Jane Davis but her name on the polls is Jane Smith, how is she going to prove that she's Jane Smith under the law?

A Indiana law prior to Senate Bill 483 has always permitted -- in recent years has permitted an individual to indicate a change of name on the poll list. So, for example, if the poll list reflected a woman's maiden name and the woman chose to change it upon marriage, Indiana law permits the voter to indicate that change of name on the poll list itself. It's considered sufficient grounds for the county registration office to then change county registration record to reflect that new name. And in that scenario I would guess that the individual could make that change of name indicated on the poll list and present the identification that otherwise conformed to the definitions in 3-5-2.

Q But if someone, a challenger, decided differently or felt differently, that person could be challenged and be required to vote provisionally?

A Certainly. The individual could be challenged and then it would be up to the county election board to determine if there were good cause and proper grounds for the provisional ballot.

Q But that voter would have to make a personal appearance before the county election board?

A Yes. If the precinct election board determined that the document presented did not conform with the requirements in 3-5-2-40.5.

(App. 1-2, Dep. Of Brad King).⁴

⁴ All Appendix references contained within this brief refer to the Appendix attached to this document containing exhibits which were filed with the District Court and referenced by the District Court. *See*, Docket Sheet, Entry No. 72. The League moved to intervene in this action but the motion was denied by the District Court which instead granted the League leave to file as *amici curiae*. *See*, Docket Sheet, Entry No. 54.

Thus, by statute, a woman could change her name on the poll list so that it is the same name as is on her driver's license but, according to King, it will be up to each precinct election board and/or challenger to determine whether the voter will have to vote a provisional ballot. The standard employed will be personalized to each precinct election board which means women in one precinct might be able to vote a regular ballot after changing their names on the poll list while women confronted with the same circumstances in another precinct may have to cast a provisional ballot.

Further, there are examples of voters whose last names are incorrectly spelled on their state issued identification but whose names are spelled correctly on the poll list. One such example of an incorrect name on an Indiana driver's license is that of Tracy Heaton de Martinez. In recognition of the Mexican custom of combining a woman's maiden name with the name of her husband, Tracy Heaton de Martinez incorporated her maiden name and the name of her husband. (App. 5-6, Aff. Of Tracy Heaton de Martinez, ¶ 4). While the Social Security Administration has correctly identified Tracy as "Tracy Heaton de Martinez," the Indiana Bureau of Motor Vehicles ("BMV") has identified Tracy as "TRACY HEATON DEMARTINEZ." (App. 6, Aff. Of Tracy Heaton de Martinez, ¶¶ 5 & 7). When informed of its error in spelling her last name, the BMV told her that it was unable to change her license. (App. 6, Aff. Of Tracy Heaton de Martinez, ¶5). On the polling list, she is identified as "TRACY HEATON DE MARTINEZ." (App. 6, Aff. Of Tracy Heaton de Martinez, ¶ 7).

For Ms. Heaton de Martinez, her name on her photo identification will not match the poll list which means she may be subject to challenge. If she changes her name on

the poll list to reflect her driver's license, it will require her to adopt a misspelling of her last name and even then, she may not be safe from challenge.

Kate Sweeney Bell cannot get the BMV to remove the hyphenated name on her driver's license. Ms. Bell is identified on her Indiana driver's license as "KATE. E. SWEENEY-BELL." (App. 7-8, Aff. Of Kate Sweeney Bell, ¶ 3). Ms. Bell's legal name is not hyphenated and she has asked the BMV on more than one occasion to remove the hyphen; however, the BMV has refused to honor her request. *Id.* Ms. Bell's name on her voter registration card appears as "KATHERINE E. SWEENEY BELL." (App. 8, Aff. Of Kate Sweeney Bell, ¶ 4). Without the hyphen, her name on the poll list does not match the name on her driver's license and again, as with Ms. Heaton de Martinez, changing Ms. Bell's name on the poll list might solve the problem and help the poll list match with her driver's license but it would require her to intentionally misspell her name.

In addition to female voters such as Ms. Heaton de Martinez and Ms. Bell, there are women such as Cordelia Lewis-Burks who has used a combination of names. Following her marriage in 1999, her name became Cordelia Lewis-Burks, "Lewis" being her last name before marriage. (App. 9, Aff. Of Cordelia Lewis-Burks, ¶ 4). The full name listed on Ms. Burks' driver's license is "CORDELIA LEWIS-BURKS." (App. 10, Aff. Of Cordelia Lewis-Burks, ¶ 5). The name on her voter registration card is "CORDELIA LEWIS BURKS." (App. 10, Aff. Of Cordelia Lewis-Burks, ¶ 6). Again, as previously discussed, Ms. Lewis-Burks faces possible challenge under the Photo ID law even if she should change her name on the poll book. Further, Ms. Lewis-Burks is an African-American who lives in a precinct that is predominantly African-American.

(App. 10, Aff. Of Cordelia Lewis-Burks, ¶ 8). Should any political party attempt to dilute the voters of a particular ethnic group, it is women such as Ms. Lewis-Burks who will face the greater number of challenges.

Indiana has adopted a new statewide voter registration software statewide. (Ex. G, Aff. Of Joel Miller, ¶ 3).⁵ While the new software will be able to incorporate a hyphen in the last name and properly alphabetize the name, the current voter registration program in Marion County does not incorporate a hyphen in hyphenated last names because the current computer system awkwardly alphabetizes hyphenated names. (App. 12, Aff. Of Joel Miller, ¶ 5). Prior to the adoption of the new statewide voter registration software, each Indiana county had its own voter registration program and independently decided how hyphenated names, three part last names, etc. are handled. (App. 12, Aff. Of Joel Miller, ¶ 7). Throughout Indiana there are likely hundreds, perhaps thousands, of female registered voters whose last name is hyphenated on their driver's license, but whose last name is not hyphenated on the voter registration list through no fault of the women. Once registered to vote, the law does not require these women to reregister to vote because there has been a software change that now allows a hyphenated name to be alphabetized

Most of these women will not realize they cannot comply with the Photo ID law until a challenge is actually made on election day. Further, simply because a voter is not challenged in one election does not mean she will not be challenged in a subsequent

⁵ The statewide voter registration program was put into place after the execution of Mr. Miller's affidavit.

election, depending upon the whims of the precinct election board and/or the political challengers who can change from election to election.

In its decision, the District Court found the foregoing differences to be “trivial”

In all of the examples cited by the LWV, we note that the names listed on the photo identification are substantially similar to the names on the voter registration lists. The only potential anomalies Plaintiffs have identified are the trivial additions or subtractions of a hyphen or a space in a voter's last name. Neither the Democrats nor the LWV contends that "conform" means "identical," making us skeptical that the provided examples would run afoul of SEA 483's requirements.

Crawford, et al., Slip Op. at 107. Unfortunately, while mainstream dictionaries may not define “conform” to mean “identical,” there are, as previously discussed, other venues that do provide that “conform” means the “same as.” And, as previously discussed, the members of the precinct election board and the political challengers have minimal requirements and no legal training.

Further, while such challenges may sound “trivial,” they do occur, as testified to by Doris Ann Sadler, Secretary of the Marion County Election Board:

Q What happens if there is a challenge to a voter who has an I.D. but let's say, for example, the name is spelled wrong and it doesn't match the spelling of the name on the poll book, and there's nothing to prevent somebody from challenging that voter for that kind of what we might call trivial reason. Right?

A And we in fact have had some examples of challenges based on trivial reasons like that, yes.

Q And right now we don't know whether the law requires that person to vote provisionally or whether that person after signing a counteraffidavit saying I am who I said I am, I don't care if you misspelled it on the poll book, whether that person can vote provisionally regularly?

A No, because I have not examined that, again. And say "I." I don't mean to sound like I'm the sole decision maker here. So please don't take it that way. The election board.

Q Does the Election Division have no legal authority from your experience or your vantage point of enforcing a uniform statewide interpretation of ambiguous provisions of election law?

A They do not have that authority, in my opinion.

Q And that results in potentially 92 different interpretations of those ambiguous provisions?

A Yes, it does. And it also results in courts working out those differences.

(App. 3-4, Dep. Of Doris A. Sadler, p.p. 56-57).

Further, Sadler, also a member of the Marion County Election Board, appellee in this action, has acknowledged that the possibility of challenges being used for political reasons has increased with the adoption of the Photo ID Law:

Q So your answer to my question that this new law won't slow down the process is predicated on the assumption that there will not be a concerted challenge program initiated or undertaken by one of the political parties.

A That would be an accurate statement, yes.

Q But there's no assurance that that will not happen, is there?

A There is no assurance, no.

Q In fact, the opportunities for presenting these type of challenges have now increased by virtue of the relocation of the challenger and the new photo I.D. requirements?

A I would say that's an accurate statement, yes.

(App. 31-32, Dep. Of Doris A. Sadler, p.p. 49-50).

