

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

No. 06-2218:

WILLIAM CRAWFORD, <i>et al.</i> ,	)	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
MARION COUNTY ELECTION	)	
BOARD,	)	
	)	
Defendant-Appellee.	)	Hon. Sarah Evans Barker, Judge

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No. 06-2317:

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

**BRIEF AND SHORT APPENDIX OF APPELLANTS CRAWFORD, UNITED  
SENIOR ACTION OF INDIANA, INDIANAPOLIS RESOURCE CENTER  
FOR INDEPENDENTLIVING, CONCERNED CLERGY OF INDIANAPOLIS,  
INDIANAPOLIS BRANCH OF THE NAACP, INDIANA COALITION ON  
HOUSING AND HOMELESS ISSUES, JOSEPH SIMPSON**

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Appellate Court No: 06-2218

Short Caption Crawford v. Marion County Election Board

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement stating the following information in compliance with [Circuit Rule 26.1](#) and [Fed. R. App. P. 26.1](#) . The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing the item #3):

William Crawford, United Senior Action of Indiana, Indianapolis Resource Center for Independent Living, Concerned Clergy of Indianapolis, Indianapolis Branch of the NAACP, Joseph Simpson

(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: Kenneth J. Falk, ACLU of Indiana, 1031 E. Washington Street, Indianapolis, IN , 46202

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

i) Identify all its parent corporations, if any; and The Indianapolis Branch of the NAACP is part of the national NAACP. The other corporations are not-for-profits incorporated in Indiana.

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock: The corporate parties do not issue stock

=====

Attorney's Signature: \_\_\_\_\_ Date: June 19, 2006

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## Table of Contents

Table of Authorities .....	i
Jurisdictional Statement.....	1
Statement of the Issues .....	2
Statement of the Case .....	3
Statement of the Facts .....	5
I.    Indiana election law.....	5
A.    Introduction.....	5
B.    In-person voting, challenge procedures and identification prior to SEA 483.....	6
C.    Identification requirements imposed by SEA 483.....	8
1.    Requirements for those voting in-person at polling places.....	8
2.    Voting by absentee ballot.....	10
II.    The specifics and costs of obtaining photo identification.....	11
III.   Potential difficulties caused by SEA 483 for persons desiring to vote.....	14
A.    There are voters and potential voters who do not currently have the required identification.....	15
B.    Difficulties faced in obtaining BMV identification.....	16
1.    Cost concerns.....	16
2.    Other issues concerning the acquisition of birth certificates.....	17
3.    Other difficulties in acquiring BMV identification.....	18

C.	Reaction of voters to challenges and provisional ballots.....	20
IV.	Justification for SEA 483.....	21
V.	The plaintiffs in No. 06-2218.....	22
	Summary of the Argument.....	26
	Argument.....	29
I.	Introduction.....	29
II.	The standard of review.....	30
III.	Rep. Crawford and the interested groups have standing to bring this action.....	30
A.	Introduction.....	30
B.	Rep. Crawford and Joseph Simpson have standing as candidates and voters to challenge SEA 483.....	31
1.	Candidate standing.....	31
2.	The candidates here can also raise their interests as voters.....	34
C.	The interested groups have standing as well.....	35
1.	Introduction.....	35
2.	A number of the interested groups have standing because they are being directly injured.....	35
3.	A number of the groups have standing because their members have standing.....	38
IV.	SEA 483 imposes a severe burden on the right to vote without the required justification and is therefore unconstitutional.....	39
A.	The right to vote and the United States Constitution...	39

B.	SEA imposes a severe burden on persons hoping to vote in-person.....	40
C.	SEA 483 is not narrowly drawn.....	43
D.	Even if SEA 483 does not impose a severe burden on the right to vote, the precise interests put forward by the State do not justify the injury to the right to vote.....	46
E.	Conclusion.....	47
V.	SEA 483 violates 42 U.S.C. § 1971(a)(2)(A) because it subjects potential voters in Indiana counties to different standards as to their qualifications to vote.....	47
VI.	SEA 483 violates Art. 2, § 2 of the Indiana Constitution.....	49
	Conclusion.....	51
	Certificate of Compliance with type volume limitations.....	52
	Certificate of Service.....	52
	Statement Pursuant to Circuit Rule 30(d).....	54

## Table of Authorities

### Cases:

<i>Action Alliance of Senior Citizens v. Heckler</i> , 789 F.2d 931 (D.C.Cir. 1986).....	36
<i>Allen v. Wright</i> , 468 U.S. 737 (1984).....	30
<i>Anderson v. Celebrezze</i> , 460 U.S. 780 (1983) .....	27, 39, 40, 43
<i>Association of Community Organization for Reform Now v. Fowler</i> , 178 F.3d 350 (5 <sup>th</sup> Cir. 1999).....	35, 36
<i>Ball v. Brown</i> , 450 F.Supp. 4 (N.D.Ohio 1977).....	48
<i>Bay County Democratic Party v. Land</i> , 347 F.Supp.2d 404 (E.D.Mich2004).....	32-34
<i>Bensman v. United States Forest Service</i> , 408 F.3d 945 (7 <sup>th</sup> Cir. 2005) .....	35, 39
<i>Board of Elections Commissioners of City of Indianapolis v. Knight</i> , 117 N.E. 565 (Ind. 1917).....	29, 49, 51
<i>Books v. City of Elkhart</i> , 235 F.3d 292 (7 <sup>th</sup> Cir. 2000), <i>cert. denied</i> , 532 U.S. 1058 (2001). .....	27, 34
<i>Brier v. Luger</i> , 351 F.Supp. 313 (M.D.Pa. 1972).....	48
<i>Burdick v. Takushi</i> , 504 U.S. 428 (1992). .....	<i>passim</i>
<i>Charles H. Wesley Education Foundation, Inc. v. Cox</i> , 324 F.Supp.2d 1358 (N.D. Ga. 2004).....	36
<i>Common Cause/Georgia v. Billups</i> , 406 F.Supp.2d 1326 (N.D.Ga. 2005) .....	42, 46, 48
<i>County of Vernon v. United States</i> , 933 F.2d 53 (7 <sup>th</sup> Cir. 1991). .....	30
<i>Doe v. Stincer</i> , 175 F.3d 879 (11 <sup>th</sup> Cir.1999) .....	38
<i>Dunn v. Blumstein</i> , 405 U.S. 330 (1972).....	43, 47
<i>El Rescate Legal Services v. Executive Office of Immigration Review</i> , 959 F.2d 742 (9 <sup>th</sup> Cir. 1991).....	36
<i>Frazier v. Callicutt</i> , 383 F.Supp.15 (N.D. Miss. 1974) .....	48

<i>Fritch v. State</i> , 155 N.E. 257 (Ind. 1927) .....	50
<i>Griffin v. Roupas</i> , 385 F.3d 1128 (7 <sup>th</sup> Cir. 2004), <i>cert. denied</i> , 544 U.S. 923 (2005) .....	29, 41, 47
<i>Haitian Refugee Center v. Nelson</i> , 872 F.2d 1555 (11 <sup>th</sup> Cir. 1989) .....	36
<i>Havens Realty Corporation v. Coleman</i> , 455 U.S. 363 (1982).....	27, 35-37
<i>Horseman v. Keller</i> , 841 N.E.2d 164 (Ind. 2006) .....	44
<i>Hoyle v. Priest</i> , 265 F.3d 699 (8 <sup>th</sup> Cir. 2001) .....	49
<i>Hunt v. Washington State Apple Advertising Commission</i> , 432 U.S. 333 (1977)..	27,35
<i>James v. Bartlett</i> , 607 S.E.2d 638 (N.C. 2005). .....	45, 52
<i>Majors v. Abell</i> , 317 F.3d 719 (7 <sup>th</sup> Cir. 2003) .....	31
<i>Mancuso v. Taft</i> , 476 F.2d 187 (1 <sup>st</sup> Cir. 1973).....	26, 32
<i>Miller v. Blackwell</i> , 348 F.Supp.2d 916 (S.D.Ohio 2004) .....	32
<i>Pennsylvania Psychiatric Society v. Green Spring Health Services, Inc.</i> , 280 F.3d 278 (3 <sup>rd</sup> Cir.), <i>cert. denied</i> , 537 U.S. 881 (2002) .....	32
<i>Powers v. Ohio</i> , 499 U.S. 400 (1991) .....	34
<i>Sandusky County Democratic Party v. Blackwell</i> , 387 F.3d 565 (6 <sup>th</sup> Cir. 2004) .....	26, 32, 33
<i>Schwier v. Cox</i> , 412 F.Supp.2d 1266 (N.D.Ga. 2005), <i>aff'd</i> , 439 F.3d 1285 (11 <sup>th</sup> Cir. 2006). .....	29, 39, 48
<i>Shivelhood v. Davis</i> , 336 F.Supp. 1111 (D.Vt. 1971).....	49
<i>Simmons v. Byrd</i> , 136 N.E.14 (Ind. 1922) .....	50
<i>Sloane v. Smith</i> , 351 F.Supp. 1299 (1972).....	40
<i>Spann v. Colonial Village, Inc.</i> , 899 F.2d 24 (D.C. Cir. 1990), <i>cert. denied</i> , 498 U.S. 980 (1990) .....	37
<i>State ex rel. McGonigle v. Madison Circuit Court</i> , 193 N.E.2d 242 (Ind. 1963).....	51

<i>United States v. Students Challenging Regulatory Agency Procedures (SCRAP)</i> , 412 U.S. 669 (1973).....	35
<i>Valley Forge Christian College v. Americans United for Separation of Church and State</i> , 454 U.S. 464 (1982).....	34
<i>Walgreen v. Board of the Town of Selectmen of the Town of Amherst</i> , 519 F.2d 1364 (1 <sup>st</sup> Cir. 1975).....	32
<i>Warth v. Seldin</i> , 422 U.S. 490 (1975).....	35, 39
<i>Wesberry v. Sanders</i> , 376 U.S. 1 (1964). ....	27, 39

Constitutions:

United States

art. III.....	35
amend I .....	41
amend XIV .....	1, 42

Indiana

art. 2, § 1 .....	50
art. 2, § 2.....	2, 5, 29,49, 51
art. 2, § 14 .....	5, 50

Statutes:

United States

28 U.S.C. § 1291 .....	1
28 U.S.C. § 1331 .....	1

28 U.S.C. § 1367.....	1
28 U.S.C. § 1441 .....	1
42 U.S.C. § 15483(b).....	7, 46
42 U.S.C. § 15483(b)(2)(A)(i).....	8, 46
42 U.S.C. § 15483(b)(2)(A)(ii).....	11
42 U.S.C. § 1971.....	48
42 U.S.C. § 1971(a).....	49
42 U.S.C. § 1971(a)(2). .....	1, 2, 48
42 U.S.C. § 1971(a)(2)(A) .....	29, 47-49
42 U.S.C. § 1971(a)(2)(B) .....	48, 49
42 U.S.C. § 1973gg .....	5
Help America Vote Act of 2002 (“HAVA”), Public Law 107-252 .....	7, 32, 45

