



# THE CANVASS: *States and Election Reform*<sup>®</sup>



A Newsletter for Legislatures

May 2008

## Supreme Court Upholds Indiana Law Requiring Photo ID to Vote

On April 28, by a vote of 6 to 3, the U.S. Supreme Court rejected a facial challenge to Indiana's voter-photo identification law in the case of *Crawford v. Marion County Election Board*. At issue was whether Indiana's requirement that voters show government-issued photo identification before casting a ballot, with certain exemptions, violated the U.S. Constitution. The 2005 Indiana law requires that a voter present ID at the precinct on election day, with absentee voters and residents of state-licensed nursing homes exempted. The law also exempts anyone unable to afford documentation to obtain a photo ID (typically a birth certificate) and authorizes a provisional ballot for those lacking the ID. The voter who casts a provisional ballot then has 10 days to bring a photo ID to an elections official. The same procedure applies for those who claim a religious objection to being photographed.

State Representative William Crawford, the Democratic Party of Indiana and other plaintiffs argued that the law violated the right to vote as protected by the First Amendment and Fourteenth Amendment's equal protection clause as well as Article 2 of the Indiana constitution. They said that the law substantially burdens the "fundamental" right to vote, discriminates between and among different classes of voters, and disproportionately affects disadvantaged and minority voters.

Indiana's Attorney General defended the law saying it reflected a legitimate legislative concern for in-person voting fraud, and was a reasonable exercise of the state's constitutional authority to regulate the time, place and manner of elections under Article 1, Sec. 4 of the U.S. Constitution. The state also asserted that plaintiffs lacked standing to challenge the statute because they could produce no eligible voter that the law had kept from actually voting.

A federal district court and, on appeal, the 7<sup>th</sup> Circuit Court and the Supreme Court found Indiana's requirement to be constitutionally valid and a reasonable restriction. Writing for the high court's majority, Justice Stephens (joined by Chief Justice Roberts and Justice Kennedy) held, "on the basis of the record made in this litigation, we cannot conclude that the statute imposes excessively burdensome requirements on any class of voters." Justice Scalia, joined by Justices Thomas and Alito, joined the majority and defended the delegation of election administration powers to the states under Article 1, Section 4: "[I]t is for state legislatures to weigh the costs and benefits of possible changes to their election codes except

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Compilation of election  
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*Election Assistance  
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when it imposes a severe and unjustified overall burden upon the right to vote or is intended to disadvantage a particular class." Justices Souter and Ginsberg authored a dissenting opinion while Justice Breyer separately dissented.

Justice Souter's dissent applied a cost-benefit analysis to the rights and burdens at issue in the case. According to Souter, the costs to the poor and disabled are particularly high. For instance, the transportation costs associated with procuring a driver's license or a state ID card may involve going a considerable distance without access to public transit. "For those that can afford roundtrip travel, a second burden is the \$3 to \$12 fee involved with obtaining a birth certificate or other designated document to prove identity." He also questioned Indiana's rationale in requiring those who fail to present a government-issued photo ID on election day, because of indigence or religious objection, to travel to a county election office within 10 days of casting a provisional ballot. This burden, he says, is "particularly onerous." In sum, he found that a significant number of state residents -- as many as 43,000 -- could be hindered from voting. Souter argued that by contrast, the state's interest in deterring in-person voter fraud is comparatively tenuous. Although observing that preventing fraud is a valid interest, he noted that the record lacked evidence of in-person voter impersonation in Indiana.

**Legislative Action:** Twenty-five states currently require some form of identification before someone is allowed to vote. Florida, Georgia and Indiana require photo identification. Louisiana, Michigan, and South Dakota request it, but will accept other forms of identity. In the wake of the decision, proponents of voter ID stepped up legislative efforts in a handful of states. In May 2008, the Kansas legislature passed House Bill 2019 to require photo identification. Sponsored by Representative Mike Burgess, HB 2019 was a modified version of legislation originating in the Senate (SB 169), sponsored by Senator Tim Huelskamp. Both legislators chair their respective elections committees.

House Bill 2019 emerged from conference committee on May 6. In the Senate, it passed with a veto-proof majority of 27-3. In the House, the measure passed 67-56, but was 17 votes short of the 84 votes (two-thirds) required to override any veto. On May 18, the Kansas governor vetoed the legislation.

The Kansas photo ID language would have exempted persons in the following categories unless they were first time voters.

- age 65 or older;
- persons with disabilities;
- members of the military and their spouses while on active duty; and,
- voters living outside the United States.