C. CHALLENGES ON THE BASIS OF PHYSICAL DIFFERENCES BETWEEN THE INDIVIDUAL AND THE PHOTO ON THE IDENTIFICATION ALSO PROVIDE THE OPPORTUNITY FOR UNBRIDLED DISCRETION IN ADMINISTERING THE PHOTO ID LAW SO AS TO UNDULY BURDEN VOTERS

The Photo ID law is silent about the criteria that are to be used to determine if an individual physically matches the photo on the government issued identification. Under the Indiana law, the “Proof of Identification” must “show[] a photograph of the individual to whom the document was issued.” I.C. 3-5-2-40.5(2). Thus the politically-appointed members of the precinct election board and challengers determine whether they are satisfied that the photo on the ID is a photo of the voter. While this sounds simple, as previously discussed, “trivial” challenges can still lawfully be made.

People, particularly women often change their appearance. There are many women whose hair color and/or hair styles at the time they present themselves to vote will not match the color and/or style of their hair in their driver’s license or state-issued identification card. Women and men change their eye color with contact lenses and also utilize the services of plastic surgeons. Appearances of both men and women frequently change.

For example, James E. Lingenfelter, Jr. is shown in the photo on his Indiana Driver’s license without any facial hair but now currently sports a goatee and moustache. (App. 13, Aff. Of James E. Lingenfelter, ¶ 3). Indianapolis voter Mary Ann Nowlin is wearing glasses in her driver’s license photo but now nearly always wears contact lenses. (App.15, Aff. Of Mary Ann Nowlin, ¶ 4).

In addition to the comparison of the photograph to the individual, there is also other data on a state identification card or driver’s license that may not match the

individual. Ms. Cordelia Lewis-Burks is shown in her driver's license photo with red hair. (App. 10, Aff. Of Cordelia Lewis-Burks, ¶ 9). Her hair color is identified on her driver's license as brown. *Id.* Ms. Nowlin's driver's license states that she is a brunette but in the photo on her license and in person, her hair is streaked with blonde. (App. 16, Aff. Of Mary Ann Nowlin, ¶ 6).

There are many men and women whose actual weight is not reflected on their driver's license. For example, the recorded weight on Ms. Nowlin's driver's license is approximately 50 pounds less than what Ms. Nowlin actually weighs. (App. 16, Aff. Of Mary Ann Nowlin, ¶ 5). For many people, being challenged on their actual weight or physical appearance could be embarrassing and humiliating. Challengers could discourage voters from voting and require them to cast a provisional ballot on the grounds that the weight or hair color or eye color of the individual presenting the identification does not match the weight or hair color or eye color of the individual described in the identification. After January 1, 2006, the driver's licenses of most Hoosiers are to be renewed every six years. During a six year period an individual can have an extraordinary change in their physical appearance.

As there are no guidelines whatsoever as to what discrepancies can be challenged regarding the differences between the photo, the descriptions contained on the identification and the current physical appearance of the individual voters, it will be left to the precinct election board and the political challengers to set their own parameters on what they might challenge.

D. GIVEN THE DISCRETION GRANTED BY THE PHOTO ID LAW REGARDING THE INTERPRETATIONS OF ITS PROVISIONS AND THE POLITICAL AGENDAS OF THE PERSONS ALLOWED TO ENFORCE THE PHOTO ID LAW, VOTERS WILL BE UNDULY BURDENED

The next issue raised is whether Indiana law provides any type of protection for voters against either well-intended but zealously strict interpretations of the Photo ID Law or politically motivated challenges. The District Court found:

We begin by noting that all precinct election officers are required to sign an oath of office with regard to the performance of their official duties, which includes the following affirmations: "I will faithfully and impartially discharge the duties of inspector (or judge, poll clerk, assistant poll clerk, or sheriff) of this precinct under the law" and "I will not knowingly permit any person to vote who is not qualified and will not knowingly refuse the vote of any qualified voter or cause any delay to any person offering to vote other than is necessary to procure satisfactory information of the qualification of that person as a voter." *Ind. Code § 3-6-6-23*.

Crawford, et al., Slip Op. at 108-109. As previously discussed a "trivial" challenge is within the discretion granted by the Photo ID Law, thus the oath provides no protection whatsoever in this regard to voters.

Under I.C. 3-11-8-21(1)-(5), whether it is a member of the precinct election board or the political party challenger, the individual making the challenge must provide the following information:

- (1) The name of the challenger.
- (2) The name of the person being challenged.
- (3) The reasons the challenger believes the person being challenged is not a legal voter in the precinct.
- (4) The source of the information provided under subdivision (3).

- (5) A statement that the challenger understands that making a false statement on the affidavit is punishable under the penalties of perjury.

To challenge a voter, the person making the challenge can affirm under penalties that he or she is not making a false statement because to find that Proof of Identification does not “conform” or a photo does not match is an opinion, not a statement of fact. Further, the members of the precinct election board and the political challengers are not required to be lawyers and thus will be inexperienced in performing statutory interpretation.

Given the discretion accorded the precinct election board and the political challengers, each and every precinct in Indiana has the potential of becoming a flashpoint of conflict. The persons who will ultimately be burdened by all of this will be the voters.

E. THE PROCESS TO HAVE A PROVISIONAL BALLOT COUNTED IS UNDULY BURDENSOME UPON VOTERS

Once a voter is challenged and casts a provisional ballot, to have the ballot counted, the voter must then make a second trip to appear before the election board. Although the challenged voter was required to complete a challenged voter affidavit at the polling place before casting the provisional ballot, *See*, I.C. 3-11-8-22, upon presenting herself or himself to the county election board or clerk of the circuit court, the voter must yet again execute another affidavit attesting that she/he was the voter who cast the provisional ballot and also present her/his Proof of Identification.

In the case of names not conforming or claims of physical appearance or physical descriptors not matching the voter who presents herself/himself, the voter has the choice of trying to get a corrected driver’s license or identification card or, trying to explain to

the county election board why the name is run together or has a hyphen or why the name has changed. Under I.C. 3-11.7-5-2.5, there is no provision that allows the election board to examine anything other than the “Proof of Identification.” Thus, for example, there is no provision for a recently married woman to provide a copy of her marriage license to document her change in name. Thus in addition to the trip to the clerk’s office, the voter may also have to travel to the BMV.

Further, there are some voters upon whom additional burdens will be imposed. The BMV does issue photo-exempt driver’s licenses and identification cards. One example of those seeking exemption from the photo requirement for religious reasons are women who wear a veil. These women can apply to be exempted from the requirement of having a photograph on their driver’s license or identification card but accompanying the application for photo exemption must be an additional document:

You must attach a letter certifying your religious belief from your Minister, Bishop, Elder or other leader of the religious sect of which you are a member explaining why you qualify for a photo-exempt driver license or ID card. The letter of certification MUST be on original letterhead and signed as stated above. Failure to provide such letter will result in denial of this application.

(App. 17-18, *Request for Photo Exempt License/Request for Photo Exempt Identification Card for Religious Reason*).

A woman who presents her photo exempt identification as Proof of Identification on election day will be challenged because she fails to present the statutorily defined government-issued form of identification with a photograph. She can cast a provisional ballot after completing a challenged voter affidavit. However, if she wants her vote counted, she must appear before the election board and complete yet another affidavit stating that she objects to being photographed for religious reasons. IC 3-11.7-5-

2.5(c)(2)(B). The woman has already provided evidence to the state of Indiana regarding her religious objections to being photographed and now must again execute an affidavit attesting to her religious objection to being photographed. For these women, this will be the process they must follow after each and every election.

The Photo ID law also allows a challenged voter to appear before the election board and attest that he or she is indigent and therefore unable to procure Proof of Identification. Nowhere does the Photo ID law define what constitutes indigency. Doris Ann Sadler, secretary of the Marion County Election Board and Clerk of the Marion County Superior and Circuit Courts, has acknowledged that Marion County has yet to determine what constitutes “indigency” for purposes of Proof of Identification:

Q: Next door is a homeless shelter where there are people who have zero money. There are other people out there who may be getting five hundred or six hundred dollars a month in Social Security and there's a whole range in between. So who in those are indigent for purposes of getting a free I.D. once we define what free I.D. means?

A: I don't know.

Q: How are we going to determine that?

A: Well, again, I think that's probably going to be a situation where the Marion County Election Board is going to have to set up some sort of decision-making process to apply under those circumstances. I'm well aware because I'm the clerk that courts and judges make those decisions all the time based on a number of issues. And sometimes, you know, a person getting three hundred dollars is described as being indigent.

Q: Yeah, but sometimes they're not.

A: And sometimes they're not, that's right. The point being that is nothing that I'm aware of that is set in stone that says that applies. So I think we're going to have to make some decisions.

(App. 19-20, Dep. Of Doris A. Salder, p.p. 38-39).

As every county will be allowed to determine its own standard as to what qualifies as indigency, the standard will vary from county to county and while some challenged voters may be held to be indigent in some counties and therefore their votes will be counted, there will be voters in the same economic circumstances who will be found not to be indigent in other counties and therefore their vote will not be counted.

F. THE PROCESS OF MAKING A PROVISIONAL BALLOT COUNT CARRIES A HIGH COST

Political scientists have long recognized that voting carries a cost and when that cost increases, fewer voters vote because they believe the benefit, i.e., having one's vote make a difference in the outcome, is outweighed by the cost.

