

Voter Identification Law



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Summary



- What is voter identification?
- History of voter identification in the United States.
- Voter identification in Iowa
 - Voting in the Iowa Constitution
 - Voting in the Iowa Code
 - Legal challenges to voter identification in Iowa
- Legal challenges to voter identification outside Iowa
 - Illinois
 - Texas
 - Virginia
 - North Dakota

What is voter identification?



- People typically think of photo identification
- Can also encompass non-photo forms of documentary identification
- Also includes signature matching

History of Voter Identification



- South Carolina was the first state to require some form of voter identification in 1950.
- By 1980, four other states required some form of identification.
- 2002: Help America Vote Act requires voter ID for certain voters in federal elections.
- 2005: Commission on Federal Election Reform recommended photo ID requirement and signature matching.
- 2008: *Crawford v. Marion County*.

Crawford v. Marion County Board of Elections



- Indiana voter ID law, enacted in 2005, requires basically all in-person voters to present photo ID, offers free photo ID.
- Plaintiffs alleged that law substantially burdened right to vote in violation of Fourteenth Amendment, arbitrarily disenfranchised voters.
- Supreme Court applied Anderson-Burdick test: weigh asserted injury to right to vote against “precise interests put forward by the State as justifications for the burden imposed by the rule.”

Crawford, continued



- Even seemingly slight burden must be justified by “relevant and legitimate state interests.”
- Indiana identified several interests: deterring and detecting voter fraud; election modernization; safeguarding voter confidence.
- National Voter Registration Act, Help America Vote Act, and Commission report all suggest that Congress supports voter photo ID requirements.
- NVRA leads to inflated registration lists.

Crawford, continued



- Indiana produced no evidence of in-person voter fraud in Indiana, but there have been instances throughout the country.
- Preventing voter fraud is unquestionably legitimate interest, strengthened by inflation of voter rolls.
- Safeguarding voter confidence encourages participation, which is a legitimate interest.
- Court found that for average person, obtaining photo ID is easy, but some people face increased burdens, which are mitigated by provisional ballots.

Crawford, continued



- Plaintiffs did not produce (credible) evidence of number of registered voters without photo ID, or of degree of difficulty faced by such people.
- Because of lack of evidence, Court could not conclude that the law imposed “excessively burdensome requirements” on any class of voters.
- Considering all voters, law imposes only limited burden, justified by precise interests.
- Nondiscriminatory law justified by lawful, neutral justifications not invalidated by mere partisan nature of passage of law.

Iowa Constitution



- Art. II, sec. 1: “Every citizen of the United States of the age of twenty-one years” who meets certain residency requirements has the right to vote in Iowa.
- Art. II, sec. 5: mentally incompetent persons and persons convicted of infamous crimes may be disqualified.
- Voting is a fundamental right in Iowa, and GA may not add to qualifications via legislation. *Chiodo v. Section 43.24 Panel*.
- May impose regulations to determine whether a person possesses qualifications. *Edmonds v. Banbury*.
- Regulations calculated to “facilitate and secure” right to vote are acceptable. *Devine v. Wonderlich*.

Iowa Code



- National Conference of State Legislatures classifies Iowa as non-strict, non-photo identification state.
- There is a focus on identification at the time of voting, but there is also an identification dimension to voter registration.

Voter Registration



- Person must provide appropriate identification either at registration or prior to voting for the first time.
- Person applying for driver's license must provide proof of identity, residence, and SSN, which is sufficient for voter registration.
- Person registering at voter registration agency must provide substantially similar information, but the Code does not require documentary proof.

Voter Registration, continued



- Person can request and complete voter registration form by mail (48A.8). If such a person has not previously voted in a federal election in the county, must generally produce photo ID and document showing name and address.

Election-day voter Registration



- Iowa also allows election-day registration. Registrant must prove both identity and residence.
- Section 48A.7A(1) provides list of acceptable forms of ID, must contain photo and valid expiration date.
- If ID does not contain current address, must also provide document showing current address to within 45 days.
- In lieu of presenting proof of identity and residence, both may be proved by written oath of person registered to vote in precinct who presents ID sufficient to satisfy voter ID requirement.