It would also have allowed for the issuance of a free photo identification card to anyone who qualified under specified poverty criteria and signed a corresponding affidavit. The legislation trimmed the list of acceptable identification forms for first-time voters applying for an absentee ("advance") ballot by mail -- deleting utility bills, bank statements, paychecks and government checks from the approved list. The conference agreement established a two-year education program leading up to a proposed 2010 implementation.

Senator Huelskamp described HB 2019 as "more similar to Florida's photo ID law (than Indiana's) in that it makes acceptable, beyond just government-issued types of ID, several additional forms of identification that society is already using to validate identification: credit cards, debit cards, employee badges and public assistance ID. Photo ID would help prevent voter fraud and Kansas counties have encountered cases where residents of adjoining states have crossed the state boundary to cast a ballot as recently as 2006." He also noted that, "one county's elections officials piloted photo identification and reported that it "made the lines move a lot quicker."

Representative Suzanne Storm opposed HB 2019 and acknowledged that there was a report of residents from an adjoining state trying to vote illegally in Kansas. However, she countered that, "Kansas voter rolls are regularly maintained and updated by election officials," daily in her county -- removing the need for a photo ID law. She added that the Kansas Secretary of State's office said in committee that no known Kansas cases of voter fraud would have been prevented by photo ID. An override effort is considered unlikely, but supporters of the legislation could attempt one when the Kansas legislature returns May 29 for its "sine die" session, the traditional ceremonial end of the legislative year.

In Oklahoma, legislation to require either photo ID or some other form of current identification passed in the House but appeared to be dead in the Senate -- falling short by one vote on May 6. In Missouri, the House passed House Joint Resolution 48, a proposed constitutional amendment that would have referred a ballot question to Missouri voters to address a Missouri Supreme Court ruling that invalidated the state's prior photo ID law. The measure passed in the House 88 -69, but Senate proponents were unable to bring it to the floor for a vote before the legislative session ended on May 16.

All but 14 states have completed 2008 sessions. It is very unlikely that there will be any changes to voter ID laws before this fall's election despite the Supreme Court decision in the *Crawford* case. At least 22 states considered bills on voter ID in 2008, but none were enacted. For a complete list of voter ID laws, go to [this page](#) on NCSL's website.

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**Significant Leap Forward in Serving Military and Overseas Voters**

Five state election offices ([Alabama](#), Kentucky, [Minnesota](#), West Virginia and [Ohio](#)), leading corporations (such as [Exxon Mobil](#)) and political campaigns have automated the complex and confusing process of registering to vote and requesting absentee ballots for military and overseas civilians by adopting a new set of Web applications pioneered by the Overseas Vote Foundation (OVF). The state election offices in Missouri, Vermont and Texas should come online within the next few months. With support from [The Pew Charitable Trusts](#), OVF launched the user-friendly, accessible online system in the fall of 2007 (see [www.overseasvotefoundation.org](http://www.overseasvotefoundation.org)) and began licensing it directly to states seeking to better serve service members and civilians around the globe. For information about opportunities for your state to participate in OVF's State Alliance program, [click here](#) or contact Susan Dzieduszycka-Suinat at [susan@overseasvotefoundation.org](mailto:susan@overseasvotefoundation.org) or Dan Murphy at [dan@overseasvotefoundation.org](mailto:dan@overseasvotefoundation.org). Ω

**State Election Officials Asked to Help Make Info for Voters Easier to Find Through New Online Resource**

Doug Chapin, the Director of [www.electionline.org](http://www.electionline.org), has brought to our attention a very important online resource for people seeking basic answers to their voter registration questions. Americans are often looking for easy answers to three basic questions:

- How and where do I find out if I'm registered to vote?
- Where do I vote?
- What's on the ballot?

The Voting Information Project, an exciting new joint endeavor of Google, the JEHT Foundation, and Pew's *Make Voting Work*, aims to answer these questions clearly and conveniently for Americans at home and abroad. Although this information has always been publicly available, it isn't always located in a place voters could commonly find. The Voting Information Project seeks to help election officials make their official voting information accessible to voters using a common, open, non-proprietary data format that is simple and user-friendly. Accordingly, the project launched [votinginfoproject.org](http://votinginfoproject.org), where legislators and election officials can learn about participating in the effort.