The fundamental axiom of economic theory as it applies to voting is that citizens act rationally as they make their decisions about whether or not to vote (Downs, 1957). Just like any consumer purchase, people are hypothesized to consider both the costs and the benefits. If the benefits outweigh the costs, then the rational choice is to vote. Thus, if turnout is declining it must be because the benefits no longer outweigh the costs for many people.

Although this theory is simple and straightforward, in practice every voter probably weighs the various costs and benefits somewhat differently. A benefit for which one person might trudge through a blizzard in order to vote may not be considered a significant benefit by another person. Similarly, a cost that might seem incredibly burdensome to one individual might be only a minor annoyance to another.

(Ex. N, *Turnout Decline in the U.S. and other Advanced Industrial Democracies*, Wattenberg, Martin P., Center for the Study of Democracy, University of California Irvine, p. 2 (1998), <http://www.democ.uci.edu/publications/papersseriespre2001/marty.html> (Last visited June 23, 2006) .

An “important cost that must be considered is the time it takes to get to the polls and go through the physical process of voting.” (*Turnout Decline in the U.S. and other Advanced Industrial Democracies*, Wattenberg, Martin P., Center for the Study of Democracy, University of California Irvine, p. 3 (1998), <http://www.democ.uci.edu/publications/papersseriespre2001/marty.html> (Last visited June 23, 2006)). In the present case, the additional cost imposed by the Photo ID law upon those casting provisional ballots will discourage voters from voting in subsequent elections and from taking the steps necessary to have their ballot counted.

Voters of provisional ballot voters will be required to take additional steps to have their ballot counted by appearing before the county election board and, if necessary, gathering additional documentation. For example, working women with families already have family obligations competing for the time they can take away from work. The woman who is required to cast a provisional ballot will now have to take additional time away from work to gather documentation and/or appear before the county election board – time she may or may not have available to her. Finding transportation to and from various locations will not impose an additional hardship upon elderly persons, poor persons and others without vehicles or limited access to a vehicle.

Additionally, the time and effort taken to challenge a voter will be unduly burdensome upon voters who are not challenged, as has been publicly acknowledged by Indiana Secretary of State Todd Rokita: “The voters in line would have to wait while the poll workers look unsuccessfully for the name on the poll list, while the poll workers process the forms the voter fills out to cast a provisional ballot, while the provisional voter uses a booth to cast her ballot, and while the poll workers provide the provisional

voter with the information required by HAVA about the provisional ballot process.” (App. , Testimony of Indiana Secretary of State, Todd Rokita before the Committee on House Administration, p. 3).⁶ Further, Secretary Rokita testified that not only do the voters waiting in line behind a challenged voter pay a “cost” but there are costs other than waiting:

We also know that both poll workers and voters are discouraged by long lines and delays at the polls. Discouraged poll workers may decline to work again. Discouraged voters may decide that the lines are too long and may walk away without voting. We need to recognize that while of course voting is important and the integrity of the election process is critical, it is also true that for many non-activist voters outside this room, casting a ballot is only one of several important or critical things that they must get done on Election Day. For example, a parent picking up a child after school, a worker hurrying to her job, or a minister on the way to visit a patient at a hospital also have other important things to do the rest of the day.

(App. 23, Testimony of Indiana Secretary of State, Todd Rokita before the Committee on House Administration).

To impact the outcome of an election will not require wide scale challenges. For example, in Marion County there are 914 precincts. (App. 33, Dep. Of Delores A. Sadler, p. 26). If only five challenges are made throughout the day in each precinct, this would be a total of over 4570 provisional ballots. In 2004, Indiana Superintendent of Education Suellen Reed lost to her opponent in Marion County by only 778 votes. *See,*

⁶ Secretary of State Rokita also discussed how poll workers from the neighborhoods can best police those cases where a voter presents to vote but is not the person they are claiming to be or who gives a false address. However, as Secretary Rokita also acknowledges, finding poll workers is difficult (*See, Ex. A, Testimony of Indiana Secretary of State, Todd Rokita before the Committee on House Administration, p. 3*). So while the idea of having neighborhood residents available to casts challenges is good in theory, in actuality, where the voters of one party predominate over the voters of another party, the poll workers and/or inspector are recruited from areas outside the precinct.

General Election Summary, Marion County Election Board, <http://www2.indygov.org/elections/Gen2004/SummaryReport.html> (Last visited June 23, 2006).

The impact of provisional balloting can be even more devastating in local races. In 2003, there were several city-county council races with close margins. In City-County Council District 1, the vote difference between the victor and loser was 82 votes. In City-County Council District 12, the vote difference was 13 votes. In City-County Council District 16, the vote difference was five votes. In many of the races for offices in smaller cities such as Beech Grove the margins are just as tight and the politics even more local. *See*, 2003 Municipal Election Results, Marion County Election Board, <http://www2.indygov.org/elections/Gen2003/SummaryReport.html> (Last visited June 23, 2006). Thus to have an impact, the challenge of voters does not necessarily have to be widespread or even in great numbers.

CONCLUSION

Given the potential impact of the Photo ID law upon the voters of Indiana and the potential to abuse the process, the League of Women Voters of Indiana and the League of Women Voters of Indianapolis respectfully request that the judgment of the District Court be reversed.

Respectfully Submitted,

Signature

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**CERTIFICATE OF COMPLIANCE WITH
TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS,
AND TYPE STYLE REQUIREMENTS**

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 6,360 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii); and,

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Word 97-2002 in 12 point Times New Roman or

Dated: June 24, 2006

Respectfully Submitted,

Karen Celestino-Horseman

*Attorney for the League of Women Voters of
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Voters of Indianapolis, Inc. as Amici Curiae*

CERTIFICATE OF SERVICE

This is to certify that on June 26, 2006, I have this day caused a true and correct copy of the foregoing brief to be served via United States first class priority mail upon the Clerk of the Seventh Circuit Court of Appeals and United States first class mail upon the following:

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Voters of Indianapolis, Inc. as Amici Curiae*

**UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

No. 06-2218:)	
)	
WILLIAM CRAWFORD, et al.,)	
)	
Plaintiffs-Appellants,	)	Appeal from the United States
	)	District Court for the Southern
v.	)	District of Indiana, Indianapolis
	)	Division
MARION COUNTY ELECTION)	
BOARD,	)	Cause below: No. 1:05-CV-634
)	
Defendant-Appellee.	)	Hon. Sarah Evans Barker, Judge

No. 06-2317:)	
)	
INDIANA DEMOCRATIC PARTY,)	
et al.,	)	Appeal from the United States
	)	District Court for the Southern
Plaintiffs-Appellants,	)	District of Indiana, Indianapolis
	)	Division
v.)	
	)	Cause below: No. 1:05-CV-634
TODD ROKITA, et al.,)	
)	
Defendants-Appellees.	)	Hon. Sarah Evans Barker, Judge

**APPENDIX OF THE LEAGUE OF WOMEN VOTERS OF INDIANA, INC. AND
THE LEAGUE OF VOTERS OF INDIANAPOLIS, INC. AS AMICI CURIAE
IN SUPPORT OF PLAINTIFFS-APPELLANTS AND REVERSAL**

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1 on election day and processed so that that
2 information could be presented to the county
3 election board before 13 days had elapsed.

4 Q She would need to go to BMV and get a photo
5 identification card as Jane Smith?

6 A Or she might have a U.S. passport at home that she
7 had updated, for example.

8 Q Even though her name is no longer Jane Smith?

9 A She might have a document that meets the
10 requirements by conforming to the name on the voter
11 registration record other than what she has with
12 her at the polls.

13 Q But if all she has is a driver's license and her
14 name on the driver's license is now Jane Davis but
15 her name on the polls is Jane Smith, how is she
16 going to prove that she's Jane Smith under the law?

17 A Indiana law prior to Senate Bill 483 has always
18 permitted -- in recent years has permitted an
19 individual to indicate a change of name on the poll
20 list. So, for example, if the poll list reflected
21 a woman's maiden name and the woman chose to change
22 it upon marriage, Indiana law permits the voter to
23 indicate that change of name on the poll list
24 itself. It's considered sufficient grounds for the
25 county registration office to then change the

1 county registration record to reflect that new
2 name.

3 And in that scenario I would guess that the
4 individual could make that change of name indicated
5 on the poll list and present the identification
6 that otherwise conformed to the definitions in
7 3-5-2.

8 Q But if someone, a challenger, decided differently
9 or felt differently, that person could be
10 challenged and be required to vote provisionally?

11 A Certainly. The individual could be challenged and
12 then it would be up to the county election board to
13 determine if there were good cause and proper
14 grounds for the provisional ballot.

15 Q But that voter would have to make a personal
16 appearance before the county election board?

17 A Yes. If the precinct election board determined
18 that the document presented did not conform with
19 the requirements in 3-5-2-40.5.