Indiana

§ 3-5-2-40.5 .....	8
§ 3-6-4.2-1, <i>et seq</i> .....	6
§ 3-6-5-14 .....	6
§ 3-6-6-1 .....	6,8
§ 3-6-6-2.....	6,8
§3-7-13-1 .....	5
§ 3-7-22-1, <i>et seq.</i> .....	5,6
§3-7-24-17.....	5
§ 3-11-4-3 .....	10

§ 3-11.7-5-1 .....	9
§ 3-11.7-5-2.5(c)(2)(A), .....	16, 17
§ 3-11.7-5-2.5(f).....	9
§ 3-11-8-2.1(e).....	10
§ 3-11-8-20 .....	7
§ 3-11-8-21 .....	7
§ 3-11-8-22 .....	7
§ 3-11-8-23.....	7
§ 3-11-8-25.1(b).....	8
§ 3-11-8-25.1(c).....	8
§ 3-11-8-25.1(d).....	9
§ 3-11-8-25.1(e).....	10
§ 3-11-10-1.2 .....	10
§ 3-11-10-3 .....	10
§ 3-11-10-24 .....	10, 42
§ 3-11-10-26.....	11
§ 3-11-11-10-26(b)(2).....	11
§ 3-14-2-1, <i>et seq</i> .....	7
§ 3-14-2-11 .....	45
§ 3-14-2-14.....	45
§ 3-14-2-16 .....	45
§ 3-14-5-1 .....	45

§ 3-14-5-3 .....	45
§ 3-14-11-12 .....	45
§ 9-24-16-1, <i>et seq.</i> .....	12
§ 9-24-16-10. ....	14
Senate Enrolled Act (“SEA”) 483 .....	<i>passim</i>

**Administrative Rules:**

140 IAC 7-4-2 .....	12
140 IAC 7-4-3 .....	12-14
140 IAC 7-4-3(b) .....	13
140 IAC 7-4-3(d) .....	14
140 IAC 7-4-3(e) .....	14

**Other Authorities:**

Lorraine Minnite & David Callahan, <i>Securing the Vote: An Analysis of Election Fraud</i> (2003) .....	44
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## **Jurisdictional Statement**

The district court had jurisdiction of the case that is docketed as No. 06-2218 pursuant to 28 U.S.C. § 1331 following its removal to federal court pursuant to 28 U.S.C. § 1441. The district court's federal question jurisdiction was based on an alleged violation of the Fourteenth Amendment to the United States Constitution and the Voting Rights Act, 42 U.S.C. § 1971(a)(2). The district court had supplemental jurisdiction of the plaintiffs-appellants' state law claim pursuant to 28 U.S.C. § 1367.

A number of the plaintiffs-appellants in No. 06-2218 are corporations.

Specifically:

-United Senior Action of Indiana is a corporation incorporated in Indiana with its principal place of business in Indiana.

-Indianapolis Resource Center for Independent Living is a corporation incorporated in Indiana with its principal place of business in Indiana

-Concerned Clergy of Indianapolis is a corporation incorporated in Indiana with its principal place of business in Indiana

-Indianapolis Branch of the NAACP is a branch of the national NAACP, which is a corporation incorporated in New York with its principal place of business in Maryland.

-Indiana Coalition on Housing and Homeless Issues is a corporation incorporated in Indiana with its principal place of business in Indiana

The Court of Appeals has jurisdiction of this appeal pursuant to 28 U.S.C. § 1291. The final judgment that is being appealed from disposed of all issues in this cause and was entered on April 14, 2006. No motion for a new trial or alteration of the judgment or any other motion that would have tolled the time to appeal was

filed. The Notice of Appeal was filed on April 24, 2006. This is not an appeal from a decision of a magistrate judge.

### **Statement of the Issues**

Effective July 1, 2005, Senate Enrolled Act (“SEA”) 483 has changed Indiana law to require, as a condition of casting a ballot that is counted, that most, but not all, persons voting at polling places produce a driver’s license or identification card issued by the Indiana Bureau of Motor Vehicles (“BMV”) or other photographic identification issued by Indiana or the federal government. The law does not require the production of any such identification for those who vote absentee ballot by mail or those who reside in nursing homes if the nursing homes are their polling places.

1. Do the plaintiffs-appellants in No. 06-2218, consisting of elected officials who are also candidates and voters, and groups who will be adversely affected and/or who contain members who will be adversely affected by the law, have standing to bring this action?
2. Is SEA 483 unconstitutional because it imposes a severe burden on the right to vote without sufficient justification for doing so in that it will prevent persons from voting and its fraud justification is illusory?
3. Does SEA 483 violate the Voting Rights Act, 42 U.S.C. § 1971(a)(2) in that it provides different standards within a county for those who vote in-person?
4. Does SEA 483 violate the Indiana Constitution, Art. 2, § 2, because it imposes an additional qualification on those wishing to vote?

## Statement of the Case

This is an appeal from the trial court's final judgment upholding SEA 483 as constitutional and lawful against challenges brought against its requirements that most persons voting in-person produce specific forms of identification.

The plaintiffs-appellants in No. 06-2218 filed their complaint against the Marion County Election Board in state court on April 28, 2005. (Motion to Supplement Record, R.Doc. 124, Attachment 2). It was removed to federal court by the Marion County Election Board on May 27, 2005 and assigned case number 1:05-cv-00804. (Motion to Supplement Record, R.Doc. 124, Attachment 1). On June 23, 2005, the trial court granted the State of Indiana's Motion to Intervene in the case. (R.Doc. 17, 18). Also on June 23, 2005, the case was consolidated with a case that had been filed on May 2, 2005 by the Indiana Democratic Party and the Marion County Democratic Central Committee against Todd Rokita in his official capacity as the Indiana Secretary of State and J. Bradley King and Kristi Robertson in their official capacities as co-directors of the Indiana Election Division. (R.Doc. 1, 23). This case had been assigned case number 1:05-cv-0634 and the consolidated cases proceeded under that single cause number. (*Id.*). On August 29, 2005, the Indiana Democratic Party and Marion County Democratic Party amended its original complaint and added the Marion County Election Board as a party. (R.Doc. 37, 43).

On October 31, 2005, both sets of plaintiffs filed separate motions for summary judgment and supporting materials. (R.Doc. 57, 62-70). On November 30, 2005 the Marion County Election Board filed a Motion for Summary Judgment and

supporting materials. (R.Doc. 74-75). On the same date defendants Rokita, King and Robertson and the Intervenor State of Indiana filed their summary judgment motion and materials. (R.Doc. 76-87).

On December 5, 2005 the plaintiffs filed a motion to strike portions of the affidavit of Wendy Orange. (R.Doc. 90). The affidavit had been submitted as Exhibit 37 to the summary judgment motion filed by defendants Rokita, King and Robertson and Intervenor State of Indiana. (R.Doc. 85). And, on December 21, 2005, the plaintiffs filed a motion to strike various portions of the summary judgment memorandum and exhibits submitted by defendants Rokita, King and Robertson and Intervenor State of Indiana (Joint Motion to Strike Portions of the Memorandum in Support of Summary Judgment and Appendix of Evidence, R.Doc. 101).

On April 14, 2006, the district court entered its Entry Granting Defendants' Motions for Summary Judgment, Denying Plaintiffs' Motions for Summary Judgment, and Denying Plaintiffs' Motions to Strike. (R.Doc. 117, Short Appendix A-3). The district court denied the motion to strike portions of Wendy Orange's affidavit as moot because it did not rely on any portions of the affidavit. (R. Doc. 117, A-128). It denied the motion to strike portions of the summary judgment memorandum and materials of Intervenor State of Indiana and defendant Rokita, King and Robertson and noted that it was considering the challenged material only insofar as the submissions were used to establish legislative facts. (R.Doc. 117, A-

126). And it granted summary judgment for the defendants and denied plaintiffs' motions. (Judgment, R.Doc. 122, Appendix ["App.,"] at A-1 – A-2).

### **Statement of the Facts**

#### I. Indiana election law

##### A. Introduction

The basic qualifications for voting in Indiana are set forth in the Indiana Constitution, Art. 2 § 2 :

(a) A citizen of the United States, who is at least eighteen (18) years of age and who has been a resident of a precinct thirty (30) days immediately preceding an election may vote in that precinct at the election.

(b) A citizen may not be disenfranchised under subsection (a), if the citizen is entitled to vote in a precinct under subsection (c) or federal law.

(c) The General Assembly may provide that a citizen who ceases to be a resident of a precinct before an election may vote in a precinct where the citizen previously resided if, on the date of the election, the citizen's name appears on the registration rolls for the precinct

The Indiana Constitution, Art. 2, § 14, also provides that the legislature may provide for registration of persons otherwise entitled to vote. Indiana law, Indiana Code §§ 3-7-13-1 through 3-7-24-17, and the National Voter Registration Act, 42 U.S.C. § 1973gg, provide numerous ways that a person may register to vote in-person as well as through the mail. There is no requirement that identification be shown when one is registering in-person to vote. (Deposition of Sadler, Attachment

to Motion for Summary Judgment of Plaintiffs' Crawford, *et al.*<sup>1</sup> ["Attachment "], Attachment 1 ["Sadler"] at 8-9, R.Doc. 57 ). However, the registration form is signed under the penalties of perjury. Similarly, there is no requirement that one registering by mail provide identification. *See*, Indiana Code § 3-7-22-1, *et seq.*

Indiana law establishes the Indiana Election Division that supplies advice and instruction to county election officials and publishes information and forms to be used in elections. (Indiana Code § 3-6-4.2-1, *et seq.*; Deposition of King, Attachment 2 ["King"] at 7, R.Doc. 57). However, the administration and oversight of elections are the responsibilities of the County Election Board. (Indiana Code § 3-6-5-14; Sadler at 6, R.Doc. 57). To fulfill this responsibility the County Election Board appoints the five officials who work at the polls: an inspector, two clerks, and two judges. (Indiana Code §§ 3-6-6-1,2; Sadler at 10-11, R.Doc. 57).

B. In-person voting, challenge procedures and identification prior to SEA 483

Before SEA 483, a voter seeking to vote in-person would go to the polling place, present himself or herself to the clerks, and sign the poll book that was kept by the clerks. (Sadler at 11; King at 28, R.Doc. 57). There would generally be a photographic copy of the signature that would be reviewed and compared. (Sadler at 4, R.Doc. 57). Indiana law provides criminal penalties if a voter uses a fraudulent identity *See*, Indiana Code § 3-14-2-1, *et seq.* Indiana law also allows any of the

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<sup>1</sup> These plaintiffs, the plaintiff in No. 06-2218, will be referred to as "Rep. Crawford and the interested groups."

election officials to challenge a voter if any one of them believes that the voter's identity is not as represented by the voter. (Indiana Code § 3-11-8-20; Sadler at 12 and King at 44, R.Doc. 57).