For questions or to find out if your officials are participating, contact Doug Chapin at (202)552-2027 or [dchapin@electionline.org](mailto:dchapin@electionline.org). Don't miss this opportunity to help voters. Ω

**Bill Introduced in Congress to Mandate Federal Election Day Registration**

On May 1, 2008 Senators Russ Feingold of Wisconsin and Amy Klobuchar of Minnesota introduced "The Election Day Registration Act," [Senate Bill 2959](#), which would amend the Help America Vote Act to require states to provide for election day registration on all days of federal elections. The bill has 4 cosponsors to date. Companion legislation (H.R. 5946), introduced in the U.S. House by Minnesota Rep. Keith Ellison has 15 cosponsors. Wisconsin and Minnesota are two of the [9 states](#) that currently authorize same day registration. Both states have had election day registration for more than 30 years. Ω

# W O R T H N O T I N G

## **Hawaii Legislature Passes Legislation to Authorize Permanent, No-excuse Absentee Voting**

On May 1 the Hawaii legislature passed a conference committee report to enact [Senate Bill 156](#), sponsored by Senator Clayton Hee. SB 156 provides that a voter who requests an absentee ballot (in person or in writing) may also request to receive absentee ballots automatically for all future elections. The legislation included appropriations for implementation and administration up to the amount of \$575,000 from the state's 2002 Help America Vote Act (HAVA) funds. In addition, the bill appropriated up to \$35,000 from general revenues as may be necessary for the required 5% state matching funds needed to qualify for the HAVA funding. On May 7, the legislation was submitted to the governor. At press time no action has been taken by the governor, who has 45 days from the date the legislature adjourned (May 1) to sign the bill. For a state-by-state analysis of absentee voting laws, please see [Absentee Voting and Early Voting](#) at ncsf.org. Hawaii will likely become just the fifth state along with California, Colorado, Montana and Washington to allow permanent, no-excuse absentee status for voters. A [table](#) on the excellent early voting website at Reed College shows the no-excuse, permanent absentee states. [Ω](#)

## **Another State Embraces Overhaul of Electoral College**

On May 1, Hawaii became the fourth state to adopt the National Popular Vote (NPV) interstate compact. Hawaii passed NPV legislation in 2007, but the legislation was vetoed by the governor. It was reintroduced in January 2008 as Senate Bill 2898, sponsored by Senator Clayton Hee, and again the legislature passed the bill. In April, it was once again vetoed by the governor. This time, however, both Houses approved an override. NPV bills enter a state into an interstate compact and pledge that all of that state's electoral votes will go to the national popular vote winner. NPV would only take effect if states with a majority of the electoral votes (270) have passed similar legislation. Hawaii joins Maryland, New Jersey and Illinois as members of the interstate compact. Combined, the four states represent a total of 50 electoral votes -- more than one-sixth of the 270 votes necessary for the law to take effect. For complete information about the effort, go to: <http://www.nationalpopularvote.com>. [Ω](#)

## **Top Election Experts Preview Issues that might Vex Election Officials in November and Legislatures Next January**

At the April meeting of NCSL's Redistricting and Elections Committee, legislators and staff able to attend the conference in Washington heard two of the nation's top experts on election issues discuss what may crop up in the fall election that will lead to legislative attention in January 2009. Doug Chapin, director of electionline.org based in Washington, D.C. and Alison Prevost from the Center for Democracy and Election Management at American University, also in Washington, spoke to the group. They listed various issues to watch including voting technology, voter registration lists, voter ID, pollworker training and standardization of voting practices. You can listen to a complete podcast of the session by going [here](#) on NCSL's website. [Ω](#)

## FROM THE EDITORS' DESK:

### **Reader Feedback: Record Turnout in November: Plan Now or React Later?**

In response to our story on states that have proactive code provisions in place to prepare for record-level turnout this fall, Iowa Representative Mary Gaskill brought to our attention her state's provision, I.C.A. § 49.64, which also establishes a clear quota of ballots that are to be made available. Thank you, Rep. Gaskill!

#### 49.64 Number of ballots delivered.

The commissioner shall cause ballots of the kind to be voted in each precinct to be delivered to the precinct election officials as follows: in general elections which are presidential elections at least fifty-five ballots for every fifty votes, or fraction of fifty votes, cast in the precinct at the last preceding general election which was also a presidential election; and in general elections which are not presidential elections, at least fifty-five ballots for every fifty votes, or fraction of fifty votes, cast at the last preceding general election which was not a presidential election.

Amended by Acts 1973 (65 G.A.) ch. 136, § 147; Acts 1974 (65 G.A.) ch. 1104, § 104, eff. April 26, 1974; Acts 2002 (79 G.A.) ch. 1134, § 35, eff. Jan. 1, 2003. [Ω](#)

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