20 Q What about a first time voter who registered by
21 mail, and this is subsequent to HAVA, who appears
22 at the polls without a photo I.D. but has a utility
23 bill, is that -- is a utility bill sufficient to
24 establish one's identity under the provisions under
25 the federal HAVA law for that sort of a person, a

1 whether they passed or didn't. So I will go back
2 and look at that and I think the County election
3 board --

4 Q Let us know through Mr. Webber what you find out.

5 A I will.

6 Q What happens if there is a challenge to a voter who
7 has an I.D. but let's say, for example, the name is
8 spelled wrong and it doesn't match the spelling of
9 the name on the poll book, and there's nothing to
10 prevent somebody from challenging that voter for
11 that kind of what we might call trivial reason.
12 Right?

13 A And we in fact have had some examples of challenges
14 based on trivial reasons like that, yes.

15 Q And right now we don't know whether the law
16 requires that person to vote provisionally or
17 whether that person after signing a
18 counteraffidavit saying I am who I said I am, I
19 don't care if you misspelled it on the poll book,
20 whether that person can vote provisionally or
21 regularly?

22 A No, because I have not examined that, again. And I
23 say "I." I don't mean to sound like I'm the sole
24 decision maker here. So please don't take it that
25 way. The election board.

- 1 Q Does the Election Division have no legal authority
2 from your experience or your vantage point of
3 enforcing a uniform statewide interpretation of
4 ambiguous provisions of election law?
- 5 A They do not have that authority, in my opinion.
- 6 Q And that results in potentially 92 different
7 interpretations of those ambiguous provisions?
- 8 A Yes, it does. And it also results in courts
9 working out those differences.
- 10 Q And does that cause you any concern, particularly
11 in light of the Bush v. Gore decision?
- 12 A In what sense?
- 13 Q In the sense that there are multiple
14 interpretations or differing interpretations of
15 provisions of election code.
- 16 A It largely concerns me because Marion County seems
17 to be the brunt of the defendants on those
18 particular issues. And, again, my concern is
19 Marion County centric, I'm afraid. But it does
20 have impact on the fact that -- and, again, this is
21 my opinion -- it does have impact on elections
22 generally and that someone in one county may have a
23 different voting experience than someone in a
24 different county, yes.
- 25 Q And if the state cannot -- if the State Election

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY, *et al.*,)
Plaintiffs,)
)
vs.) CAUSE NO: 1:05-CV-0634-SEB-VSS
)
TODD ROKITA, *et al.*,)
Defendants.)
-----)
WILLIAM CRAWFORD, *et al.*,)
Plaintiffs,)
)
vs.)
)
MARION COUNTY ELECTION BOARD,)
Defendant,)
and)
)
STATE OF INDIANA,)
Intervenor)

AFFIDAVIT OF TRACY HEATON DE MARTINEZ

Tracy Heaton de Martinez being first duly sworn upon her oath, hereby deposes and states as follows:

1. I am over the age of eighteen years, have personal knowledge of each of the matters stated in this affidavit, and am authorized and competent to make this affidavit.
2. I am a resident of Indianapolis, Indiana and a qualified Indiana voter. I am also a member of the League of Women Voters.
3. My legal name is Tracy Heaton de Martinez.
4. In 1991, I married Felipe Nathanael Martinez Gonzalez of Mexico.
“Martinez” is the last name of my husband’s father while “Gonzalez” is his mother’s

maiden name. The custom in Mexico is for the son's name to incorporate the last names of both parents, with the mother's name going last. Although his legal name in Martinez Gonzalez, in Mexico, men are commonly referred to by the last name of their father. In Mexico, after marriage, women keep both their maiden name and also take their husband's last name. In honor of my husband's Mexican ethnicity, my name incorporates my maiden last name and his last name.

5. My Indiana driver's license identifies me as "TRACY HEATON DEMARTINEZ." When I was first issued my license by the Indiana Bureau of Motor Vehicles, I informed them that they had incorrectly spelled my name but I was told it could not be changed. A copy of my driver's license is attached hereto as Attachment A.

6. I do not hold a valid passport.

7. The social security administration correctly identifies me as "Tracy Heaton de Martinez."

7. My name on the poll list is correctly listed as "TRACY HEATON DE MARTINEZ."

I affirm under the penalties for perjury that the foregoing representations are true.

Executed this 31st day of October 2005.


Tracy Heaton De Martinez

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY, *et al.*,)
Plaintiffs,)
)
vs.) CAUSE NO: 1:05-CV-0634-SEB-
)
TODD ROKITA, *et al.*,)
Defendants.)
-----)
WILLIAM CRAWFORD, *et al.*,)
Plaintiffs,)
)
vs.)
)
MARION COUNTY ELECTION BOARD,)
Defendant,)
and)
)
STATE OF INDIANA,)
Intervenor)

AFFIDAVIT OF KATE E. SWEENEY BELL

Kate E. Sweeney Bell being first duly sworn upon her oath, hereby depose and states as follows:

1. I am over the age of eighteen years, have personal knowledge of each of the matters stated in this affidavit, and am authorized and competent to make this affidavit.
2. My legal name is Katherine E. Sweeney Bell. In 1999, I married Jason Bell and began using both my maiden name and my husband's last name.
3. When the Indiana Bureau of Motor Vehicles issued me a driver's license following my marriage, the license contained the name "KATHERINE E. SWEENEY-BELL." At that time, I informed the BMV that there is no hyphen in my name but was

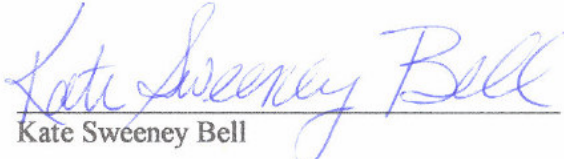
told it could not be changed. When I subsequently renewed my license and again told the BMV personnel that my name does not have a hyphen, I was told that because the original license contained this name, I could not change it. However, the license does identify me at "KATE E. SWEENEY BELL."

4. I am identified on my voter registration card as "KATHERINE E. SWEENEY BELL."

5. I am a political candidate for Center Township Assessor.

I affirm under the penalties for perjury that the foregoing representations are true.

Executed this 31st day of October 2003.


Kate Sweeney Bell

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY, *et al.*,)
Plaintiffs,)
)
vs.) CAUSE NO: 1:05-CV-0634-SEB-VSS
)
TODD ROKITA, *et al.*,)
Defendants.)
-----)
WILLIAM CRAWFORD, *et al.*,)
Plaintiffs,)
)
vs.)
)
MARION COUNTY ELECTION BOARD,)
Defendant,)
and)
)
STATE OF INDIANA,)
Intervenor)

AFFIDAVIT OF CORDELIA LEWIS-BURKS

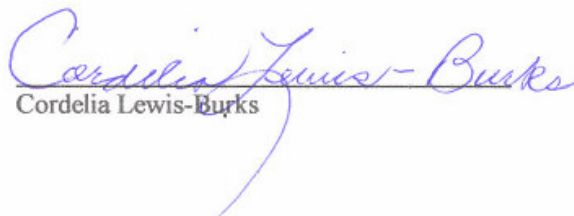
Cordelia Lewis-Burks being first duly sworn upon her oath, hereby deposes and states as follows:

1. I am over the age of eighteen years, have personal knowledge of each of the matters stated in this affidavit, and am authorized and competent to make this affidavit.
2. I am a resident of Indianapolis, Indiana and a qualified Indiana voter.
3. My name is Cordelia Lewis-Burks.
4. Prior to 1999, I was known as Cordelia Lewis. In 1999, I married Jesse Burks.

5. My Indiana driver's license identifies me as "CORDELIA LEWIS-BURKS."
6. I am identified on my voter registration card as "CORDELIA BURKS."
7. I retired from my job in 2005. Professionally and in the community I am known as both Cordelia Lewis and Cordelia Lewis-Burks.
8. I am an African-American and live in a predominantly African-American precinct.
9. I am shown in the photo on my driver's license with red hair but m hair color is identified on my driver's license as brown.

I affirm under the penalties for perjury that the foregoing representations are true.

Executed this 31st day of October 2005.


Cordelia Lewis-Burks

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY, *et al.*,)
Plaintiffs,)
vs.) CAUSE NO: 1:05-CV-0634-SEI
TODD ROKITA, *et al.*,)
Defendants.)
-----)
WILLIAM CRAWFORD, *et al.*,)
Plaintiffs,)
vs.)
MARION COUNTY ELECTION BOARD,)
Defendant,)
and)
STATE OF INDIANA,)
Intervenor)

AFFIDAVIT OF JOEL MILLER

Joel Miller, being first duly sworn upon her oath, hereby deposes and states follows:

1. I am over the age of eighteen years, have personal knowledge of each of the matters stated in this affidavit, and am authorized and competent to make this affidavit.

1. I am employed as a member of the Board of the Marion County Voter Registration.

2. My responsibilities include implementation of the voter registration system for Marion County, Indiana.

3. Marion County is currently working with the State of Indiana to implement a new system.
4. Under the current system, hyphenated names are awkwardly alphabetized on the poll list.
5. At some point before I began working with the Marion County voter registration program, there was a concern that the poll clerks might miss a name on the poll list due to the way the hyphenated names were alphabetized so the program stopped using hyphens in most hyphenated last names. It is my understanding there are some hyphenated names with hyphens which were either entered before the enactment of the policy or were inadvertently entered by either volunteers entering data or staff.
6. At this time, there are no plans to review the thousands of voter registration forms to add the hyphen to last names thus most of the hyphenated names on the Marion County poll list will appear without the hyphen.
7. Prior to implementation of a statewide voter registration system, each county implemented its own voter registration system, leaving it to the discretion of the county to determine how to handle the inputting of names including hyphenated names.