The challenge to identity was made by the challenger completing a form affidavit. (Indiana Code § 3-11-8-21; King at 48-49, Ex. 2, R.Doc. 57). The challenged voter could then complete a form response and would then be allowed to vote provisionally (Indiana Code §§ 3-11-8-22, 23; King at 48-49, Ex. 2, R.Doc. 57). Once the provisional ballot was cast the County Election Board would determine if the ballot should be counted or not without any further action by the voter. (King at 55-57, Sadler at 13, R.Doc. 57).<sup>2</sup>

Prior to SEA 483, there was no requirement that the prospective voter show any form of identification. (Sadler at 11, R.Doc. 57). The only exception to this, added in the Help America Vote Act of 2002 ("HAVA"), Public Law 107-252., 42 U.S.C. § 15483(b), provides that if a voter registers by mail and then votes for the first time in-person in a federal election, the voter must present certain information for identification purposes. Specifically, the voter must provide "a copy of a current utility bill, bank statement, government check, paycheck, or other government

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<sup>2</sup> Prior to 2004 there was not a provisional ballot procedure in Indiana. Instead, a person seeking to challenge the voter would complete an affidavit and the voter would complete a counter-affidavit attesting to the fact that he or she could legally vote. (King at 44, 48-49, R.Doc. 57). The provisional ballot procedure was introduced in 2004 by the Help America Vote Act ("HAVA"), Public Law 107-252. (King at 53, R.Doc. 57).

document that shows the name and address of the voter.” 42 U.S.C. § 15483(b)(2)(A)(i).

C. Identification requirements imposed by SEA 483

1. Requirements for those voting in-person at polling places

With one exception, persons who are voting in person must be asked to show proof of identification prior to voting. Indiana Code § 3-11-8-25.1(b). The identification allowed under the statute is quite specific and must be a document that satisfies 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.

Indiana Code § 3-5-2-40.5.

If the voter does not present the specific form of identification required by the law, or if the identification is deemed to be inadequate by the election board (comprised of the inspector and judges at the precinct [Indiana Code § 3-6-6-1]), then a challenge must be filed. Indiana Code § 3-11-8-25.1(c). Once a challenge is

filed, the voter may file a counter-affidavit and, if so, will be allowed to sign the poll list and will be given a provisional ballot. Indiana Code § 3-11-8-25.1(d).

Under SEA 483, if the voter completes a provisional ballot because he or she does not have the required identification, the voter must appear before the Circuit Court Clerk or County Election Board not later than ten (10) days following the election, which is also the deadline for counting the provisional ballots. Indiana Code §§ 3-11.7-5-1, 3-11.7-5-2.5. At that time the voter must either:

- a. Provide proof of identification and execute an affidavit that the voter is the same person who had voted previously, or,
- b. Execute an affidavit that the voter is the same person who had voted provisionally and:
  - i. is indigent and unable to obtain proof of identification without payment of a fee, or
  - ii. has a religious objection to being photographed.

Indiana Code § 3-11.7-5-2.5. Once the voter returns to the office of the Clerk or Election Board and either presents proof of identification or signs the affidavit of indigence or religious objection, the voter's ballot will be counted, provided that there are no other grounds for challenge. Indiana Code § 3-11.7-5-2.5. If the voter fails to timely appear, fails to provide the required identification, or fails to execute the appropriate affidavits, the provisional ballot will be declared invalid. Indiana Code § 3-11.7-5-2.5(f).

As indicated above, there is one exception to requirement that all Indiana voters present the specified proof of identification. SEA 483 contains an exception for a voter "who votes in person at precinct polling place that is located at a state

licensed facility where the voter resides.” Indiana Code § 3-11-8-25.1(e). These persons are “not required to provide proof of identification before voting.” (*Id.*) The term “state licensed facility” includes, at least, nursing homes. (King at 121, R.Doc. 57).

## 2. Voting by absentee ballot

Indiana law currently provides that certain persons may vote via absentee ballot. Indiana Code § 3-11-10-24. Specifically, persons who: have a specific and reasonable expectation of being out of the county during the time the polls are open, are working in an election capacity, are disabled, are confined by illness, are elderly, are caring for a disabled person or working in other employment for the entire times that the polls are open, are prevented by religious observance during the entire times that the polls are open, or who have confidential addresses pursuant to Indiana law may vote absentee by mail. *Id.* In order to vote by absentee ballot the ballot must be applied for prior to the election and received before polls close. Indiana Code §§ 3-11-4-3, 3-11-10-3.

Although SEA 483 imposes rigorous identification requirements for those seeking to vote in-person, except for nursing home residents, the law explicitly specifies that those who vote absentee by mail do not have to provide the identification required by those voting in-person. Indiana Code § 3-11-10-1.2.<sup>3</sup> The

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<sup>3</sup> Indiana law also provides that a person who would be otherwise entitled to vote absentee, may vote in-person, prior to the election, before an absentee voter

only time identification is required of a voter who is voting absentee ballot by mail is if the voter has registered to vote by mail and votes for the first time thereafter in a federal election, via an absentee ballot. The requirement is imposed by HAVA and the identification that must be produced is not the limited identification specified by Indiana law, but is the same forms of identification that federal law requires to be produced if the person votes in-person in a federal election for the first time after registering by mail. *Supra.* 42 U.S.C. § 15483(b)(2)(A)(ii).

When an absentee ballot is cast the voter must seal the ballot and sign his or her name on the outside of the envelope containing the ballot and an affidavit. (Sadler at 24, R.Doc. 57). The signature is then examined before the ballot is counted and if it does not match it can be challenged and the precinct election board of the precinct where the voter lives will determine if the ballot will be counted. (Sadler at 24-26, R.Doc. 57). The signature, and the ability to compare it with the voter's signature on file, is how election officials ensure that there is not fraud and that the election is both safe and secure. (King at 126, R. Doc. 57).

## II. The specifics and costs of obtaining photo identification

Therefore, in order to vote in-person, Indiana voters, except those living in state licensed facilities, must present a current photo identification issued by Indiana or the federal government. The identification must have an expiration date.

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board in either the office of the circuit court clerk or a satellite office. Indiana Code § 3-11-10-26. If a voter votes absentee in this manner the identification required of in-person voters must be shown. Indiana Code § 3-11-11-10-26(b)(2).

The acceptable federal government identification includes military identification as well as passports. (King at 60, R.Doc. 10). Although, “State identification could for example, include university-issued identification cards, if the cards contain an expiration date . . . (King Dep. at 61) . . . [t]he parties agreed that the most likely source of acceptable identification is either drivers’ licenses or identification cards issued by the . . .BMV . . .” (Entry Granting Defendants’ Motions for Summary Judgment, Denying Plaintiffs’ Motion for Summary Judgment, and Denying Plaintiffs’ Motion to Strike [“Entry”] at 15, App. A-17).<sup>4</sup>

In order to obtain a license or identification card an applicant must personally visit a BMV office (Deposition of Redman, Attachment 3 [Redman] at 13, R.Doc, 57) and produce certain documentation. The applicant for a new license or regulation must present, among other things, a primary document, a secondary document, and one proof of Indiana residency requirement or two primary documents and one proof of Indiana residency. (Redman at 5, Ex. 2, R.Doc.57; 140 IAC 7-4-2.)<sup>5</sup>

A primary document, for an American citizen, consists of a United States birth certificate with authenticating stamp or seal, a certificate of naturalization or

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<sup>4</sup> Indiana law provides that an Indiana resident who does not wish to receive a license to drive may receive an identification card. Indiana Code § 9-24-16-1, *et seq.*

<sup>5</sup> The BMV identification rules for those seeking licenses or permits have now been promulgated at 140 IAC 7-4-2 and 140 IAC 7-4-3. They are very similar to the requirements relied on by the parties and district court below.

United States documents showing that the person is a citizen but born abroad, a United States passport, or a United States military, veterans or merchant marine identification card with photograph. (140 IAC 7-4-3(b); Redman at 5, Ex. 2, R.Doc.57). The relevant secondary documents, excluding information that would be possessed by non-citizens, are currently defined by 140 IAC 7-4-3 as:

- certified academic transcript from schools in the United States or territories
- school report cards from schools in the United States or its territories dated within 12 months of application
- school identification cards with photo or yearbook photo from schools in the United States and/or its territories dated within 3 years of application
- an Indiana identification card
- a driver's license, identification, or permit issued by another state
- an Indiana county presentence investigation report with clerk stamp or seal
- an Indiana gun permit
- an Indiana probation identification card with photo, name, and date of birth
- a letter from a probation officer, caseworker, or social worker on official letterhead, certified with a stamp or seal, with the applicant's name and the signature of the worker
- prison release documentation
- United States district court presentence investigation report with stamp or seal
- a valid banking card, Master Card, Visa, American Express, or Discover card issued in the name of the applicant with his or her signature
- a bank statement issued within 60 days of the application
- a W-2 or 1099 form with the applicant's name and address
- a computer-generated paycheck stub with the applicant's name and address
- a valid employee photo identification card
- a valid Indiana professional license
- a valid insurance card
- a Medicare or Medicaid card
- a United States military discharge or DD214 separation papers
- a United States Uniformed Services Card
- a divorce decree certified by the court with a stamp or seal

-an application of marriage or record of marriage that is certified with a stamp or seal<sup>6</sup>

The proof of residency requirement can be satisfied by any primary or secondary document as long as the applicant's name and current residence appears, although a post office box is not an acceptable address. (140 IAC 7-4-3(e); Redman at 5, Ex. 2, R.Doc.57). The BMV has listed various examples that would satisfy the proof of residency requirement including such things as: voter registration card; Indiana driver's license, identification card, or permit with a photograph, child support stub from the Indiana Family and Social Services Administration with the name and address of the applicant, among other documents. (*Id.*)

SEA 483 provides that if a person who does not have a valid license and will be at least eighteen (18) years of age at the next general, municipal or special election will be provided an identification card without cost. (Indiana Code § 9-24-16-10).

### III. Potential difficulties caused by SEA 483 for persons desiring to vote

A. There are voters and potential voters who do not currently have the

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<sup>6</sup> The promulgated regulation, 140 IAC 7-4-3(d), eliminated, clarified, and added to some of the secondary documentation listed in the document that was before the district court. The regulation removed: confirmation of registration letter from an educational institution; court documentation with stamp or seal; Hoosier RX Plan Card and Hoosier Works Card with imprinted name; Indiana BMV title application of registration; Selective Service Acknowledgement Card; United States Veterans Universal ID card. (Redman at 5, Ex. 2, R.Doc.57). The regulation adds the following documentation available to United States citizens: an original driving record from another state, a valid employee photo identification card, a Medicare or Medicaid card, and a United States Uniformed Services Card.

required identification

“The BMV is aware that there are persons who do not currently have a driver’s license or identification card and who are, or who will be, eligible to vote at the next election. Redman Dep. at 21-22).” (Entry at 19, A- 21). The BMV, however, does not have an estimate as to the precise number. *Id.*

A survey done by plaintiff Indiana Coalition on Housing and Homeless Issues (“ ICHHI”) to its member organizations that provide services to homeless and low-income persons indicated that the service providers were personally aware of clients who had neither license nor identification cards. (Deposition of Reinke, Attachment 4 [“Reinke”] at 60-67, Req. 3, R.Doc. 57, App. A-130). This is not a rare phenomenon among homeless persons as case managers at Horizon House, a day center in Indianapolis, noted that frequently homeless persons who they serve, have lost all their possessions, including identification. (Affidavit of Ford, Attachment 5 [“Ford”] ¶¶ 1-5, R. Doc. 57, App. A-135-136; Affidavit of Thompson, Attachment 6 [“Thompson”] ¶¶ 1-5, R.Doc. 57, App. A-139-140).

