

INDIANA COURT OF APPEALS

APPELLATE CASE NO. 49A02-0901-CV-00040

LEAGUE OF WOMEN VOTERS	)	Marion County Superior Court
OF INDIANA, INC. and	)	Civil Division-02
LEAGUE OF WOMEN VOTERS	)	
OF INDIANAPOLIS, INC.	)	
	)	
Appellants	)	
	)	Trial Court
vs.	)	Cause No. 49D02-0806-PL-027627
	)	
TODD ROKITA, in his official	)	The Honorable S. K. Reid
capacity as Indiana Secretary of State	)	
	)	
Appellee	)	

STATEMENT OF ADDITIONAL AUTHORITIES

Come now Appellants, the League of Woman Voters of Indiana, Inc. and the League of Woman Voters of Indianapolis, Inc. (both hereinafter referenced as the “League”), by counsel, and hereby advise this Court of new pertinent and significant authority. Pursuant to Rule 48 of the Indiana Rules of Appellate Procedure, the League provides the following:

1. On May 22, 2009, the Bureau of Motor Vehicles (“BMV”) held a public hearing regarding the proposed of addition of 140 IAC 7-1.1-3 to the Indiana Administrative Code. (Attached hereto for the Court’s convenience as Exhibit A).

2. Last week, the BMV announced that Indiana residents can expect changes when they go to apply for or renew their driver’s license or identification card. See, <http://www.in.gov/bmv/> (Last visited July 16, 2009).

3. Under the Indiana Photo ID Law of 2005 (the “Law”) which is being challenged in the instant appeal, voters are required to possess a current or recently expired driver’s license or BMV-issued photo identification card if they want their vote to count. The new administrative regulations governing the issuance of Indiana driver’s licenses and identification cards will impact upon the burdens and qualifications imposed upon voters as discussed at pages 21 through 26, 36 through 37, and 43 of the League’s opening brief, and pages 11 through 13, 17 and 24 through 26 of their reply brief.

4. Whether the voter is a first-time applicant or is seeking a renewal of her Indiana driver’s license or identification card, all persons will have to conform to the new regulations as of January 1, 2010. 140 IAC 7-1.1-3(a). Specifically, for the first time, the new BMV regulations will require voters to submit original or certified documents that prove the voter’s “identity, lawful status in the U.S., residence address, and Social Security Number (SSN) or that the applicant does not qualify for an SSN, and that the applicant is an Indiana resident” 140 IAC 7-1.1-3(a). This will require a minimum of four documents but for voters with name changes or who have moved during the process, it could require many more documents.¹

¹ These new regulations will repeal 140 IAC 7-1.1-2, under which a first-time applicant for a driver’s license or identification card was required to present two (2) identifying documents.

CONFIRMING IDENTIFICATION

5. The new regulations require that voters present a document confirming their identification. 140 IAC 7-1.1-3(b)(1)(A)-(J). Most voters will rely upon their birth certificate. If the current name of the voter does not match the name on the birth certificate, then she must show supporting documentation for each and every name change so as to track to the name currently being used.

6. Every name change the voter incurred, e.g., marriage, divorce, subsequent marriage, change to hyphenated names, etc., must now be documented so as to establish how the woman arrived at her current name, no matter how long ago or where the change occurred. 140 IAC 7-01.1-3(b)(1)(J). The supporting documentation must be either the original document or a certified copy of the original document. 140 IAC 7-1.1-3(a)(1). Voters, primarily women, will need to track down certified copies of long-ago marriages, divorces or legal name changes. Elderly women, who have not used their maiden name for many years, will need to go back to out-of-state record keepers to secure certified copies of marriage certificates or divorce decrees.

PROOF OF RESIDENCY AND INDIANA RESIDENCE ADDRESS

7. Voters will also have to present proof of Indiana residency and residence address. 140 IAC 7-1.1-3(a)(1). Voters can do this by presenting two of the following documents if each of the two documents shows that the individual is not only an Indiana resident but also shows the voter's residence address. 140 IAC 7-1.1-3(b)(4). Otherwise,

the voter will have to present two documents showing proof of Indiana residency and two documents showing proof of Indiana residence address. *Id.*

8. The following documents can be submitted to satisfy the residency and residence requirement:

Documentation from the U.S. Postal service confirming a change of address;

A voter registration card² ;

A utility company, credit card, doctor, or hospital bill that contains the voter's name and address and was issued within sixty (60) days of the date of application;

A residential mortgage or loan contract or least or rental contract that is dated within twelve (12) months of the date of application and which contains the voter's name and residence address;

A bank statement or bank transaction receipt, dated within sixty (60) days of the date of application and which contains the voter's name and residence address;

A current motor vehicle loan payment book for a vehicle registered in the name of the voter and containing the voter's name and residence address;

A current and valid homeowner's renter's or car insurance policy dated within one (1) year of the application date and containing the voter's name and residence address;

A W-2 Form, property tax or excise tax bill or SSA or other retirement benefit statement that is dated within a year of application and contains the voter's name and residence address;

A preprinted pay stub that is dated within sixty (60) days of application and contains the voter's name and residence address;

² While a voter registration card can be used to prove residency to secure a driver's license or identification card, under the Law it is not adequate identification to vote.