I affirm under the penalties for perjury that the foregoing representations are true.

Executed this 31 day of October 2005.


Joel Miller

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY, *et al.*,)
Plaintiffs,)
vs.) CAUSE NO: 1:05-CV-0634-SEB-VSS
TODD ROKITA, *et al.*,)
Defendants.)
-----)
WILLIAM CRAWFORD, *et al.*,)
Plaintiffs,)
vs.)
MARION COUNTY ELECTION BOARD,)
Defendant,)
and)
STATE OF INDIANA,)
Intervenor)

AFFIDAVIT OF JAMES E. LINGENFELTER

James E. Lingenfelter, Jr., being first duly sworn upon his oath, hereby
deposes and states as follows:

1. I am over the age of eighteen years, have personal knowledge of each of the matters stated in this affidavit, and am authorized and competent to make this affidavit.
2. I am a resident of Indianapolis, Indiana and a qualified, registered Indiana voter.
3. My current Indiana driver's license contains a photograph of me without facial hair. Since the time my driver's license was issued, I have grown a goatee and moustache.

I affirm under the penalties for perjury that the foregoing representations are true.

Executed this 31st day of October 2005.


James E. Lingenfelter

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY, *et al.*,)
Plaintiffs,)
)
vs.) CAUSE NO: 1:05-CV-0634-SE
)
TODD ROKITA, *et al.*,)
Defendants.)
-----)
WILLIAM CRAWFORD, *et al.*,)
Plaintiffs,)
)
vs.)
)
MARION COUNTY ELECTION BOARD,)
Defendant,)
and)
)
STATE OF INDIANA,)
Intervenor)

AFFIDAVIT OF MARY ANN NOWLIN

Mary Ann Nowlin, being first duly sworn upon her oath, hereby deposes states as follows:

1. I am over the age of eighteen years, have personal knowledge of each of the matters stated in this affidavit, and am authorized and competent to make this affidavit.
2. I am a resident of Indianapolis, Indiana and a qualified Indiana voter.
3. I also hold a current Indiana driver's license.
4. At the time my photograph was taken for my driver's license, I was wearing eyeglasses. I no longer regularly wear eyeglasses but instead wear contact lenses.

5. The weight on my driver's license is no longer accurate as I now weigh fifty (50) pounds more than the weight stated on my driver's license.

6. My driver's license lists my hair color as brown although my hair is streaked with blonde. In the photo on my driver's license, my hair is also streaked with blonde.

I affirm under the penalties for perjury that the foregoing representations are true.

Executed this 31st day of October 2005.



Mary Ann Nowlin



REQUEST FOR PHOTO EXEMPT LICENSE/REQUEST FOR PHOTO EXEMPT IDENTIFICATION CARD FOR RELIGIOUS REASONS

State Form 45811 (R5 / 2-05)

Approved by State Board of Accounts, 2005

INDIANA BUREAU OF MOTOR VEHICLES
Photo-Exempt Request
531 Virginia Avenue
Indianapolis, IN 46203

Check the appropriate box(es) that applies:

<input type="checkbox"/> BUSINESS	<input type="checkbox"/> MISSIONARY	<input type="checkbox"/> FIRST ISSUANCE (<i>Religious only</i>)	<input type="checkbox"/> CHAUFFEUR / MC	<input type="checkbox"/> PPC / MC
<input type="checkbox"/> COLLEGE	<input type="checkbox"/> RELIGIOUS	<input type="checkbox"/> RENEWAL	<input type="checkbox"/> EXTENSION / TEMPORARY	<input type="checkbox"/> OPERATOR
<input type="checkbox"/> MILITARY	<input type="checkbox"/> VERIFICATION LETTER	<input type="checkbox"/> DUPLICATE	<input type="checkbox"/> CHAUFFEUR	<input type="checkbox"/> OPER / MC
			<input type="checkbox"/> PPC	<input type="checkbox"/> IDENTIFICATION CARD (<i>Religious only</i>)

NOTE: Commercial Driver License (CDL) does not qualify for Photo Exempt.

FEES: Please make check or money order payable to the BMV.

OPERATOR	\$14.00	OPER / MC	\$24.00	OPER / MC 75+	\$20.00	PPC	\$14.00	IDENTIFICATION CARD	\$9.00
DUPLICATE	\$10.00	MC ONLY	\$14.00	CHAUF / MC 75+	\$28.00	PPC / MC	\$22.00		
CHAU / MC	\$28.00	CHAUFFEUR	\$18.00	PPC / MC 75+	\$24.00	OPER / 75+	\$12.00		

PLEASE NOTE: Extensions or verification letters do not require a fee.
Please note: Religious, Missionary, Business and College students - If your driver license is expired, you must include an additional five dollars (\$5.00) delinquent fee.

SUPPORTING DOCUMENTATION IS REQUIRED FOR ISSUANCE OF A PHOTO EXEMPT LICENSE. PLEASE READ CAREFULLY AND NOTE THE FOLLOWING:

ACTIVE MILITARY:	You and or your spouse will need a letter on letterhead verifying your status and location out of state / country with the military, signed by your commanding officer.
COLLEGE STUDENTS:	You will need a letter on school letterhead verifying your status and location with the college and verifying your length of stay, out of state / country.
BUSINESS:	You will need a letter of certification on letterhead, stating your place of business and location, out of state / country.
MISSIONARY:	You will need a letter on letterhead verifying your status and location out of state / country with the church or ministry organization.
<hr/>	
TEMPORARY LICENSE:	If you find that your driver license has expired while you are out to the state or country, you may request a temporary license that will allow an extension of your driver license for up to ninety (90) days from the date of expiration.
VERIFICATION LETTER:	If your driver license has been lost or stolen and you are outside of the state and your driver license is VALID and has not expired, you may request one (1) ninety (90) day verification letter. This letter may enable you to return to Indiana to apply for a duplicate license.
<hr/>	
PHOTO-EXEMPT DRIVER LICENSE OR IDENTIFICATION CARD (for Religious reasons only)	You must attach a letter certifying your religious belief from your Minister, Bishop, Elder or other leader of the religious sect of which you are a member, explaining why you qualify for a photo-exempt driver license or ID card. The letter of certification MUST be on original letterhead and signed as stated above. Failure to provide such letter will result in denial of this application.

Complete the following entirely

Drivers license number		Expiration date (month, day, year)	
Legal name (first, middle initial, last)			
Indiana address (number and street, city, ZIP code) (NOTE: Proof of residency is required to change Indiana address)			
Eye color	Hair color	Height	Weight
Sex	Date of birth	Out of state since:	
Return date	Social Security number (mandatory for internal records) (NOTE: if not on BMV file a copy of card will be required.)	SS# on license? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Temporary out of state / country address (number and street, city, state, country, ZIP code)			

PLEASE COMPLETE REVERSE SIDE

FALSE STATEMENTS MAY RESULT IN THE SUSPENSION OF YOUR DRIVING PRIVILEGES FOR ONE YEAR

Please consider the past four years regarding any application you may have made for a driver license, learner permit, identification card or commercial driver license, when answering the following questions:

- Yes No 1. Are you subject to fainting spells or seizures of any kind?
- Yes No 2. Have you had or do you presently have a physical, mental, or hearing disability which MAY adversely affect or impair your ability to operate a motor vehicle safely?
- Yes No 3. Are your driving privileges suspended, revoked, or otherwise withdrawn in this state or any other state?
Where? _____ When? _____
Reason? _____
- Yes No 4. Have you ever been convicted of a felony under the motor vehicle laws of this state, or any other felony in the commission of which a motor vehicle was used?
- Yes No 5. Have you previously held an Indiana driver license , permit, or ID card?
If Yes, under what name? _____

If you have any further questions, please feel free to contact this office at (317) 234-0550.

Read carefully and sign the following.

I do swear or affirm that all statements made throughout this application are true. False statements may result in the suspension of your driving privileges for one (1) year.

Signature of requester

Date signed (month, day, year)

1 Q And that's, obviously, a decision that has to be
2 made between now and May?

3 A Yes.

4 Q What about this notion of indigency. Do you know
5 what indigency is?

6 A The technical definition or what I think it is?

7 Q Well, obviously, if you ask any of us around this
8 table whether we have money, we're all going to
9 tell you we have no money. Maybe not Doug, but
10 everyone else.

11 (Laughter.)

12 Q Next door is a homeless shelter where there are
13 people who have zero money. There are other people
14 out there who may be getting five hundred or six
15 hundred dollars a month in Social Security and
16 there's a whole range in between.

17 So who in those are indigent for purposes of
18 getting a free I.D. once we define what free I.D.
19 means?

20 A I don't know.

21 Q How are we going to determine that?

22 A Well, again, I think that's probably going to be a
23 situation where the Marion County Election Board is
24 going to have to set up some sort of
25 decision-making process to apply under those

1 circumstances. I'm well aware because I'm the
2 clerk that courts and judges make those decisions
3 all the time based on a number of issues. And
4 sometimes, you know, a person getting three hundred
5 dollars is described as being indigent.