In-person Voter Identification (49.78)



- Prior to receiving a ballot, a voter must establish the voter's identity by providing photo ID.
- Precinct official shall use information on card to verify identity of would-be voter, including signature.
- Veteran's ID card that does not contain signature is not subject to challenge.
- If the voter does not have "primary" ID, may produce "secondary" ID, including voter ID card or forms acceptable for election-day registration.

In-person Voter Identification, continued



- A person who cannot produce “primary” or “secondary” identification can have that person’s identity sworn to by another registered voter.
- Prior to January 1, 2019, a person may swear an oath to establish identity and cast a regular ballot.
- A person who fails to produce ID or have their identify sworn to after January 1, 2019, may cast a provisional ballot (49.81).
- Provisional ballot can be cured either before polls close or by Monday after elections.
- Registered voter who is not listed by DoT as having ID should be sent free voter ID card automatically (48A.10A).

Absentee Voter Identification



- A request for an absentee ballot requires certain biographical information, including voter verification number, but not documentary proof thereof. Commissioner must fill in missing information by best means available (53.2(3)).
- Commissioner may dispute application if the signature on the application doesn't appear to match the signature on file (53.2(5)).
- Commissioner must reject ballot if it appears to the commissioner that signature on return envelope does not match signature on file (53.18(3)).

Legal Challenges to Voter ID in Iowa



- *League of United Latin American Citizens v. Pate*, No. CVCV056403 (Polk Cnty. Dist. Ct. filed July 24, 2019).
- LULAC alleges that signature matching requirement and requirement that absentee ballot application include a voter verification number deny right to vote under Iowa Constitution.
- Particularly objects to lack of notification to certain voters whose ballots are rejected.

Legal Challenges in Iowa, continued



- LULAC sought a temporary injunction on enforcement of law until resolution of the case.
- Court found that signature matching would cause irreparable harm by completely disenfranchising certain voters.
- Court found that apparent requirement to include voter verification number on absentee ballot application was likely to dissuade certain voters.

Legal Challenges in Iowa, continued



- When considering the likelihood of the plaintiffs' success on the merits, court found that voting is fundamental right under Iowa Constitution.
- Restrictions on right are subject to strict scrutiny, the highest level of scrutiny under Iowa law.
- Court found that signature matching would likely not survive review due to high risk of error and lack of evidence that it would prevent fraud.
- Court found that language requiring voter verification number on absentee ballot request likely wouldn't survive, partially because it is an inaccurate statement of law.

Legal Challenges in Iowa, continued



- Weighing the equities, court found that state would suffer little or no harm from injunction because it did not produce evidence that the law would prevent election fraud.
- On interlocutory appeal, Iowa Supreme Court upheld those injunctions and remanded to the district court.

Legal Challenges outside Iowa: Illinois



- *Zessar v. Helander*, No. 05-C-1917 (N.D. Ill. Mar. 13, 2006).
- Election law in effect in 2006 required county election officials to reject absentee ballots when signature on ballot doesn't match signature on file on voter registration card.
- Election officials required to inform voter of rejection, but not within a given timeframe and without any provision in law for challenging rejection or curing ballot.

Legal Challenges outside Iowa: Illinois, continued



- Plaintiff claims that lack of notice and opportunity to cure ballot violate procedural due process rights under Fourteenth Amendment.
- Although there is no fundamental right to vote absentee, once state grants that right, it is entitled to due process protections.
- Court found that right to vote is important, risk of erroneous deprivation is high, deprivation is complete, and additional procedures would protect right. Burden of pre-deprivation hearing would not outweigh benefits.

Legal Challenges outside Iowa: Illinois, continued



- Illinois implemented new law that required prompter notification and provided opportunity for in-person hearing to rehabilitate ballot.
- Plaintiff alleges that in-person requirement would disenfranchise voters not present in state.
- Court declined to rule, because plaintiff provided no evidence that such a voter existed.

Legal Challenges outside Iowa: New Hampshire



- Saucedo v. Gardner, No. 17-cv-183-LM (D.N.H. Filed Aug. 14, 2018).
- New Hampshire enacted signature matching requirement that gave no notice or opportunity to cure, which plaintiffs claimed was a deprivation of due process.
- Court weighed *Mathews* factors: private interest, risk of erroneous deprivation and probable value of other procedures, and government interest.