A child support check stub, Medicaid benefit statement or Medicare benefit summary statement that was issued by the Indiana Family and Social Services Administration within sixty days of the application date and which contains the voter's name and address;

An Indiana handgun permit that contains the voters name, signature, residence address and date of birth;

First class mail from any federal or state court or agency dated within sixty (60) days of the application date and which contains the voter's name and address.

140 IAC 7-1.1-3(b)(4)(A)-(M).

9. For older women in particular, who may not have insurance, vehicles, property, credit cards or utilities listed in their names and who instead have items listed under their husband's name and vice-versa, the number of available documents is reduced.

10. For all voters, the time within which they must apply for the driver's license must be carefully calculated so that the voter can satisfy the requirements with documents that fall within the prescribed time periods and allow the BMV enough time to match the voter's information to the Social Security Administration, 140 IAC 7-1.1-3(a)(4), in time for the primary and general elections.³

11. As discussed in the League's briefs, groups such as the old order Amish, who restrict their contact with the outside world and already face a challenge in voting

³ This Court recently held that BMV rules, threatening individuals with invalidation of their BMV-issued licenses or identification cards if their information did not match information that the SSA and other federal agencies have in their records, did not comport with due process requirements because the BMV failed to articulate ascertainable standards. *Leone v. Comm'r, Indiana BMV*, 906 N.E.2d 172, 181-82 (Ind. Ct. App. May 15, 2009), *reh'g pending*.

with an Indiana photo identification card or license that lacks a photo due to religious reasons. That challenge has now increased.

12. Low income persons who do not have credit cards or do not own a vehicle or do not pay for renter's insurance or do not maintain a bank account, will have to gather the necessary documents so that their vote can be counted.

13. College students over the age of 18 who reside with their parents and are in college but who do not have credit cards, car loans, insurance payments, mortgages, etc., will have to secure the license or identification card necessary to have their vote counted.

PROVING A VALID SOCIAL SECURITY NUMBER
OR REASON WHY THE VOTER DOES NOT QUALIFY
FOR A SOCIAL SECURITY NUMBER

14. The voter must finally present evidence that she does have a valid social security number or does not qualify for a social security number. The latter is proved by presenting a document from the Social Security Administration that establishes the voter does not qualify for a social security number. For the voter who does have a social security number, she will have to present:

A social security card;

A W-2 form;

A Form 1099; or,

A preprinted pay stub containing the employer's name.

140 IAC 7-1.1-3(b)(5).

15. Voters who do not have their social security card will have to make an additional trip to the Social Security Administration to get a new social security card and must satisfy whatever requirements the Social Security Administration imposes in issuing a duplicate card. Women whose names have changed since the issuance of their social security card, even if they have their original card, will either need to get an amended card or perform additional steps to show the Social Security Administration whatever documentation is required to support the name change.

16. The BMV has purportedly promulgated these new regulations in conjunction with the federal Real ID Act, a federal law that is currently undergoing scrutiny. The prospect of the amendment or modification of the Real ID Act is not speculative as the Obama Administration has proposed alternatives to the Real ID Act, (specifically the Pass ID Act) due to the costs imposed upon the states by compliance with the Real ID Act and privacy concerns.

17. On July 15, 2009 the Senate Homeland Security and Government Affairs Committee held a hearing to examine problematic aspects of the Real ID Act. In her opening statement, the Honorable Janet Napolitano, Secretary, U. S. Department of Homeland Security, testified that since the Real ID Act was enacted, 12 states have passed legislation rejecting implementation of the law as an unfunded federal mandate; two states have passed legislation refusing to implement it without significant conditions being met; and, another 11 states have passed resolutions opposing it.

http://hsgac.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=3d9a52cd-c442-4dee-9a1f-b02ed3b38000 (Statement of the Hon. Janet Napolitano).

18. Although the future of the Real ID Act remains uncertain and multiple bills have been introduced to amend the Real ID Act, the Indiana BMV regulations will take effect on January 1, 2010, regardless of whether the Real ID Act is significantly changed.

19. On July 15, 2009, the Fort Wayne *Journal Gazette* editorialized about the new BMV regulations. “BMV headaches ahead”, www.journalgazette.net/article/20090715/EDIT07/307159958/1147/EDIT07/ (Last Visited July 16, 2009) (attached hereto for the Court’s convenience as Exhibit B).

20. The *Journal Gazette* predicted that these new rules will result in “inevitable confusion and frustration ahead” and observed:

Another concern is the additional hurdle established for Indiana voters, who already face the most stringent requirements of any voters in the nation in spite of no evidence of widespread voter fraud.

The cumbersome process of applying for or renewing a state ID card surely will discourage some who depend on those cards – out-of-state college students and, again, senior citizens – from bothering to vote.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that on July 17, 2009, a copy of the foregoing Statement of Additional Authorities was mailed to the Honorable Christopher F. Zoeller, Indiana Attorney General, Thomas M. Fisher, Indiana Solicitor General and Heather L. Hagan, Office of Indiana Solicitor General, Indiana Government Center South, Fifth Floor, 302 W. Washington St., Indianapolis, IN 46204-2270.

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