6 Q Yeah, but sometimes they're not.

7 A And sometimes they're not, that's right. The point
8 being that is nothing that I'm aware of that is set
9 in stone that says that applies. So I think we're
10 going to have to make some decisions.

11 Q Okay. That's fair.

12 If I am challenged and I vote a provisional
13 ballot and decide that I want to go through with it
14 even though it's two weeks to find out what
15 happens, I'm going to have to physically come down
16 to your office; is that correct?

17 A Yes.

18 Q And you're in the City-County Building; is that
19 correct?

20 A That's correct.

21 Q There's no free parking for the City-County
22 Building; is that correct?

23 A No. We've got the new judicial center to build.
24 Maybe we can take care of that.

25 (Laughter.)

**Testimony of Indiana Secretary of State Todd Rokita
for the Committee on House Administration
February 9, 2005**

Chairman Ney and members of the Committee on House Administration, I would like to thank you for inviting me to testify regarding Indiana's implementation of the Help America Vote Act of 2002 (HAVA), how it affected the 2004 General Election, and our plans for full implementation of HAVA. For those of us charged with constitutional and statutory duties to impartially promote and conduct elections, implementing HAVA is not a small task. HAVA has brought effective and much-needed election reform to our state, as it has for the rest of the country. We all face significant challenges presented by HAVA, and in Indiana I believe we are addressing those as effectively and efficiently as we can. Certainly full federal funding of HAVA is needed to help state and local election officials succeed in making HAVA work. I would appreciate your efforts in helping make full funding a reality.

HAVA implementation is progressing very well in Indiana. In 2003 our state plan was developed by a diverse group of 28 members I appointed from a variety of backgrounds – all three major political parties in the state, county and state election officials, the military, the media, the disability community, minority communities, and state legislators. Today only about 10% of our voters would vote on outdated voting equipment, and we expect to have that down to zero. That is, every registered voter will have the opportunity to vote on new equipment. Our statewide voter registration system is under development in a very inclusive process involving county election officials, state agencies, and other stakeholders. We carried out a robust outreach and education initiative for voters and poll workers in 2004. Before spending taxpayer money on polling places, we surveyed every polling place in the state to determine their condition for accessibility, and we are now working with and encouraging county officials in our 92 counties to address accessibility issues in polling places. I intend today to highlight some successes we have seen in Indiana as well as some challenges we have faced in the election reform arena due to HAVA.

Provisional Voting

In Indiana, we embraced the idea of provisional voting shortly after the 2000 election, when it was proposed by our Bipartisan Election Task Force on Election Integrity. So we were pleased when HAVA made provisional voting the law of the land.

I see provisional voting as a tremendous accessibility tool, knowing it can and should be used only as a *last resort* when a qualified voter would have otherwise been turned away from the polling place, her civic duty unfulfilled. Due to the strict and, frankly, sometimes unreasonable and ill-considered mandates of the National Voter Registration Act passed by Congress in 1993, keeping an accurate list of voters has become an even more daunting task, and clerical mistakes with the list can occur through no fault of the voter. In these cases, that voter's intentions should be honored and his ballot counted. Provisional voting offers us this chance, as election administrators, to get

it right, maintain voter confidence, and encourage voter turnout -- one of our most important goals.

At the same time, provisional voting can encourage system accountability. It can deter unscrupulous individuals, political parties, activist groups or campaigns from seeking to dilute the voice of honest voters by rushing polling places with unqualified voters and people intending to vote multiple times. In 2002, the *Wall Street Journal* focused attention on this illegal practice in Indiana by imbedding one of its columnists in a Congressional campaign where that columnist detailed, through his eyewitness account, voter intimidation in reverse -- that is, poll worker intimidation -- by groups of persons (being chauffeured from polling place to polling place in vehicles used by the campaign) demanding to vote and proceeding to cast ballots without regard to the law or the rights of other voters.

Each state's election system has its own strengths and its unique tools to provide for both voter access to the ballot and for election integrity. Therefore, HAVA correctly left the details for administration of provisional voting to the states. I would like to describe Indiana's process, which we believe fairly implements provisional voting in a way that protects voters' rights and fosters system accountability.

Indiana Code 3-11.7-5-2 sets forth the key requirement concerning precinct based provisional voting in Indiana. Each county election board ultimately decides whether a provisional ballot is valid, and therefore whether the provisional ballot should be counted. The county election board can be assisted by bipartisan teams in sorting provisional ballots and in helping make "easy" calls where the facts about a provisional ballot are not in dispute.

When the county election board examines a provisional ballot, which is still sealed inside its secrecy envelope to protect the privacy of the voter's choices, the board asks three questions:

(1) Is the affidavit signed by the provisional voter properly executed?

Did the voter sign a sworn statement that the voter meets the qualifications to be eligible to vote in the precinct?

(2) Is the provisional voter "a qualified voter of the precinct"?

Is the voter registered to vote in the precinct where the voter is casting the provisional ballot (or otherwise "qualified" to vote in that precinct under one of the fail-safe methods)? Does the person continue to meet the requirements for being a voter in the precinct (that is, for example, is the voter still alive)?

(3) If this voter claims to have applied to register to vote at a "full service" voter registration agency, did the voter apply at the agency while registration was still open?

Since "full service" voter registration agencies under the National Voter Registration Act will continue to accept voter registration applications year round, did this voter apply with the agency before registration was closed before the election? If a voter applies after the registration cutoff, that application is still processed, but is done so when registration reopens after the election.

The county election board has to find that the answer to each question (1), (2), and (3, if applicable) is yes. If the answer is yes to each question, the provisional ballot is declared valid, removed from the secrecy envelope, and processed.

Policy Considerations

One of the strongest arguments for having provisional ballots cast at the precinct where the voter lives comes from one of the most successful community efforts in modern times: the neighborhood watch programs. The neighbors who participate in these programs are the best equipped and have the best knowledge to sort out innocent behavior from suspicious activity. They know the difference between people simply walking along their street and an unfamiliar car circling the playground.

When many of these same community activists serve as poll workers, they may know that a person whose name does not appear on the poll list is their neighbor, or will know if a residence address given by a person is actually a demolished building. They can better communicate the questions they have to the county election officials to help eliminate the need for the voter to cast a provisional ballot in the first place. In Indiana, we firmly believe that the provisional voting process is one of last resort—to be used only when all other methods of proceeding directly to the voting booth have been exhausted. So far, we have seen its use limited to the rare exception and not used as “normal” way of voting. Based on reports of large numbers of provisional votes cast in various states, it seems to me that provisional voting is either not being used as a last resort or is being abused. I believe the way we address this in Indiana, by making sure all other avenues are exhausted before the casting of a provisional ballot, best serves the voters.

Everyone acknowledges the desperate need to recruit poll workers. We also know that both poll workers and voters are discouraged by long lines and delays at the polls. Discouraged poll workers may decline to work again. Discouraged voters may decide that the lines are too long and may walk away without voting. We need to recognize that while of course voting is important and the integrity of the election process is critical, it is also true that for many non-activist voters outside this room, casting a ballot is only one of several important or critical things that they must get done on Election Day. For example, a parent picking up a child after school, a worker hurrying to her job, or a minister on the way to visit a patient at a hospital also have other important things to do the rest of the day.

For that reason, we want to make every voter’s experience within the polls as pleasant and as efficient as possible. Some problems at the polls are of course unavoidable. Some voters have more ability (and perhaps more patience) than others to wait while the poll workers try to solve these problems.

But every voter who would appear at a polling place other than at the precinct where he lives to cast a provisional ballot there would be requiring another voter to wait. The voters in line would have to wait while the poll workers look unsuccessfully for the name on the poll list, while the poll workers process the forms the voter fills out to cast a provisional ballot, while the provisional voter uses a booth to cast her ballot, and while the poll workers provide the provisional voter with the information required by HAVA about the provisional ballot process.

Then, there are the logistical problems associated with the ‘vote anywhere’ approach. For example, administrators could not possibly know how many provisional ballots to print, and of what kind, for a particular polling place, which would lead to ballot shortages, and yet again, turning potential voters away—the very thing provisional voting was designed to stop!

Yes, every vote is important. But no voter is more important than any other voter. We should encourage both equal treatment and equal responsibility for all voters.

Prohibiting precinct-based provisional voting also sends the wrong message about the importance of voting for all of the other offices on the ballot. While important decisions are made in Washington and in state capitals, some of the decisions that have the most obvious and compelling effects on people’s daily lives are made down the street at city hall or in the county government building. The decisions about whether to rezone to allow for a new business, to change a speed limit in a neighborhood, or to raise school tax levies are often made by these local elected officials.

It is also true that elections to these local offices are sometimes decided by one or two votes, or even have ties. While some might think an actual tie vote is statistically too rare to consider, in one Indiana county in 2003 a nonpartisan election for school board resulted in a tie vote between a challenger and the incumbent.

