January 27, 2009

A Brief History of Voter Picture Identification Cards from the Help America Vote Act to Crawford v. Marion County Election Board

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“When you’ve voted’em with their whiskers on, you take’em to a barber and scrape off the chin fringe. Then you vote’em again with the side lilacs and a mustache. Then to a barber again, off comes the sides and you vote’em a third time with the mustache. If that ain’t enough and the box can stand a few more ballots, clean off the mustache and vote’em plain face. That makes every one of ’em good for four votes.”

-“Big Tim” Sullivan local tough for Boss Tweed

I. Introduction

In recent years, no election-law issue has generated such a partisan response by legislatures all over the country as the proposal that voters be required to “prove their identity before voting.” Republicans have called the measure “a simple, commonsense proposal and a necessary safeguard against voter fraud.” Democrats have decried the proposal calling it “a tawdry attempt by Republicans to suppress the votes of millions of Americans.” While, the issue of voter identification has divided elected officials, the American public as high as eighty one percent according to NBC News/ Wall Street Journal survey have favored the requirement of requiring voters to show identification before they vote. As state legislatures have enacted voter identification requirements, the results of a 2006 nationwide survey which showed that 77% of respondents support voter-identification requirements, including 67% of Democrats.

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1 Hirak Shah is a second year law student at Western New England College School of Law in Springfield, Massachusetts
5 Id. at H6768 (statement of Rep. Pelosi D-CA 8th Dist.).
6 Peter Hart & Bill McInturff, NBC News/ Wall Street Journal Survey, Study # 6062, at 13 (2006), [http://online.wsj.com/public/resources/documents/poll2006060426.pdf](http://online.wsj.com/public/resources/documents/poll2006060426.pdf) (finding that in April of 2006, 62% of respondents to a national poll strongly favored the showing of photo identification before voting, 19% somewhat favored, 12% were neutral, 3% somewhat opposed, and only 4% strongly opposed). See also, John Fund, *Stealing Elections: How Voter Fraud Threatens Our Democracy*, p. 5 (2004) (Citing 2004 Rasmussen Research poll which found that “82 percent of Americans, including 75 percent of Democrats, believed that people should be required to show a driver’s license of some other form of photo ID before they are allowed to vote”). See Stephen Ansolabehere, *Access Versus Integrity in Voter Identification Requirements* 11 tbl. 1 (Feb 23, 2007), available at [http://web.mit.edu/polisci/port1/ccess/material/NYUidentification1.pdf](http://web.mit.edu/polisci/port1/ccess/material/NYUidentification1.pdf) (the results of a 2006 nationwide survey which showed that 77% of respondents support voter-identification requirements, including 67% of Democrats).
identifications laws opponents of the measures have shifted the battle over the laws from the legislative halls to the courtroom to challenge the constitutionality of the new laws, and this battle culminated in the landmark voter identification case of Crawford v. Marion County Election Board, where the Supreme Court on April 28, 2008 in a 6-3 decision upheld Indiana’s voter identification law.⁷

This Note will focus on voter identification requirements in light of the Crawford case, by looking at past voter identification efforts leading up to the Crawford decision, and looking at other alternatives. In Part II of this note will examine the current landscape of voter identification legislation. Part III of the note will look at the constitutional challenges to voter photo identification laws first looking at state challenges. Then examining the Crawford case though the majority and dissenting opinions and examining where the Court stands on the State interests versus the potentially burdening a person’s right to vote. Finally, Part V will examine alternatives for voters who lack photo identification.

II. Voter Identification Laws

A. Help America Vote Act of 2002

In response to the contested Presidential Election of 2000, Congress set out to reform election procedures.⁸ Congress in 2002 passed the Help America Vote Act (“HAVA”) which was a broad election reform law between the Democrats and Republicans who had two competing interests, Democrats who were interested in access and Republicans who focused on

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⁷ Crawford v. Marion County Election Board, 128 S.Ct. 1610, 1624 (held that the application of the statute to the vast majority of Indiana voters is amply justified by the valid state interest in protecting “the integrity and reliability of the electoral process”).
fraud prevention. In terms of access the Act allowed states to provide provisional ballots to register voters who were not on the voter rolls, and in terms of fraud prevention the law required all first time voters who registered by mail to provide photo or non-photo identification (bank statement, utility bill) when voters go to the polls.\(^9\)

B. States Response to the Help America Vote Act

After HAVA was passed all states began to implement the requirements required by the HAVA. As of 2006, three states Georgia, Indiana, and Missouri required voters to present photo identification as an absolute condition to vote.\(^{10}\) The other forty seven states fall into four different categories in terms of compliance with HAVA.

The first category being no documentary identification required. These states did not go beyond the federal requirements for first time voters. In Iowa voters could establish their identity through various methods such as signing an affidavit under the penalties of perjury.\(^{11}\) In California voters could state their name, and take an oral oath.\(^{12}\) In Maryland, voters would have to recite their date of birth and address to the poll worker.\(^{13}\) In New Jersey, voters would have to sign a pollbook that is compared to the signature on the voter’s file.\(^{14}\) As of 2005 roughly two-

\(^9\) 42 U.S.C. §15482 (a) (Supp. Ill 2003) (Access to provisional ballots). 42 U.S.C. § 15483 (b) (HAVA requires that voters produce a copy of “valid photo identification or a copy of current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter”).  
\(^{11}\) Iowa Code Ann §49.77 (West 1999).  
thirds of the U.S. population lived in states that did not request documentary evidence beyond
the federal requirements.\textsuperscript{15}