It is also not a rare phenomenon among elderly persons. A survey released in 2005 by AARP Indiana notes that 3% of Indiana registered voters surveyed do not have either a valid license or identification card and 30% of these are not very likely or not likely at all to obtain the required identification, even if necessary to the ability to vote. (Affidavit of Lyle and AARP survey, Attachment 8 [“Lyle”], R.Doc. 59, 62, App. A-146).. The director of plaintiff United Senior Action noted that based on her experience with the organization and the conversations that she has had over

the last 16 years with her members, there are many senior citizens who do not have either a valid license or identification card. (Deposition of Niemier, Attachment 7 [“Niemier”] at 23-24, R. Doc. 62).

It is also common for persons with disabilities not to have identification. (Deposition of Madill, Attachment 9 [“Madill”] at 6, R.Doc. 62). Moreover, persons who are blind or visually disabled may have identification cards, but they may be expired without the knowledge of the person. (Madill at 9, R.Doc. 62).

B. Difficulties faced in obtaining BMV identification

1. Cost concerns

In order to obtain an identification card, the prospective voter must, as is indicated above, present a birth certificate with a seal. In Indiana, these can cost from \$12 to \$22. (Entry at 20, A-22). If the person was born out of Indiana, the cost can be from \$15 to \$30. (Ford ¶ 9, R.Doc. 57, A-135 ).

Indiana law, Indiana Code § 3-11.7-5-2.5(c)(2)(A), does allow a voter who voted by provisional ballot without identification to be allowed to vote if the voter appears at the office of the County Clerk or Election Board and verifies that he or she is indigent and “unable to obtain proof of identification without payment of a fee.” However, the head of the Marion County Election Board noted that it was not clear whether the cost of a birth certificate would be deemed to be a “fee” within the statute and also noted that there was not yet a definition of indigence. (Sadler at 37-39, R.Doc. 57). Moreover, the transportation fees and parking costs imposed on those traveling to the BMV or the office of the Clerk or County Election Board may

not be waived, no matter how expansively Indiana Code § 3-11.7-5-2.5(c)(2)(A) is interpreted in the future. (Deposition of Robertson, Attachment 12 [“Robertson”] at 48-49, R. Doc. 63).<sup>7</sup>

2. Other issues concerning the acquisition of birth certificates

The birth certificate that must be produced to satisfy the BMV’s primary document requirement is one that has a seal and the BMV is aware of persons who have been turned away because they do not have this. (Redman at 18, R.Doc. 57). Persons born in Marion County, Indiana, may obtain a certified copy of their birth certificates from the Health and Hospital Corporation of Marion County. (Affidavit of Ullrich, Attachment 11 [Ullrich] ¶¶ 1-3, R.Doc. 62). In order to receive the sealed copy the person must produce a passport, current student identification, military identification card or either a non-expired driver’s license or state identification card. (Ullrich ¶ 6, and attachment, R.Doc. 62). If the person does not have the information necessary to satisfy the Health and Hospital Corporation’s identification requirements, the person is told to go to the Indiana State Department of Health in downtown Indianapolis, (Ullrich ¶ 7, R.Doc. 62). There, in order to obtain the birth certificate, the person must present:

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<sup>7</sup> Transportation concerns are particularly acute for disabled persons in Indianapolis who, depending on the severity of their disability, may have to rely upon a para-transit system that costs \$6.00 for a round trip and that must be scheduled days in advance. (Madill at 13-15, R.Doc. 62). Homeless persons will not be able to afford the costs of birth certificates and will have difficulty accessing transportation. (Thompson ¶¶ 7, 6, 17, R. Doc 57, App. A-140-141; Ford ¶¶ 7, 8, 18, R.Doc. 57, App. 136-137).

one of the following: a driver's license, state identification card, work identification with signature, military identification with signature, school identification with signature, veterans identification or passport, or,

two of the following: social security card, credit card with signature, bank card with signature, motor vehicle registration (must be at least 6 months old), housing lease (must be at least 6 months old), military DD-214, valid Indiana professional license, original employment application (must be at least 6 months old), current voter's registration.

(First Stipulation of the Parties, Frequently Asked Questions, p. 2, R.Doc. 53).

There are homeless persons who do not have the underlying information necessary to obtain a birth certificate, regardless of cost. (Ford ¶ 11, R.Doc. 57, App. A-136). And, there are persons who were born out of the State of Indiana for whom there are no records of birth, and hence no birth certificates to produce in order to obtain a BMV identification card so that the person may vote in-person. (Affidavit of Haith, Attachment 14 ["Haith"] p 13, R.Doc. 63).<sup>8</sup>

Persons seeking out of state birth records may have to wait months to receive them. (Thompson ¶ 9, R.Doc. 57, App. A-140).

### 3. Other difficulties in acquiring BMV identification

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<sup>8</sup> In recognition of this problem, the BMV has created a policy, not announced publicly, allowing persons over the age of 65 who do not have birth certificates because their births were not recorded to substitute as a primary document: a Medicare/Medicaid card, Social Security benefits statement, property deed, property tax statement, bank statement, United States Veteran's access photo identification card, marriage license or divorce decree, or pension statement. (Redman 9, Ex. 3, R.Doc. 57). There is no record showing that this policy has ever been used. (Redman at 11, R.Doc. 11).

Multiple documents are needed in order to obtain a license or state identification card from the BMV: a primary document, a secondary document, and proof of Indiana residency. People are turned away from the BMV because they do not have the secondary documentation and/or proof of residency. (Redman at 18, R.Doc. 57).

This is a particular problem for homeless persons who do not have a residence. A case manager who works with homeless persons stated that “I know from working with my clients that some of them do not have this secondary and other information and therefore they are unable to even obtain an identification card.” (Ford ¶ 13, R.Doc. 57, App. A-136 ). Yet, homeless persons do vote, or at least they have in the past in Indiana. (Ford ¶14, R.Doc. 57, App. A-136). This problem was demonstrated by Kristjan Kogerma, a homeless person who went to the BMV in Indianapolis on September 27, 2005, in order to obtain an identification card. (Affidavit of Kogerma, Attachment 15 [“Kogerma”] ¶¶ 1-5, R.Doc. 63, App. A-154). Although he had a birth certificate and his Social Security card, he was denied an identification card because, being homeless he did not have proof of his address. (Kogerma ¶¶ 6, 8 and attachment, R. Doc. 63, App. A-154-155).

Poor persons may also not have the documentation necessary for the BMV. (Deposition of Bohannan, Attachment 10 [“Bohannan”] at 42-43, 91-92, R.Doc. 62). Persons in nursing homes may not have, or may not be able to obtain, the requisite information. (Niemier 60-62, R.Doc. 62). It is not uncommon for disabled persons living in some types of congregate living situation run by a private company to have

their identification kept by the company so that the individual is not able to obtain his or her identification card, even if one has been issued. (Madill at 26-29, R.Doc. 62).

Constance Andrews is an employee of the BMV in Marion County who is responsible for determining if applicants for licenses or state identification cards have with them sufficient documentation to meet the BMV's requirements. (State's Summary Judgment Exhibit 55 ["Andrews"] 8-9, 37, R.Doc. 86). She is aware that people have difficulty in meeting the document requirements to obtain a license or identification card and estimates that each week of the 50 people she sees who are seeking license or identification cards, 30 are turned away because they do not have appropriate documents. (Andrews at 28-29, R.Doc. 86).

### C. Reaction of voters to challenges and provisional ballots

In order for a voter without identification to vote he or she must vote by way of provisional ballot and then go to the BMV to obtain identification and then go to the office of the Clerk or County Election Board prior to the statutory deadline. In the past, many persons, particular those in the poor and minority communities, reacted to challenges by not voting and leaving the polls, even when the challenges were not meritorious. (Haith ¶¶ 2-10, R.Doc. 63; Bohannon at 50-54, R. Doc. 62; Deposition of Oakley, Attachment 13 ["Oakley"] at 20-21, R.Doc. 63; Deposition of Simpson, Attachment 16 ["Simpson"] at 62-64, R.Doc. 64). Some prospective voters are intimidated and frustrated by the challenge process.(Haith ¶ 8, R.Doc. 63; Bohannon at 50-54, R.Doc. 62; Oakley at 20-21, R. Doc. 63; Simpson at 62-64, R.Doc.

64). In the past, when all that was necessary was to file the counter-affidavit and then vote, people who were challenged would leave rather than take the time to go through the challenge process which could take more than 30 minutes. (Haith ¶ 7, R.Doc. 63; Sadler at 18-19, R.Doc. 57). When faced with challenges, some prospective voters simply do not follow through because it is not worth the effort. (Deposition of Crawford, Attachment 17 [“Crawford”] at 127-128, R. Doc. 65). As a veteran poll watcher indicated: “[i]t is my experience that people do not go to extraordinary efforts when they are challenged when trying to vote. They simply will not vote.” (Haith ¶ 10, R.Doc. 63).

#### IV. Justification for SEA 483

SEA 483 was enacted to combat voter fraud. (Entry at 85-89, App. A-85 – A-89). Yet, the State of Indiana is not aware of any incidents of persons voting, or attempting to vote, while using fraudulent identities. (Entry at 21, A-23). Moreover, not one person has ever been formally charged in Indiana with any sort of crime relating to the use of false identities while voting in-person. (Entry at 22, A-24). Veteran poll watchers have seen no evidence of in-person fraud. (Id.). And, while the General Assembly was considering SEA 483 it was not presented with any evidence of in-person fraud in Indiana. (Crawford, Ex. B., Interrogatories 8, R.Doc. 65). However, “there is evidence of absentee fraud in Indiana and . . . pervasive fraud regarding absentee balloting led the Indiana Supreme Court recently to vacate the results of the mayoral election in East Chicago.” (Entry at 22, App. A-24).

Although not before the General Assembly, there are reports in newspapers and other periodicals from around the country that in-person voting fraud might have occurred. (Entry at 23-24, App. A-25-26). There are also polls that indicate that voters are concerned about fraud. (Entry at 24-25, App. A-24-25).