How ironic it would have been if a voter in that county had chosen to stop by some other polling place on the way home from work to vote for the “more important” statewide offices, such as United States Senator or Governor, by way of a provisional ballot since it was more convenient to do so, only to discover the day after the election that she could have decided the school board election by her own vote if only she had appeared at the precinct where she lived. Our republic needs and deserves a system where elected offices are treated in a uniform fashion when it comes to the selection of the officeholder.

(NOTE: In Frankton-Lapel school corporation in Madison County, Indiana, the local judge broke the tie in favor of the incumbent).

As we have been shown in other instances, history is a stubborn teacher. If we fail to remember our lessons, she will teach them to us again and again.

We have been taught the lesson in the past that to protect the integrity of the election process, it is important as a general principal to have voters cast their votes in the precincts where they live. Let me take a moment to tell you about the lesson we were taught in Indiana.

There was once a close presidential election. The Democratic Party’s candidate won the popular vote that year but lost the Electoral College vote to the Republican Party nominee. There were allegations both before and after Election Day of fraud in a key state that both parties had fought hard to carry.

The year was not 2000; the year was 1888. The state was not Florida; the state was Indiana. The candidates were not Bush and Gore; they were Cleveland and Harrison.

In Indiana, there was evidence that so-called “floaters” were being hired to go from one precinct to another on Election Day to cast votes for the most important race on the ballot: President of the United States. In the absence of an effective voter registration system, these floaters may have provided the margin of victory in a presidential campaign. No one knows for sure.

And that is one risk inherent in a system other than one with precinct-based provisional balloting. Yes, if modern-day floaters appeared at several polling places on Election Day, the law requires that these voters be given provisional ballots, whose validity can be determined later.

We also know from our experience in 2000 that the public's patience in waiting for election results can quickly wear thin and that the credibility of both the media and the entire election administration process can be damaged by prolonged doubt about which candidate has won an election.

A flotilla of modern-day "floaters" could have that effect in a key state in a national race or in a statewide race for United States Senator or Governor. Even if an effort to improperly sway the election results through misuse of provisional voting fails, there will be time required to sort out genuine from false provisional ballots. Once again, the general public will wait while the ballot battles are fought before county election boards or in the courts.

Just like problems at the polling place, some election contests, disputes, and recounts are inevitable. There will always be ill-motivated persons who attempt to win an election by any means, fair or foul. However, let's not have to learn the lesson about "floaters" again.

The aftermath of the 1888 election in Indiana was much like that of 2000. There was a bipartisan effort, led by the Governor, a Democrat, and the Governor-elect, a Republican, to enact laws that according to one historian "made Indiana a pioneer in election reform." Other states followed Indiana's lead in providing for secret, government-printed ballots for all voters, and for those ballots to be given to each voter at the voter's respective polling place.

The same historian (Walsh, *Centennial History of the General Assembly*, p. 228-229) wrote, "the immediate result" of these reforms "was restoration of public confidence in the integrity of Indiana's election process."

I contend that implementing reforms in the spirit of HAVA can and is beginning to have the same effect in restoring public confidence in the election process. And provisional voting supports our goal as election administrators – making sure every eligible vote counts.

Voter Registration

A decade's worth of election experience since 1993 has given us a much better appreciation of the strengths and weaknesses of the National Voter Registration Act (NVRA). While NVRA fulfilled its intended goal of making it easier for eligible voters to register, its lack of flexibility has left us with a legacy of unintended consequences. Voters and potential voters are discouraged when they hear media reports that the percent of voters turning out to exercise their civic duty is declining. What they do not realize but we election officials know is that voter turnout is probably much higher than is reported because voter turnout statistics are based on the number of people listed in the voter rolls even though many are neither eligible to nor intend to vote in the places where they registered long ago. In Indiana, we estimate about 20% to 30% of our voter roll statewide consists of people who are no longer eligible to vote in the places where they

appear on the poll lists, either because they have moved and registered elsewhere or because they have died and election officials have not been able to remove them from the list.

Poll workers are discouraged and frustrated when they see the names of deceased or non-resident voters appear on the poll list year after year, despite their efforts (or those of the voters) to have the list corrected. Because poll workers often work at the same polling place year after year, they see these problems continuing with no real answer to the questions about when or how it can be fixed.

Election administrators are resigned to their task of performing the unhappy duty of explaining the good intentions of NVRA to a spouse who is grieved that the name of his deceased wife is still on the poll list, right above his own. Does this stop that widower from returning to the poll year after year? Maybe not, but this additional grief point is another unintended consequence of the NVRA.

These problems, resulting from the overly rigid federal statutes governing voter lists, call forth our instinct to help and our sympathy. But the criminal acts of those who take advantage of these phantoms who appear on the poll lists should make us outraged at this abuse of our election process. I point to the 2003 mayoral primary election in East Chicago in Lake County, Indiana as an example of what can and does happen. Because of rampant voter fraud, the Supreme Court of Indiana ordered a new special election for mayor of the city late last year. Media and eyewitness accounts revealed that several individuals voted from addresses where homes had been demolished years before for the construction of a new baseball stadium.

I served on a bi-partisan Election Integrity Subcommittee created by the Lake County Election Board in 2003 to address the many problems with elections in Lake County where we heard such testimony. We received documents, such as obituary notices, and sworn testimony of individuals indicating those voters listed in the obituary notices had indeed actually died, but poll lists indicated they had voted, or more correctly, someone had voted in their names in election after election after death. While these cases of fraud and election abuses in Lake County seem extreme and are by some regarded as the death throes of an old political machine, voter registration abuse can and likely does happen in other places around the country. It is a very real problem and one we can easily prevent by removing some of the rigid restrictions of NVRA.

From an administrative perspective, bloated voter rolls are costly for federal, state, and local governments. Election administrators must prepare precincts for elections based on the number of registered voters, knowing some of them could not possibly show up to vote. This leads to wasteful spending on ballots and other election day forms. For instance, Indiana law requires (for its optical scan and punch card counties) local election officials to have at each precinct enough ballots for every registered voter, regardless of what turnout statistics show. At the end of each election day, mountains of relatively expensive, specially printed paper must be discarded. Bloated rolls also lead to increased costs for candidates, parties, and interest groups that rely on state and local voter lists for their mailings.

Further, if we had a true accounting of the real number of eligible voters in each county, many counties could and would likely condense precincts. In addition to easing the very real problem of recruiting poll workers, having a true and accurate voter registration list would lower the costs associated with putting on elections, including

reducing the amount of taxpayer dollars spent on stipends for poll workers. Furthermore, local election officials could then reallocate voting equipment, placing additional machines in high traffic precincts and having back-up machines ready to go in case of election day problems. Counties could get a more accurate estimate of how many machines they really need and save scarce state and federal money.

HAVA's requirement for a single, uniform, official, centralized, interactive computerized statewide voter registration list is a step in the right direction. In Indiana, our statewide voter registration system project is well under way. After a very thorough procurement process, we selected a vendor last year to develop our system and have it in place by the end of 2005. In just a few weeks, we will be rolling out a pilot program in about 10% of our counties. The response from county election officials has been overwhelming – more than half of Indiana's 92 counties volunteered to be one of the system's pilot counties. We have included in our discussions, and on our statewide voter registration system steering committee, representatives from the other state agencies with whom we will work to obtain voter registration information, including the department of correction, department of health, and bureau of motor vehicles.

While creating this single voter registration list has presented its own challenges, like addressing the varying types of technology available in the counties, once it is in place it will revolutionize election administration in our state. It is important for us to keep in mind, though, that the data coming out of the system is only as good as the data going in. The fact is our voter lists, largely because of NVRA, are bloated. We plan to do what we can to clean up our statewide list during this process, but we do still have the constraints of NVRA to consider.

Voting Systems

In Indiana in 2000, over 50% of our state's voters were casting ballots on punch card or lever voting equipment. In the 2004 elections, only 10% of registered voters would have voted on those same machines. At the end of 2004, the one remaining lever county retired the last lever machines. Many counties have purchased machines accessible to disabled voters so they will have one in each polling place. I am confident all remaining punch card machines will be phased out and there will be a machine accessible for disabled voters in each polling place in Indiana by 2006. To date, and pursuant to our state plan, we have distributed \$17 million in voting equipment reimbursements to Indiana counties.

We all heard the sometimes sensationalized press accounts regarding direct record electronic (DRE) machines in the months leading up to the 2004 November election, particularly from the groups who called for a voter receipt or voter verified paper trail for all DRE machines. In Indiana we have been using DRE machines for the last twenty years in some counties. Like any device, DREs can have problems. But we have had very few, and all of these problems can be attributed to inevitable human error and not malice or criminal efforts to suppress or steal votes. During the Indiana Ninth Congressional District recount we recently conducted following the November 2004 election, three of the six counties we recounted before the recount petition was dismissed were DRE counties. In a very transparent process, parties, election officials, and

watchers had the opportunity to examine poll lists, internal paper audit trails from the DRE machines, and the machines themselves. And we again found the machines worked to reliably and effectively count votes. There were no significant changes in the number of votes cast for either candidate in any of the counties.