Legal Challenges outside Iowa: New Hampshire, continued



- Court found that right to vote is fundamental.
- Although there is no fundamental right to vote absentee, still requires adequate process.
- Court found that risk of deprivation isn't extreme, but significant in close races. Difficulty of task, lack of standards, and unreviewable nature of decision makes risk higher.
- Benefits of any sort of process would be tangible.
- State has legitimate interests in preventing voter fraud and increasing confidence, but more process wouldn't harm those interests and wouldn't be burdensome.

Legal Challenges outside Iowa: Texas



- *Texas NAACP v. Steen, No. 17-40884 at 3 (5th Cir. Apr. 27, 2018)*
- In 2011, Texas enacted a strict photo voter ID law. Required voters to produce one of five forms of government-issued ID and provided no alternatives.
- In 2014, federal district court permanently enjoined enforcement of the law, finding that the law had a discriminatory impact on racial minorities and had been passed with a discriminatory purpose.
- Fifth Circuit overruled discriminatory purpose finding and ordered interim remedy.

Legal Challenges outside Iowa: Texas, continued



- District court entered interim remedy expanding list of acceptable IDs and providing for an affidavit as an alternative to producing ID.
- In 2017, Texas enacted new law, expanding list of acceptable IDs, created mobile locations for issuing “election identification certificates,” and removing “other” box from affidavit.
- District court permanently enjoined new law and reinstated pre-2011 law.

Legal Challenges outside Iowa: Texas, continued



- Fifth Circuit ruled that new law did not have discriminatory impact on minority voters.
- District court had heard no evidence indicating discriminatory intent and could not attribute illegal animus from old law to new law.
- District court also erred in not deferring to legislature's proffered remedy.

Legal Challenges outside Iowa: Virginia



- *Lee v. Virginia State Bd. of Elections*, 843 F.3d 592, 594 (4th Cir. 2016)
- Virginia enacted strict photo voter ID law in 2013.
- Law allows for a wide range of acceptable IDs, including some issued by private entities.
- Anyone lacking a photo ID must be provided one for free and without having to provide documentation.
- Voter without photo ID can cast provisional ballot and cure within three days by email, fax, or in person.
- Plaintiffs alleged that law violated section 2 of Voting Rights Act, First, Fourteenth, Fifteenth, and Twenty-Sixth Amendments.

Legal Challenges outside Iowa: Virginia, continued



- No plaintiff demonstrated that they were unable to vote due to the law.
- Presented expert evidence that racial minorities and the young disproportionately lacked ID.
- District court found that law inconvenienced all voters equally, but that inconvenience doesn't reach the level of a substantial burden.
- Law was passed through normal legislative process, no evidence of intentional discrimination.

Legal Challenges outside Iowa: Virginia, continued



- Fourth Circuit affirmed the decision of the district court.
- Need to show that right to vote was abridged on account of race to show violation of section 2 of VRA, but plaintiffs provided no evidence of such abridgement.
- Even if minorities face disproportionate inconvenience, doesn't amount to denial or abridgement.
- No evidence that law was passed with discriminatory intent in violation of 14th and 15th Amendments.

Legal Challenges outside Iowa: Virginia, continued



- Plaintiffs argue that burden is not justified by precise interests identified by Virginia, violating First and Fourteenth Amendments.
- Applying *Anderson-Burdick*, burden is less than in *Crawford* and interests are the same, so law must pass muster.
- Court saw no evidence that law was intended to or actually did discriminate against young voters in violation of the Twenty-Sixth Amendment.

Legal Challenges outside Iowa: North Dakota



- *Brakebill v. Jaeger*, No. 18-1725 (8th Cir. Filed Sept. 24, 2018).
- Renewed Motion for Stay Pending Appeal
- North Dakota voter ID law includes requirement that ID includes residential address
- Plaintiffs allege that the law is discriminatory against Native Americans
- Court found that allowing the injunction to stay in place would irreparably harm the state.
- Court found it relevant that North Dakota does not require voter registration.

Recent Developments



- A federal district court has enjoined Georgia from rejecting absentee ballots or applications for signature mismatches.
- Another North Dakota tribe has sued the state over its voter ID law.

Questions?