V. The plaintiffs in No. 06-2218

Representative Crawford has represented Indianapolis District 98, in the Indiana House of Representatives since 1972 (Crawford at 10-11, R.Doc. 65). His district is probably the most economically challenged in the State and he has been told by a number of persons at town hall and similar meetings that they do not have the required identification in order to be able to vote. (Crawford 22, 80, R.Doc. 65). He concedes that the majority of persons in his district do have the required identification, but he believes that there is a significant minority that do not. (Crawford at 29-30, R. Doc. 65). He believes that SEA 483 will impose an increased burden on poor persons and as a politician he is concerned because he plans to run again this year and his experience is that the more persons who vote, the better are his electoral chances. (Entry at 35, App. A-37). He is also concerned, as a civil right advocate, that the law runs counter to basic public policy of encouraging persons to vote and, although he has the required identification and will vote, he objects to producing identification. (*Id.*, Crawford at 31, 47-48, R.Doc. 64).

Joseph Simpson is an elected member of the Washington Township (Indianapolis) Board as well as a precinct committee-person. (Simpson at 12-13, R.Doc. 64). He wishes to remain in office and therefore wishes to maximize the

number of persons who vote for him in the future and the more people who are able to vote, the more people who will vote for him. (Simpson at 17-19, R.Doc. 64). He is personally aware that some voters will walk away from the polls and not vote when challenged and he believes SEA 483 will increase the number of challenges. (Simpson at 41-42, 62-64, 77, R.Doc. 64). People in his district have indicated that they object to the law, however, he has not been able to identify any voters who could not vote. (Simpson at 79, R.Doc. 64; Entry at 35, App. A-37). He, like Rep. Crawford, has the requisite identification, will display it if he has to, but is opposed to doing so. (Simpson at 22-23, R.Doc. 64).

ICHHI “is a statewide coalition of organizations and individuals who advocate for persons who experience homelessness as well as low-income persons and families across Indiana.” (Entry at 38, App. A-40). Its members are made up of shelters and other groups providing services to homeless persons as well as the persons receiving the services. (*Id.*). Among its members is Horizon House whose case managers have noted that their clients frequently do not have photo identification, have extreme difficulty in being able to obtain photo identification, and are, sometimes, registered to vote. (Ford, R.Doc. 57, App. A-135, *et seq.*; Thompson, R.Doc. 57, App. A-139, *et seq.*; Declaration of Michael Reinke, Supplemental Attachment 2, R.Doc. 99). In a survey, several of ICHHI’s member organizations also indicated that they were personally aware that homeless persons they serve do not have photo identification. (Reinke, Attached Request No. 3, R. Doc. 57, App. A-130, *et seq.* ). Although ICHHI does not have the names of the persons, it is aware that many homeless and

impoverished persons do not have the identification required to vote. (Entry at 38-39, App. A-40-41).

“The Indianapolis Resource Center for Independent Living (‘IRCIL’) is a center for independent living funded by the federal government through Title 7 of the Rehabilitation Act.” (Entry at 37, App. A-39). IRCIL’s bylaws provide that its members include its board of directors and the persons with disabilities served by the organization. (*Id.*) IRCIL’s members are frequently dependent on public transportation and therefore will have difficulty in making the trips necessary to obtain the identification necessary to have their vote counted. (Madill, Ex. E, Interrogatories ¶ 10, R.Doc. 62). It has members who live in congregate living situations and may not have the information necessary to obtain identification. (*Id.* and Madill 46-47, R.Doc. 62). It assists clients in obtaining identification cards from the BMV, although it does not pay the cost of the underlying documents, such as birth certificates. (Entry at 38, App. A-40). With the passage of SEA 483, IRCIL “will have to devote more of its staffing resources to working with clients in order to try to collect the information necessary to obtain an identification card which . . . will inevitably mean that staff will be less able to devote their time to other issues of importance to IRCIL’s clients.” (*Id.*) IRCIL has not identified members who do not have photo identification. (*Id.*)

“The Indianapolis Branch of the NAACP (“NAACP”) is the local branch of the well-known national civil rights organization. (Entry at 39, App. A-41). The NAACP has not identified any members by name that will not be able to vote because of the

new law, although members have indicated that SEA 483 will prevent them from voting. (Bohannan at 18, R.Doc. 62; Entry at 39, App. A-41). Passage of the law requires the NAACP to now engage in educational and outreach efforts in an effort to inform the public about the law so as to maximize the number of persons who can vote inasmuch as the NAACP both registers and encourages persons to vote. (Bohannan at 25, 27, R.Doc. 62; Affidavit of Bohannan, Supplemental Attachment 5, ¶¶ 1, 3, 4, R.Doc. 99). These efforts will divert the NAACP from engaging in other activities inasmuch as it has limited time and membership resources. (*Id.*) Roderick Bohannan, a member of the NAACP, also strongly objects to having to show his identification in order to vote. (Entry at 40, App. A-42).

Concerned Clergy of Indianapolis (“CCI”) is a civil rights organization consisting of ministers, civic leaders, educators, entrepreneurs, as well as community persons that advocates for the rights of minorities and poor persons in a host of areas, including voting rights. (Oakley 8-9, Ex. G, Interrogatories ¶ 8, R.Doc. 63). It believes that the new law will negatively affect the ability of poor persons to vote. (Oakley at 15-16, R.Doc. 63). One of its members, Rev. Dinkins, is strongly opposed to any requirement that he must show identification to vote, although he does have photo identification. (Entry at 37, A-39). In response to the new law CCI “will have to expend its limited financial resources to assist persons with paying the costs of birth certificates so that they can vote.” (*Id.*)

“United Senior Action of Indiana (‘USA’) is a 15,000 member, not-for-profit organization that is designed to promote and advocate issues of interest and

importance to senior citizens.” (Entry at 40, App. 42-A). It has not identified members who will be adversely affected by the new law, however, it has members who do not have birth certificates, and the Executive Director of the organization has indicated that based on her experience and conversation with her members many seniors do not have licenses or identification cards and members will be discouraged from voting. (Niemi at 23-24, 38-39, R.Doc. 62; Entry at 40, App. A-40).

### **Summary of the Argument**

All the plaintiffs in this case have standing to bring this action. Representative Crawford and Joseph Simpson have standing as candidates to raise the constitutional claims of voters. *Mancuso v. Taft*, 476 F.2d 187, 190 (1<sup>st</sup> Cir. 1973). Representative Crawford has been informed at town hall meetings that potential voters do not have the required identification to vote and Mr. Simpson is aware that prospective voters for him will be likely to leave the polls without voting if challenged. The fact that at this point particular voters who will not be able to vote, or will be discouraged from voting, cannot be identified does not preclude standing inasmuch as it is impossible to know prior to the next election who will be injured, but injury is inevitable. *See, e.g., Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565, 574 (6<sup>th</sup> Cir. 2004). Moreover, as voters, Representative Crawford and Joseph Simpson have standing because they are being forced to display their identification when they vote. This is sufficient injury to give them

standing. See e.g., *Books v. City of Elkhart*, 235 F.3d 292, 300 (7<sup>th</sup> Cir. 2000), cert. denied, 532 U.S. 1058 (2001).

NAACP, IRCIL and CCI will all have to expend resources, impairing their ability to provide other services, in order to combat the effects of SEA 483. This is injury that is sufficient to give the organizations standing. *Havens Realty Corporation v. Coleman*, 455 U.S. 363, 379 (1982). All the interested groups have members who will be injured because of SEA 483. The members voting rights are germane to the organizations' purposes and there is no necessity for the members to participate in this litigation. The organizations therefore have standing to bring this action as representatives of their members. See e.g., *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 343 (1977).

The statute violates the United States Constitution. The right to vote is fundamentally important and is implicit in a number of constitutional provisions. *Anderson v. Celebrezze*, 460 U.S. 780, 786, n. 7 (1983); *Wesberry v. Sanders*, 376 U.S. 1, 19 (1964). A balancing test is used to assess the constitutionality of impingements on the right to vote, requiring a court to weigh the injury to the voter against the precise interests advanced by the State, taking into consideration the necessity of the burdening of the voter's rights. *Burdick v. Takushi*, 504 U.S. 428, 433-34 (1992). However, if the burden on voting rights is severe, the impingement can be upheld only if the regulation is narrowly drawn to advance compelling interests. 504 U.S. at 434.

The statute will make it much more burdensome for certain persons to vote. Some prospective voters do not have birth certificates or the other documentation required by the BMV. Homeless persons frequently do not have the necessary documentation. This is not, however, just a problem for homeless persons. For example, fully 60% of persons who a BMV employee witness sees each week who are attempting to obtain a license or identification are turned away because they do not have the required documentation. Additionally, the evidence is uncontested that if the ability to vote is even slightly burdened, people will not vote. The law imposes a severe burden.

The purpose for the statute is to combat fraud. However, it is not enough to allege fraud, the statute must be narrowly tailored to meet that purpose. There has never been in-person voting fraud in Indiana. The only fraud that has been reported is in the area of absentee balloting. SEA 483 does not impose identification requirement for absentee voters, only those who vote in-person. Moreover, there has been no showing why the protections against fraud in place prior to SEA 483 are not sufficient. And, there are many less onerous methods of identification that could be used to satisfy the State's fraud concerns. This all combines to indicate that the statute is not narrowly tailored. And, even if the statute was not deemed to impose a severe burden, it is wanting because the "restriction and resulting exclusion are [not] reasonable given the interest the restriction serves." *Griffin v. Roupas*, 385 F.3d 1128, 1130 (7<sup>th</sup> Cir. 2004), *cert. denied*, 544 U.S. 923(2005).

SEA also 483 violates 42 U.S.C. § 1971(a)(2)(A), a statute that prohibits the imposition of different standards for voters within the same county. The statute applies outside of the context of racial discrimination in voting. *See e.g., Schwier v. Cox*, 412 F.Supp.2d 1266 (N.D.Ga. 2005), *aff'd*, 439 F.3d 1285 (11<sup>th</sup> Cir. 2006). SEA 493 creates a different standard for voters who are voting in-person in that no identification must be presented if the voter lives in a nursing home that is a voting precinct, whereas other persons voting in-person must present identification.

Finally the statute violates the Indiana Constitution. Article 2, § 2 of the Indiana Constitution sets out the explicit requirements for an Indiana resident to be able to vote. The legislature cannot add on to these requirements. *Board of Elections Commissioners of City of Indianapolis v. Knight*, 117 N.E. 565, 567 (Ind. 1917). SEA 483 is not some mere regulation of the right to vote. Instead it has imposed a new substantive requirement. It is not enough that the voters bring material that identify themselves, instead they must bring the specific, and limited, forms of identification prescribed by SEA 483. This imposes a new requirement to vote and violates the Indiana Constitution as well.