A great deal of information has been presented on both sides of the debate about voter verified paper trails for DRE machines, and this discussion will continue for years. Some of my colleagues have contemplated, and at least one already enacted, a statewide requirement for voter verified paper trails for DRE machines. I respect the right of my colleagues in those states to make their own decisions on this important issue.

In Indiana, having successfully used DRE machines for 20 years, we have not taken the position of requiring a voter verified paper trail. I urge this committee and the entire Congress to continue to allow these decisions about features on voting equipment to be left to state and local election officials who are closest to and know best the needs of their voters and the unique needs of the election process in their states. The administrative nightmare of adding new requirements on top of partially implemented HAVA requirements now, with less than eleven months before the HAVA implementation deadline and with voting equipment procurement contracts pending or already entered by most jurisdictions, is enormous.

We have also addressed in Indiana the issue of voting system vendor accountability. In 2004, state election officials discovered that a vendor had installed and allowed uncertified software to be used during the 2003 municipal elections in otherwise certified equipment. Our state election commission addressed concerns with using this software by requiring a hefty bond to be secured by the vendor for the 2004 November election. We also addressed this issue with legislation. In 2004, Indiana made it illegal to not only sell or install uncertified voting equipment, including software, but also to market uncertified equipment in the state. We did this to protect our county election officials from the old “bait and switch” routine, that is, being shown one model and sold another. In 2005, we are asking our legislature to pass law allowing my office to impose hefty civil penalties (after an administrative hearing) against any voting system vendor who knowingly or negligently allows voting equipment not allowed by state law to be used in an election or allows voting systems to be programmed or used in any manner contrary to state law.

Accessibility Standards

In Indiana, we partnered with the Governor’s Planning Council for People with Disabilities to conduct a statewide survey of all Indiana polling places on election days (about half during a May primary and half during a November general) in 2004 so we could give local officials detailed roadmaps as soon as possible for correcting accessibility problems in their polling places. We conducted these surveys on election days to be sure our results reflected actual conditions in locations when they are set up for an election.

Our surveys found that about 80% of polling places are mostly compliant with accessibility standards. We are now working to correct easy to fix problems by ordering parking signs and door handles in bulk through state purchasing avenues to send to

counties for their use in polling places. Further, we are beginning a project where we hope to work with service groups like the Boy Scouts, United Way, and other local groups dedicated to community service to make upgrades that require construction, like ramps and accessible parking lots. Our hope is that this will be a way to stretch the limited state and federal funds available to pay for such upgrades for all polling places as well as help foster a sense of community involvement and investment in our elections.

To give local election officials more flexibility in relocating polling places that cannot be made accessible, we have legislation pending before our legislature to enable local officials to move a polling place up to five miles outside a precinct's boundaries if such a move is necessary to make the polling place for the precinct fully accessible to voters with disabilities.

As part of our training and education efforts in 2004, we worked with Indiana Protection and Advocacy Services and the Governor's Planning Council for People with Disabilities to properly train poll workers how to work with disabled voters and to educate voters with disabilities about their rights at the polls.

All of us have our own physical limitations today, and we may expect to face other physical challenges in the course of our lives. Therefore, making voting accessible is important for all of us. We intend to have accessible voting for all eligible voters in every precinct in Indiana by 2006.

Vote Fraud

The most important issue facing election officials around the country, and something we all consider every day, is voter confidence. Increasing the number of eligible, properly registered voters who turn out to cast their ballots is our mission. And voter confidence in our system is crucial to that mission. It is incumbent upon us to address potential problems as soon as possible and not wait until we have a crisis to fix the system. One important way to increase voter confidence is to curb vote fraud. As we all know, reports of fraud and abuse receive much more public attention than good stories about smoothly run elections. So we must do all we can to stop vote fraud from happening.

In many places around Indiana, the documented and alleged vote fraud we see centers around abuses of absentee ballots, in addition to the problems with bloated voter registration lists detailed previously in this testimony.

Earlier in this testimony I referred to the vote fraud so massive in Lake County, Indiana that the Supreme Court of Indiana ordered a special mayoral primary and general election more than a year after those elections had originally taken place. The trial court judge in the case wrote an opinion over 100 pages long detailing instances of absentee ballot fraud. But vote fraud does not just happen in Lake County, Indiana.

In Anderson, Indiana, a mid-size city in the north central part of the state, a young man was convicted last year of vote fraud. He completed absentee ballot applications in the names of registered voters. Knowing the statutory turn-around time in which the election office would mail absentee ballots, he then literally followed the mail carrier and plucked the ballots out of the mailboxes. He completed those ballots and returned them to the election office. And he did it again in another election. He was later caught and

successfully prosecuted. Fraudulently cast votes like these deny those of us who cast honest ballots to have our votes counted as they should. These fraudulent votes dilute the vote of every honest voter who goes to the polls.

I truly believe Hoosiers are good, honest people. But these examples prove we have some bad apples. And if we have them in Indiana, you have them in your states. We must remember that every vote is important – every vote legally cast by an eligible voter. It is our duty to make sure those legally casts votes are not cancelled out by fraudulently cast ballots.

One reform our legislature is considering this year, and a reform I strongly support, is a requirement that each voter be asked to show photo identification when he appears to vote. A Rasmussen poll conducted last year showed over 80% of Americans believe we should be required to show photo identification to vote. It has been my experience that people expect to be asked for identification when they arrive at the polls. They approach the poll clerks' desk and immediately reach for a purse or wallet to get out a driver's license or other piece of identification. In today's society, we show identification for so many of our daily activities – to enter many buildings, to ride on an airplane, to write a check, to rent a movie. Voters expect to be asked for identification when they cast their ballots.

This is not about voter intimidation. It is about voter confidence. It is about the right of a legally registered voter to have her ballot counted and to expect that ballot to have exactly the same weight as every other legally registered voter's ballot. Inherent in this is the right not to have her vote diluted or cancelled out by someone who would act to defraud the system. Requiring government issued photo identification at the polls is a way to ensure this. State and local officials know this, and I look forward to working with my state's legislature to pass this important tool in providing a higher level of confidence for Hoosier voters.

I appreciate your invitation to allow me here today to share Indiana's experiences implementing HAVA. I look forward to continuing to work with you and with state and local election officials in my state and around the country as we approach HAVA's implementation deadlines.

Thank you.

- 1 A Yes.
- 2 Q -- is that correct?
- 3 A That is correct?
- 4 Q Is there a new law -- is there not a new law that
5 now for the first time permits challengers to
6 actually be inside the polling place within the
7 chute?
- 8 A I believe that's true. Although, again I -- this
9 is the summary of the Indiana legislative election
10 stuff and we are still piling through all of that.
- 11 Q Well, that's where I found out about it.
- 12 A Yeah.
- 13 Q Do you know where the impetus came or from whom the
14 impetus came for that particular challenge?
- 15 A I don't. I wasn't even familiar -- I wasn't aware
16 it was in the legislature. So, no, I don't.
- 17 Q So your answer to my question that this new law
18 won't slow down the process is predicated on the
19 assumption that there will not be a concerted
20 challenge program initiated or undertaken by one of
21 the political parties.
- 22 A That would be an accurate statement, yes.
- 23 Q But there's no assurance that that will not happen,
24 is there?
- 25 A There is no assurance, no.

1 Q In fact, the opportunities for presenting these
2 type of challenges have now increased by virtue of
3 the relocation of the challenger and the new photo
4 I.D. requirements?

5 A I would say that's an accurate statement, yes.

6 Q I had some questions of Mr. King this morning, and
7 I'm not sure I fully understood his answer with
8 regard to the voter identification numbers, the
9 VINs --

10 A Yes.

11 Q -- which I think came along in about 2002; is that
12 correct?

13 A In anticipation of the statewide voter registration
14 list, yes.

15 Q And as I read the law, once the new statewide voter
16 registration database, the list, is in place every
17 voter is going to be assigned a VIN?

18 A If there is not already one recorded, yes.

19 Q What role, if any, will these VINs play in terms of
20 establishing voters' identities on election day?

21 A My understanding is that those numbers will be used
22 in order to help identify duplicates. So that if a
23 person, a John Smith, for instance, is on a poll
24 list in both Allen County and Marion County, that
25 Voter Identification Number in some way will be

- 1 A That's right.
- 2 Q And then they go through the regular challenge
3 procedures?
- 4 A That's right. And those ballot envelopes with the
5 ballot inside is physically sent to that precinct
6 election board on election day for determination.
- 7 Q Is there a challenge procedure when my application
8 first comes in and I'm saying I'm going to be out
9 of town that day, I would like to be able to vote
10 absentee?
- 11 A There has not been.
- 12 Q But there could theoretically be?
- 13 A There theoretically could be, I believe, under the
14 new law.
- 15 Q How many polling places are there in Marion County,
16 if you know?
- 17 A There are 914 precincts, and depending on the
18 location cycle, approximately 610 to 630 polling
19 place locations. So there are several locations
20 that have multiple precincts housed within one
21 building.
- 22 Q Are any of them in nursing homes or state licensed
23 facilities, that you're aware of?
- 24 A I believe we do have some in nursing homes, yes.