Nos. 07-21, 07-25

IN THE
Supreme Court of the United States

No. 07-21
WILLIAM CRAWFORD, *et al.*,
Petitioners,
v.
MARION COUNTY ELECTION BOARD, *et al.*,
Respondents.

No. 07-25
INDIANA DEMOCRATIC PARTY, *et al.*,
Petitioners,
v.
TODD ROKITA, *et al.*,
Respondents.

On Petitions for Writs of Certiorari to the United States Court of Appeals for the Seventh Circuit

SUPPLEMENTAL BRIEF OF STATE RESPONDENTS IN OPPOSITION TO THE PETITIONS

Office of the Indiana
Attorney General
IGC South, Fifth Floor
302 W. Washington St.
Indianapolis, IN 46204
(317) 232-6255
**Counsel of Record*

STEVE CARTER
Attorney General
THOMAS M. FISHER*
Solicitor General
JULIE A. HOFFMAN BRUBAKER
Deputy Attorney General
Counsel for State Respondents

QUESTION PRESENTED

Whether an Indiana statute mandating that those seeking to vote in-person produce a government-issued photo identification violates the First and Fourteenth Amendments to the United States Constitution.

SUPPLEMENTAL BRIEF OF STATE RESPONDENTS IN OPPOSITION TO THE PETITIONS

Pursuant to Supreme Court Rule 15.8, the State Respondents respectfully submit this Supplemental Brief in Opposition to the Petitions to bring to the Court's attention new authority that casts further doubt on the need for review in this case. In *Common Cause/Ga. v. Billups*, No. 4:05-CV-0201-HLM, __ F. Supp. 2d __, 2007 WL 2601438 (N.D. Ga. Sept. 6, 2007), the court upheld a Georgia law that, like Indiana's Voter ID Law at issue in this case, requires in-person voters to present government-issued photo identification at the polls.

1. The Brief of State Respondents in Opposition to the Petitions argues that review is not necessary because lower courts have applied a uniform federal constitutional standard to voter identification requirements. *See* State Opp. 11-12. The memorandum decision of the Northern District of Georgia in *Common Cause/Ga.* upholding Georgia's voter photo-identification law confirms that lower courts are having no problems applying existing Supreme Court precedent in this context. Indeed, it eliminates one of only two federal district court decisions invalidating voter-identification laws. *See* State Opp. 12 (citing *Common Cause/Ga. v. Billups*, 439 F. Supp. 2d 1294, 1345 (N.D. Ga. 2006) (preliminary injunction); *ACLU of N.M. v. Santillanes*, 2007 WL 782167, at *25 (D. N.M. 2007) (final judgment, appeal pending)).

Just like the Seventh Circuit in this case, the court in *Common Cause/Ga.* ruled that "the appropriate standard of review for evaluating the 2006 Photo ID Act is the *Burdick* sliding scale standard," and not strict scrutiny. *See Common Cause/Ga.*, 2007 WL 2601438, at *44. Also just like the decision below, *Common Cause/Ga.* held that the "[p]laintiffs simply have failed to prove that the character and magnitude of the asserted injury to the right to vote

[caused by the Voter ID Law] is significant." *Id.* And, once again just like the decision below, *Common Cause/Ga.* ruled that States have a compelling interest in preventing in-person vote fraud. *See id.* at *47. Finally, expressly *following* this case on the issue of the State's burden to prove that in-person voter fraud actually exists, *Common Cause* held that "'the State is not required to produce such documentation prior to enactment of a law.'" *Id.* at *48 (quoting *Ind. Democratic Party v. Rokita*, 458 F. Supp. 2d 755, 826 (S.D. Ind.2006)).

Thus, *Common Cause/Ga.* confirms that there is no need for Supreme Court guidance as to the proper constitutional standard to apply to voter photo-identification laws.

2. The *Common Cause/Ga.* decision also reinforces the State's argument that where, as here, there are no plaintiffs who have been, or who will be, stymied from voting, a challenge to a voter-identification law presents substantial Article III standing problems. *See* State Opp. 22-26.

The district court in *Common Cause/Ga.* actually ruled that *no* plaintiff had standing—it reached the merits only "out of an abundance of caution"—in circumstances strikingly similar to this case. *See Common Cause/Ga.*, 2007 WL 2601438, at *41. The standing-less plaintiffs included political groups, principally the Georgia NAACP, suing on behalf of themselves and their injured members, and two individual voters asserting their own injuries. *See id.* at *13-15, 19-20. The court concluded that none of the political-interest groups had standing (1) because none could prove they had any members injured by the Georgia law and (2) because the resource-reallocation injury found in *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), does not apply to a political-interest group that is merely speculating as to how it might respond to the impact of a law unrelated to its core mission. *See id.* at *39-40. Furthermore, neither of the individual voters had standing because both testified they would obtain acceptable photo identification in advance of

the next election if the court upheld the Georgia law. *See id.* at *40-41.

Here, similarly, none of the political-interest groups or political parties has proven the existence of members injured by the Indiana Voter ID Law. Pet. App. 77, 82, 90-91, 101-03. Also, none has done anything but make predictions about how they might change their spending priorities in the wake of the Voter ID Law, which makes applying *Havens* inappropriate. Pet. App. 86-90. And as for the two individual voters—Plaintiffs Crawford and Simpson (who are also political candidates but have identified no injured supporters)—both *already* have acceptable photo identification. Pet. App. 83-84. Thus, there is no more injury here than in *Common Cause/Ga.*

The Georgia court's conclusions with respect to standing underscore another reason why this case is not cert-worthy. Were the Court to grant certiorari in this case, it is far from certain that, in view of the Petitioners' Article III standing problems, it could even reach the merits of the Indiana Voter ID Law. So, even if the Court were interested in examining a state voter-identification law (though no significant conflicts exist as to the validity of such laws under the U.S. Constitution), it should wait for a case where a challenger can actually demonstrate an injury.

CONCLUSION

The petitions should be denied.

Respectfully submitted,

Office of the Indiana
Attorney General
IGC South, Fifth Floor
302 W. Washington St.
Indianapolis, IN 46204
(317) 232-6255

**Counsel of Record*

STEVE CARTER
Attorney General
THOMAS M. FISHER*
Solicitor General
JULIE A. HOFFMAN BRUBAKER
Deputy Attorney General

Counsel for State Respondents

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