## **Argument**

### **I. Introduction**

SEA 483 compels most, but not all, Indiana residents who are voting in-person to present photo-identification and it is agreed that the most likely form of photo identification will be licenses or identification cards issued by the BMV. The district court found the burden to be slight and the requirement reasonable and

therefore constitutional. However, the burden is not slight, but severe and the required scrutiny compels a conclusion that the law violates the United States Constitution as well as federal law and the Indiana Constitution. Rep. Crawford and the interested groups have standing to raise these arguments. Accordingly, the trial court's grant of summary judgment to the defendants was erroneous and must be reversed. Judgment should be entered for Rep. Crawford and the interested groups.

## II. The standard of review

Because this is an appeal from a ruling on cross-motions for summary judgment, the standard of review to be applied by this Court is a *de novo* one. *See e.g., County of Vernon v. United States*, 933 F.2d 532 (7<sup>th</sup> Cir. 1991).

## III. Rep. Crawford and the interested groups have standing to bring this action

### A. Introduction

In order to have standing a plaintiff must be faced with injury, traceable to the challenged action that can be redressed by a favorable decision. *Allen v. Wright*, 468 U.S. 737, 751 (1984). Although not disputing that the redressibility and causation prongs of standing were met here, the trial court concluded that none of the group plaintiffs in this case had standing to bring this action because they did not meet the injury requirement and Rep. Crawford and Joseph Simpson had standing only to assert the rights of voters who, through inadvertence, are unable to

present photo identification at the polls.<sup>9</sup> This was erroneous. All plaintiffs have been or face injury and all have standing.

B. Rep. Crawford and Joseph Simpson have standing as candidates and voters to challenge SEA 483

1. Candidate standing

Representative Crawford has been informed by persons at town hall and similar meetings that they do not have the required identification to vote. He believes that a significant minority of persons in this district do not have the required identification. Joseph Simpson is aware that prospective voters for him will be likely to walk away from the polls if challenged and that SEA 483 will increase challenges. Both men are candidates.

In *Majors v. Abell*, 317 F.3d 719, 722 (7<sup>th</sup> Cir. 2003), this Court noted that a candidate had standing to challenge a law regulating political advertising because he himself had been threatened with prosecution and because he could raise the interests of his supporters if they would be deterred “from supporting him by paid advertisements.” A candidate has standing to assert the rights of voters who are burdened by an unconstitutional law. “A candidate for public office, such as appellee, is so closely related to and dependent upon those who wish to vote for him and his litigation will so vitally affect their rights that courts will relax the rule of

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<sup>9</sup> Although, the trial court did not find that its limited grant of standing precluded its ability to address the arguments on the merits made by Rep. Crawford and Mr. Simpson, which were the exact same arguments made by the interested groups.

practice (which is designed to assure vibrant representation of vital interests of non-parties) and permit a candidate to raise the constitutional rights of voter.” *Mancuso v. Taft*, 476 F.2d. at 190. *See also, Pennsylvania Psychiatric Society v. Green Spring Health Services, Inc.*, 280 F.3d 278, 288, n. 10 (3<sup>rd</sup> Cir.), *cert. denied*, 537 U.S. 881 (2002); *Walgreen v. Board of the Town of Selectmen of the Town of Amherst*, 519 F.2d 1364, 1365, n. 1 (1<sup>st</sup> Cir. 1975); *Bay County Democratic Party v. Land*, 347 F.Supp.2d 404, 422 (E.D.Mich. 2004).

It is true that Representative Crawford and Joseph Simpson have not been able to identify particular voters today who will not be able to vote for them at future elections. Nor can they identify those who will be discouraged from voting by the various hurdles to voting and/or the prospect of a challenge and not vote. Yet, the evidence is clear that: there are Indiana residents who do not have the BMV identification, it is difficult, if not impossible, for some persons to obtain the information necessary to procure BMV identification, and that when faced with hurdles to voting, persons do not vote.

In *Sandusky County Democratic Party v. Blackwell*, 387 F.3d at 574, political parties and labor organizations were allowed to challenge a directive concerning provisional ballots as potentially violative of HAVA, despite the fact that specific members who would be affected were not identified and not yet known. The court found that it was “inevitable” that the issue would arise at the time of voting and therefore the issues presented “are not speculative or remote; they are real and imminent.” *Id.* The trial court found this and, similar case, *Miller v. Blackwell*, 348

F.Supp.2d 916, 920 (S.D.Ohio 2004); *Bay County Democratic Party*, 347 F.Supp.2d at 422, not apposite because the cases involved a situation, unlike this one in the court's estimation, where it is impossible to know the identify of the voters injured prior to the election. (Entry at 75, n. 67. App. 77A).<sup>10</sup> However, no one, at this point, can identify a single person and say definitively that it will be impossible for him or her, between now and the next election, to take whatever extraordinary steps are necessary to obtain BMV identification. Nor can anyone, at this point, identify persons who, at the time of the next election, will become so discouraged by the process attendant to obtaining identification that they will not vote. This is a case about burdens and whether the burden is sufficiently onerous and unreasonable enough to prevent or discourage persons from voting. It is enough that the problem, persons being deterred from voting, is inevitable. Rep. Crawford and Joseph Simpson can do nothing more at this point than note that some of their constituents do not have identification and that some of their constituents will not vote rather than face a challenge.<sup>11</sup>

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<sup>10</sup> The district court also noted that those other cases were not decided in the Seventh Circuit and involved preliminary injunctions. (Entry at 75, n. 67, App. 69-A). However, regardless of whether arising in the context of a preliminary injunction or summary judgment, the point is that standing is allowed if real and imminent issues will inevitably arise at the time of voting. *Sandusky*, 387 F.3d at 574. And, while *Sandusky* was decided by the 6<sup>th</sup> Circuit, this is not reason to discount its value as precedent, albeit not binding.

<sup>11</sup> The district court stated that candidate standing is not available because any voter prohibited from voting could assert his or her own rights. (Entry at 66,

2. The candidates here could also raise their interests as voters

The trial court found that Rep. Crawford and Joseph Simpson do not have personal standing to object to having to show their identification in order to vote because “[o]ffense alone in response to government policies or requirements does not suffice to create standing.” (Entry at 58, App. 60-A). While it is true that “abstract injury” and generalized grievances are not sufficient to bestow standing, *Valley Forge Christian College v. Americans United for Separation of Church and State*, 454 U.S. 464, 483 (1982), Rep. Crawford and Joseph Simpson have demonstrated concrete injury.

Both Rep. Crawford and Joseph Simpson are being forced to display their identification when they vote. They have to engage in a physical activity that is unwelcome and objectionable. Given that unwelcome confrontation with an objected to object or practice is sufficient injury to bestow standing, *see e.g., Books v. City of*

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App. 68-A). This assumes that a candidate asserting the injury of his constituents is asserting standing under the third-party standing doctrine exemplified in, *e.g., Powers v. Ohio*, 499 U.S. 400, 410-411 (1991). This is incorrect as the standing of a candidate is separate from the third-party standing doctrine. *See, e.g., Bay County Democratic Party v. Land*, 347 F.Supp.2d at 422-423. In any event, both candidates satisfy the requisites for third-party standing. For third-party standing, the litigant must have suffered an injury in fact, assuring a concrete interest; the litigant must have a close-relation to the third party, and there must exist an impediment to the third-party being able to raise his or her own rights. *Id.* Both Rep. Crawford and Joseph Simpson are in close relation to prospective voters and the voters’ potential inability to vote for them is injury, and the ultimate burden imposed by SEA 483, the inability or discouragement of the right to vote will not be determined until the day of the election, thus hindering the ability of any third-party to raise his or her own claims at this point. *See, e.g., Bay County Democratic Party v. Land*, 347 F.Supp.2d at 423.

*Elkhart*, 235 F.3d at 300, having to produce a photo identification is a sufficient “identifiable trifle” to allow standing. *United States v. Students Challenging Regulatory Agency Procedures (SCRAP)*, 412 U.S. 669, 690, n. 14 (1973).<sup>12</sup>

C. The interested groups have standing as well

1. Introduction

An organization may satisfy Article III standing requirements in two separate ways. It will have standing if “it meets the same standing test that applies to individuals. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378-79 . . . . (1982).” *Association of Community Organization for Reform Now v. Fowler*, 178 F.3d 350, 356 (5<sup>th</sup> Cir. 1999). However, it will also have standing if “its members can sue in their own rights, the interests at stake are germane to the organization’s purpose, and neither the claim nor the relief requested require the participation of individual members in the lawsuit.” *Bensman v. United States Forest Service*, 408 F.3d 945, 949, n. 2 (7<sup>th</sup> Cir. 2005). *See also, e.g., Hunt v. Washington State Advertising Commission*, 432 U.S. at 343. Only one member need be injured in order for the organization to have standing. *Warth v. Seldin*, 422 U.S. 490, 511 (1975)

2. A number of the interested groups have standing because they are being directly injured

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<sup>12</sup> As is indicated below, the constitutionality of the challenged statute depends on a weighing of burden on the voter as opposed to interest of the State. *See*, Section V-A, *infra*. Admittedly, a person who has identification in his pocket cannot argue that it is too burdensome to produce. However, he can argue that the requirement as imposed upon him violates federal law and the Indiana Constitution. *See*, Section IV and VI, *infra*.

In *Havens Realty Corporation v. Coleman*, 455 U.S. at 379, the Court held that a fair-housing organization could demonstrate standing if the racial steering practices challenged impaired its “ability to provide counseling and referral services . . . Such concrete and demonstrable injury to the organization’s activities – with the consequent drain on the organization’s resources – constituted far more than simply a setback to the organization’s abstract social interests.”

Thus, under *Havens Realty*, an organization has standing to sue on its own behalf where it devotes resources to counteract a defendant’s allegedly unlawful practices and this affects its ability to provide basic services it was formed to provide. In *Fowler*, 178 F.3d at 360, the court concluded that an organization involved in voter registration had standing to challenge Louisiana’s alleged failure to implement portion of National Voter Registration Act since it caused the organization to expend resources to counteract the failure.<sup>13</sup> CCI, IRCIL and the NAACP will all have to expend resources to combat the effects of SEA 483. The

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<sup>13</sup> *Fowler* demonstrates the error in the trial court’s assertion that *Havens* applies only to fair-housing cases. (Entry at 68, App. 70-A). Numerous cases allow standing under *Havens* in other than fair housing contexts. See e.g., *El Rescate Legal Services v. Executive Office of Immigration Review*, 959 F.2d 742, 748 (9<sup>th</sup> Cir. 1991) (organization serving immigrants); *Haitian Refugee Center v. Nelson*, 872 F.2d 1555, 1561, n. 10 (11<sup>th</sup> Cir. 1989) (organization challenging policies of Immigration and Naturalization Service); *Action Alliance of Senior Citizens v. Heckler*, 789 F.2d 931, 938 (D.C.Cir. 1986) (senior citizens advocacy organization); *Charles H. Wesley Education Foundation, Inc. v. Cox*, 324 F.Supp.2d 1358, 1364 (N.D. Ga. 2004) (organizers of voting registration drives).

NAACP will now engage in educational and outreach efforts in an effort to inform the public about the law so as to maximize the number of persons who can vote, an essential goal to the NAACP. IRCIL will have to take time and resources away from other efforts to assist its clients in trying to obtain the information necessary to obtain an identification card and CCI will have to spend its limited resources to pay for birth certificates so persons can vote.<sup>14</sup> The goals of all three organizations are frustrated by hindering people's ability to vote and they must spend resources to address this problem, thereby bestowing standing on the organizations.

Recognizing that these organizations have standing does not “eviscerate the standing doctrine.” (Entry at 70, App. 72-A). This is not “self-inflicted” or manufactured harm. (*Id.*). Instead, as required by *Havens*, each group has demonstrated that the “illegal action increases the resources the group must devote to programs independent of its suit challenging the action.” *Spann v. Colonial Village, Inc.*, 899 F.2d 24, 27 (D.C. Cir. 1990), *cert. denied*, 498 U.S. 980 (1990).

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<sup>14</sup> The trial court found that these allegations were too “imprecise and speculative.” (Entry at 69, App. 71-A). Yet, the NAACP has indicated that it “will be involved in education and outreach efforts to inform the public about the law . . . These efforts will divert our chapter from engaging in other activities inasmuch as we have limited time and membership resources.” (Affidavit of Roderick Bohannon, Supplemental Attachment 5, ¶ 5, R.Doc. 99) There is certainly nothing speculative about that. IRCIL and CCI both assert that they will have to respond to assist persons who need help in obtaining identification from the BMV. Given the onerous BMV requirements it is inevitable that these organizations will be called upon to assist prospective voters.

3. A number of the groups have standing because their members have standing

ICHHI's members include not only advocacy groups but homeless persons as well. It is undisputed that homeless persons, including those served by Horizon House, who are therefore members of ICHHI, have extreme difficulty in obtaining identification. It is not necessary that the members be named in order for the organization to have standing "neither unusual circumstances, inability of individual members to assert rights nor an explicit statement of representation are requisites." *Doe v. Stincer*, 175 F.3d 879, 882 (11<sup>th</sup> Cir.1999) (internal citation omitted). Therefore, ICHHI has standing.

Rev. Dinkins, a member of CCI, objects to showing photo identification, a fact that gives him standing to challenge aspects of SEA 483. (See Section III-C). Therefore, CCI has standing. Similarly, Roderick Bohannon a member of the NAACP objects to producing his identification, giving NAACP standing. Additionally, unknown members of the NAACP have indicated that the law will prevent them from voting, further strengthening the NAACP's standing.

IRCIL has had members indicate that SEA 483 will create barriers to being able to vote. They would have standing to challenge those barriers and therefore IRCIL has standing. Similarly, USA has members who do not have birth certificates and has members who will be discouraged from voting. Given that the exact identity of aggrieved potential voters cannot be identified until the time they are actually denied the right to vote, nothing more specific can be shown. The facts demonstrate that the organizations have members who are "suffering immediate or threatened

injury.” *Warth v. Seldin*, 422 U.S. at 511. The members’ interests at stake are germane to the organizations’ purposes and there is no need for participation of the individual members. *Bensman*, 408 F.3d at 949, n. 2. The organizations therefore have standing.

IV. SEA 483 imposes a severe burden on the right to vote without the required justification and is therefore unconstitutional

A. The right to vote and the United States Constitution

The Constitution does not explicitly guarantee a right to vote. *Griffin*, 383 F.3d at 1130. However, on numerous occasions the Supreme Court has noted the fundamental importance of the right to vote. “No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.” *Wesberry v. Sanders*, 376 U.S. at 19. The right is implicit in various constitutional provisions, including the Equal Protection and Due Process Clauses as well as the First Amendment. *Anderson v. Celebrezze*, 460 U.S. at 786, n. 7.

However, the Court has stressed that not every restriction on the right to vote is either unconstitutional or subject to strict scrutiny. Any election law “will invariably impose some burden on individual voters” and to impose strict scrutiny on every regulation on the franchise would “tie the hands of States seeking to assure that elections are operated equitably and efficiently.” *Burdick v. Takushi*, 504 U.S. at 433. Therefore a more “flexible standard” applies where a court must “weigh ‘the character and magnitude of the asserted injury to the rights protected by the First

and Fourteenth Amendments that the plaintiff seeks to vindicate’ against the ‘precise interests put forward by the State as justification for the burden imposed by its rule,’ taking into consideration ‘the extent to which those interests make it necessary to burden the plaintiff’s rights.’” 504 U.S. at 434, *quoting, Anderson*, 460 U.S. at 788-89.

Under this standard, the rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights. Thus, as we have recognized when those rights are subjected to “severe” restrictions, the regulation must be “narrowly drawn to advance a state interest of compelling importance.” . . . But when a state election law provision imposes only “reasonable, nondiscriminatory restrictions” upon the First and Fourteenth Amendment rights of voters, “the State’s important regulatory interests are generally sufficient to justify” the restriction

*Burdick*, 504 U.S. at 434. (internal citations omitted).

B. SEA imposes a severe burden on persons hoping to vote in-person

The most common form of identification for in-person voters is identification issued by the BMV. Some persons do not have a birth certificate or are unable to obtain one because in order to do so they must produce a BMV issued identification. Others, such as the homeless or those living in congregate living will not have the secondary documentation or proof of Indiana residency. Some of these persons may not be “indigent” and therefore, under the law, there is no way that they can vote in-person. Even those who may be declared indigent will be able to vote only after making yet another trip, this time to the office of the Clerk or County Election Board to execute the requisite affidavit. In order for others to obtain identification they will have to incur the expense and inconvenience of traveling to the Health and

Hospital Corporation and possibly the Indiana Department of Health and then to the BMV. If these voters do not learn of the identification requirement until the first time they try to vote they will possibly have to travel to obtain a birth certificate, then to the BMV, and then to the office of the Clerk or County Election Board.

The trial court criticized the plaintiffs for not presenting evidence of anyone who will not be able to vote or who will suffer hardship because of the challenged law. Inasmuch as the injury will not occur until the election, the plaintiffs' difficulties in this regard are understandable. But, plaintiffs clearly demonstrated that there will be hardships suffered. For example, Kristjan Kogerma, a homeless man who went to the BMV to obtain identification was turned away because he could not produce the necessary secondary documentation. (Kogerma, R.Doc. 63, App. A-154). This is a frequent problem for homeless persons who frequently do not have the necessary documentation to obtain identification as is documented both by a survey done by homeless agencies as well as by persons who work with the homeless and homeless voters. (Reinke, Ex 1, R.Doc. 57, Req. 3. A-130, *et seq*; Ford, R. Doc. 57, App. A-135, *et seq.*; Thompson, R.Doc. 57, App. A-139, *et seq.*).

It is not just difficult for persons who are homeless to accumulate the documentation necessary to obtain the BMV identification. A BMV employee estimates that fully 60% of the persons that she sees each week who are trying to apply for a license or identification are turned away because they do not have proper documentation. (Andrews at 8-9, 28-29, 37, R.Doc. 86). Although the number is not known by the BMV, it concedes that there are persons who do not currently

have license or identification cards and who are, or will be, eligible to vote at the time of the next election. (Entry at 19, App. A-21). The AARP has estimated that 3% of Hoosiers over the age of 60 who are currently registered voters have neither a license or identification and 30% of these are not very likely or not likely at all to obtain the required identification, even if necessary to be able to vote. (Lyle, R. Doc. 59, App. A-145).

Voting now carries an additional burden. For those seeking to vote in-person, an original birth certificate must be purchased and trips to the BMV must be made. The district court discounted the fact that the evidence is uncontested that when impediments are placed in front of voters they often will not vote. As the court noted in *Common Cause/Georgia v. Billups*, 406 F.Supp.2d 1326, 1365 (N.D.Ga. 2005), in granting a preliminary injunction against a voter identification statute, “[t]he right to vote is a delicate franchise.” Thus, voters will be discouraged not only by the challenge process at the polls if they try to vote without identification but by the entire process of the expense and bother of multiple trips to government agencies.<sup>15</sup>

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<sup>15</sup> The trial court notes that any burden can be minimized by voters voting absentee, without an identification requirement. (Entry at 82, n. 71, App. 84-A). However, it is clear that non-disabled persons who are not elderly have no absolute right to vote via absentee ballot. Indiana Code § 3-11-10-24. Moreover, as the court noted in *Common Cause/Georgia* where the enjoined law allowed all voters to vote absentee, the fact that absentee ballots requires that voters plan sufficiently far ahead to apply to plan to vote absentee, and plan far enough ahead to get the ballot back in a timely fashion, means that absentee balloting is not a “realistic alternative to voting in person that is reasonably available for most voters who lack Photo ID.” 406 F.Supp.2d at 1365.

C. SEA 483 is not narrowly drawn

Given that SEA 483 imposes a severe burden on the ability to vote, it can be justified only if the statute is narrowly drawn to advance a compelling state interest. *Burdick*, 504 U.S. at 434. A court may not simply accept the rationale offered by the State; it must “identify and evaluate the precise interest put forward by the State.” *Anderson*, 460 U.S. at 789. The burden imposed by the statute here is not justified.

The trial court found that the State had a compelling interest in combating fraud in voting. While this is certainly a legitimate and strong state interest, merely alleging fraud does not automatically justify burdening the right to vote. *See e.g.*, *Dunn v. Blumstein*, 405 U.S. 330, 345, 351-52 (1972). SEA 483 is not narrowly tailored to meet the State’s interest in combating fraud.

Although the State introduced articles and other materials indicating that there has been in-person fraud in other states, material that was not before the legislature, it is undisputed that there has been no evidence of in-person voting fraud in Indiana. Moreover, many of the incidences cited by the trial court did not involve in-person fraud that identification would have thwarted. (See, Amicus Brief of Brennan Center, Section A). Additionally, a national study, introduced by the State, demonstrates that “the disenfranchisement of voters through antiquated voting systems, errors, mismanagement of registration bases, and intimidation or harassment is a far bigger problem than traditional forms of election fraud.”

Lorraine Minnite & David Callahan 15, *Securing the Vote: An Analysis of Election Fraud* (2003). (State's Summary Judgment Exhibit 6, R.Doc. 79).

The election fraud that has occurred in Indiana has all been in the area of absentee ballot voting, an area that the Indiana legislature has not protected with any additional identification safeguards. Instead, fraud prevention for absentee voters is safeguarded by signature comparison, a method that SEA 483 rejects for in-person voters. And while absentee balloting and voting in person are certainly distinct and separate, it would appear obvious that there is a greater chance of fraud in absentee voting. Indeed, the Indiana Supreme Court has noted that absentee voters may be treated differently than those who vote in-person precisely because “the absentee voter is not exposed to the extensive precautions followed by Election Day officials to guard the integrity of the ballots.” *Horseman v. Keller*, 841 N.E.2d 164, 172 (Ind. 2006). “Rather than drawing the Photo ID law narrowly to attempt to prevent the most prevalent type of voter fraud, the State drafted its Photo ID requirement to apply only to in-person voters . . . Under these circumstances, the Photo ID requirement simply is not narrowly tailored to serve its stated purposes – preventing voter fraud.” *Common Cause/Georgia*, 406 F.Supp.2d at 1361-62

Prior to SEA 483 there were in place anti-fraud procedures in voting. In addition to the requirement that the voter sign in and that his or her signature be compared by an election official to the signature on the voter rolls, and that the voter be subject to challenge, Indiana law criminalizes in-person voter fraud in a

number of statutes. *See*, Indiana Code §§ 3-14-2-11 (voting in improper precinct); 3-14-11-12 (voting in false name or duplicate voting); 3-14-2-14 (penalty for precinct officials who knowingly allow unauthorized voter), 3-14-2-16 (assorted election fraud); 3-14-5-1 (allowing for arrest of illegal voters and forwarding of affidavits to prosecutor)3-14-5-3 (requiring that violations be reported to prosecuting attorney). In *Dunn*, in striking down a duration residency restriction for voting, the Court noted that the state’s interest in protecting against fraud was met by the “variety of criminal laws that are more than adequate to detect and deter whatever fraud may be feared.” 405 U.S. at 353. Given that there has been no evidence of in-person fraud in Indiana, SEA 483 is simply not “necessary to meet the State’s goal of stopping fraud.” 405 U.S. at 354.

Moreover, in passing SEA 483, the State eschewed various other forms of identification and instead selected one particular form of identification that for some is difficult, if not impossible, to obtain. This is not rational, let alone narrowly drawn to advance the State’s interest. The nursing home exception in the law is appropriate, in the estimation of the trial court, because there will be people there who will know the voter. (Entry at 103, App. 105-A). Yet, SEA 483 does not allow persons to vote, even if they are known to those working the polls.

SEA 483 is not properly tailored because it ignores all forms of identification other than that issued by Indiana or the United States. HAVA was “initiated in the wake of allegations of irregularity and fraud in the 2000 presidential election.” *James v. Bartlett*, 607 S.E.2d 638, 642 (N.C. 2005). It prescribes identification

requirements for those who have never been to the polls before and have never appeared in-person before an election official. Yet, HAVA, 42 U.S.C. § 15483(b), allows these individuals to prove their identity in a much more expansive manner than SEA 483, through some form of current photo identification or “a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.” 42 U.S.C. § 15483(b)(2)(A)(i). Indeed, every other state (with the exception of Georgia whose law has been preliminarily enjoined, *Common Cause/Georgia*), while undoubtedly sharing Indiana’s concerns about fraud, currently allow more forms of identification to be used by voters than Indiana. See, Section B(2), Brief of Amicus Brennan Center for Justice.

“[T]he State has a number of significantly less burdensome alternatives available to prevent in-person voting fraud.” *Common Cause/Georgia*, 406 F.Supp.2d at 1362. The identification requirements imposed by SEA 483 are not narrowly drawn to advance the State’s legitimate interest in combating fraud.

- D. Even if SEA 483 does not impose a severe burden on the right to vote, the precise interests put forward by the State do not justify the injury to the right to vote

*Burdick* makes clear that even if not severe, a regulation that burdens the right to vote must be carefully scrutinized and the injury to the rights involved must be balanced against “the precise interests put forward by the State as justifications for the burden imposed by its rule,’ taking into consideration ‘the extent to which those interest make it necessary to burden the plaintiff’s rights.” 504 U.S. at 434

(internal citation omitted). Even if the burden imposed by SEA 483 was deemed not to be serious enough to require the strictest scrutiny, the statute is still unconstitutional. This intermediate scrutiny does not change the fact that the statute will prevent or deter persons from voting. And, as indicated above, the State's interest in preventing fraud does not justify this particular burden. The State has ignored ready alternatives and has created the most onerous identification requirement in the country. "[T]he constitutional question is whether the restriction and resulting exclusion are reasonable given the interest the restriction serves." *Griffin*, 383 F.3d 1130. Excluding those who do not have the precise form of restricted identification demanded by the State is not reasonable given the State's interest in preventing fraud, the other available methods of identification, the lack of in-person voting fraud in Indiana and the concomitant fraud in absentee voting which remains unburdened by identification requirements.

#### E. Conclusion

The trial court erroneously concluded that the identification requirements of SEA 483 did not create a serious burden on the right to vote and then concluded that the law was reasonable. However, given that the law does impose a serious burden, *Burdick* requires more. The statute fails the required scrutiny and is unconstitutional.

IV. SEA 483 violates 42 U.S.C. § 1971(a)(2)(A) because it subjects potential voters in Indiana counties to different standards as to their qualifications to vote

Federal law, 42 U.S.C. § 1971(a)(2) provides that:

No person acting under color of state law shall –

(A) in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote.

The trial court found that no arguments could be raised that SEA 483 violates 42 U.S.C. § 1971, despite the fact that it imposes different standards depending on whether a person is a nursing home resident or some other type of in-person voter, because, in the trial court’s estimation, that statute only applies to racial discrimination in voting requirements. (Entry at 114, App. A-116). The trial court erred.

In *Schwier v. Cox, supra*, the court held that a requirement that persons disclose their Social Security numbers as a condition of registration was a violation of the 42 U.S.C. § 1971(a)(2)(B). No mention was made of the fact that the case did not involve racial discrimination. And, there are numerous other cases, discounted by the district court, that hold that § 1971 applies outside of the context of racial discrimination. *See, Ball v. Brown*, 450 F.Supp. 4, 7 (N.D. Ohio 1977) (“the prevalent trend permits § 1971 actions to redress non-racial discrimination”); *Frazier v. Callicutt*, 383 F.Supp.15, 20 (N.D. Miss. 1974) (“in a proper case, 42 U.S.C. § 1971(a)(2)(A) may be applied to prohibit discrimination in non-racial as well as racial grounds.”); *Brier v. Luger*, 351 F.Supp. 313, 316 (M.D.Pa. 1972) (claim that Democrats were purged from voter registration list at a much greater rate than Republicans was “properly brought under 42 U.S.C. § 1971(a)(2)(A) which prohibits

the utilization under color of state law of any practices in the determination of voter eligibility which differ from those applied to other individuals within the same county.”); *Shivelhood v. Davis*, 336 F.Supp. 1111 (D.Vt. 1971) (finding in granting a preliminary injunction that defendants violated 42 U.S.C. § 1971(a) by making college students complete an additional questionnaire when registering to vote). *See also, Hoyle v. Priest*, 265 F.3d 699 (8<sup>th</sup> Cir. 2001), (court addresses the merits of a claim that Arkansas’ ballot initiative petition procedure violated 42 U.S.C. § 1971(a)(2)(B), despite the fact that there was no allegation of racial claim.)

SEA 483 creates a different standard for registered voters who are voting in-person, depending on whether they are voting in a nursing home or outside of a nursing home. The latter voters must present satisfactory identification from the BMV; the former do not. These different “standards, practices and procedures” applied to “individuals within the same county” violate the plain language of 42 U.S.C. § 1971(a)(2)(A).

#### V. SEA 483 violates Art. 2, § 2 of the Indiana Constitution

The Indiana Constitution, Art. 2 § 2, states in order to vote the Indiana citizen must meet age and residency requirements. The Indiana Supreme Court has noted that this provision “is mandatory to the extent that it precludes the Legislature from modifying its requirements or from imposing on persons therein designated any additional qualifications which shall be prerequisite to their exercise of the right of suffrage.” *Board of Elections Commissioners of City of Indianapolis v. Knight*, 117 N.E. at 567.

SEA 483 imposes a new requirement upon persons voting in-person in Indiana. They must now possess and display the specific form of identification mandated by the statute. The trial court found that this is merely a procedural requirement upon the right to vote, not a new voting requirement. (Entry at 122, App. 124-A). It is true, as noted by the trial court, that in interpreting Art. 2 § 1 of the Indiana Constitution, providing that Indiana elections are to be free and equal and Art. 2 § 14, allowing the legislature to impose registration requirements, the Indiana Supreme Court has held that “the Legislature has the power to determine what regulations shall be complied with by a qualified voter in order that his ballot be counted, so long as what it requires is not so grossly unreasonable that compliance therewith is practically impossible.” *Simmons v. Byrd*, 136 N.E.14, 18 (Ind. 1922). In *Fritch v. State*, 155 N.E. 257, 258 (Ind. 1927), the Court allowed that voter registration laws “do not impair or abridge the elector’s privilege, but merely regulate its exercise by requiring evidence of the right.” But, SEA 483 does not generally require the voter to present evidence of who they are. Instead, it imposes a new substantive requirement under the guise of identification. For, if Rep. Crawford attempts to vote in the same district he has voted in for years, where everyone knows him by name, and he does not present the identification required by SEA 483, he will be denied the right to vote. SEA 483 does not impose a procedural hurdle. It imposes a substantive requirement.

Moreover, under *Simmons*, the requirements imposed by SEA 483 are grossly unreasonable. There will be persons who will not be able to obtain the identification

necessary to vote even though they have many other ways to identify themselves. There will be persons who will be discouraged from voting because of the new requirements. For some, compliance will be practically impossible.

The right to vote established by the Indiana Constitution, “cannot be abridged or denied . . . through direct legislative enactment, except as such limitation upon the privilege is authorized by other provisions within the organic law of the state.” *State ex rel. McGonigle v. Madison Circuit Court*, 193 N.E.2d 242, 249 (Ind. 1963). There is nothing that authorized the legislature to impose new substantive requirements on the right to vote and its efforts in SEA 483 to impose these new requirements are “in conflict with the manifest purpose of [Art. 2, § 2 and is] . . . in conflict with the manifest purpose of that section to designate the voters entitled to participate in all elections. . . .” *Knight*, 117 N.E. at 569.

### **Conclusion**

The trial court’s judgment is therefore erroneous and must be reversed. Summary judgment must be entered for Rep. Crawford and the interested groups.

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### Certificate of Compliance with Type Volume Limitations

This certifies that this brief complies with the type-volume limitation of F.R.App. 32(a)(7)(B) because this brief contains 13,972 words, excluding the parts of the brief exempted by Fed.R.App. 32(a)(7)(B)(iii).

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### Certificate of Service

I hereby certify that a copy of the foregoing was served on the below named person(s) by first class U.S. postage, pre-paid, on this 19th day of June, 2006.

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submitted by all appellants contains all the materials required by Circuit Rule 30(a) and (b). Specifically, the Short Appendix contains the trial court's Judgment and Entry granting its Judgment. Pursuant to Circuit Rule 30(b)(6), appellants have also included short excerpts from the record in this cause which are important to a consideration of this matter.

Counsel further certifies that none of the materials included in the Appendix are available electronically with the exception of the trial court's Judgment and Entry. These latter appendix documents are included in the electronic filing as required by Circuit Rule 31(e).

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