The second category is documentary identification requested, but not required. In these
states voters could either produce documentary identification either photographic or non-
photographic, or if they did not bring documentary identification to the polls they could establish
their identity by affidavit.\textsuperscript{16} States also provided other means besides an affidavit for the voter to
establish identity including if the poll worker knew the voter personally or just make a note in
the precinct voter registration list that the voter lacked identification.\textsuperscript{17}

The third category is photo identification requested, but not required. These states
include Louisiana, South Dakota, Hawaii, and Florida. These states allow voters who don’t
produce a photo identification but provide other methods of identification including stating their
birth day or signing an affidavit the ability to vote without being challenged.\textsuperscript{18}

The last category is documentary identification required. These states require either
photo identification or some form of documentary identification such as a utility bill or bank
state.\textsuperscript{19} Some states are more restrictive in what they will accept as documentary identification

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\textsuperscript{15} Spence Overton, Voter Identification, 105 MILR 631, 640 (2007)
\textsuperscript{16} In 2005 the states that requested documentary identification but provided affidavit option or
other means were Arkansas, Connecticut, Delaware, Kentucky, North Dakota, and Tennessee.
\textsuperscript{17} N.D. Cent. Code §16.1-05-07 (Supp. 2005) law provided that a voter without photo
identification can vote without being challenged by providing their date of birth-provided that
a member of the election board or a clerk knows the voter personally and can vouch for them.
See Ark. Code Ann. §7-5-305 (Supp. 2005) law provided that if a voter does not present
documentary identification the poll worker makes a note on the precinct voter-registration list
that the voter lacked identification.
\textsuperscript{18} In 2005, a voter without photo identification could establish their identity by signing an affidavit
in Louisiana and South Dakota, and by reciting their birth date and address in Hawaii. See also
FLA. State. §101.048 (2006) which provided that in Florida a person is required to have a photo
identification but if they don’t they can cast a provisional ballot that will be counted provided
the signature on the provisional ballot matches the signature on the voter’s registration.
\textsuperscript{19} As of 2006, these states were Alabama, Alaska, Arizona, Colorado, Montana, New Mexico,
South Carolina, Virginia, and Washington
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such as only accepting identification that had been issued by the state or federal government.\textsuperscript{20} These states have the strictest standards far beyond what is required under HAVA.

After HAVA was passed and states implemented new requirements for first time voters, opponents of the measures went to the courts to challenge the constitutionality of the voter-identification law. The next part of the note will examine different state challenges to the provision of requiring identification, than after examining different state challenges; the note will examine the case of \textit{Crawford v. Marion County Election Board}.

III. Challenges to the Constitutionality of Voter-Identification Laws

Opponents of voter-identification measures have raised three main constitutional challenges to the identification measures.\textsuperscript{21} First, opponents of the measure have argued that the identification requirements amount to a poll tax on the voter in violation of the Twenty-fourth Amendment and the Equal Protection Clause of the Fourteenth Amendment.\textsuperscript{22} Other argument opponents make are that the identification requirements place an undue burden on the right to

\textsuperscript{20} VA. Code Ann. §24-2-643 (Supp. 2005). Virginia will only accept as documentary identification a voter-registration care, driver’s license, any other identification card issued by Virginia or the federal government, or a photo identification issued by an employer.


\textsuperscript{22} U.S. Const. Amend. XXIV (Citizens’ right to vote in federal elections “shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax”); See \textit{Harper v. Va. State Bd. of Elections}, 383 U.S. 663, 666 (1966)(held that “voter qualifications have no relation to wealth nor to pay or not paying this or any other tax,” it is unconstitutional for a state to “make the affluence of the voter or payment of any fee an electoral standard.” The Court prohibited the poll tax for all elections using the Equal Protection Clause of the Fourteenth Amendment).
vote in violation of the First and Fourteenth Amendments of the Constitution.\textsuperscript{23} Lastly, opponents make the same argument on burdening the right to vote but base it upon the protections of the respective state constitutions.\textsuperscript{24} Before discussing the \textit{Crawford} case and how the Court judged the merits of the constitutional claims, the next section will briefly look at the lawsuits filed in other states.

A. State Legal Challenges

As of January 2008 there have been challenges to state identification requirements in Arizona, Colorado, Georgia, Indiana, Michigan, Missouri, New Mexico, and Ohio. Missouri has been one of the only states in which opponents of the state identification requirements were able to challenge the requirements successfully. The cases in Michigan, Ohio, and Colorado were unsuccessful challenges to state identification requirements which were not much stricter than the identification requirement under HAVA.\textsuperscript{25}

In Missouri in \textit{Weinschenk v. Missouri}, the Missouri Supreme Court in a 6-1 decision found the voter identification law unconstitutional under the Missouri State Constitution.\textsuperscript{26} The Missouri statute required voters to present an unexpired state or federal issued photo

\textsuperscript{23} \textit{Ill. Bd. of Elections v. Socialist Works Party}, 440 U.S. 173, 184 (1979) ("Voting is of the most fundamental significance under our constitutional structure"); See also \textit{Reynolds v. Sims}, 377 U.S. 533, 554 (1964) ("It has been repeatedly recognized that all qualified voters have a constitutionally protected right to vote and to have their votes counted").

\textsuperscript{24} \textit{Bush v. Gore}, 531 U.S. 98, 104 (2000) ("When the state legislature vests the right to vote for President in its people, the right to vote as the legislature has prescribed is fundamental... "); \textit{Ariz Const. art II, §21} ("All elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage"); See \textit{Ga. Const. art. II, §1, P2} ("Every person who is a citizen of the United States and a resident of Georgia as defined by law, who is a least 18 years of age and not disenfranchised by this article, and who meets minimum residency requirements as provided by law shall be entitled to vote any election by the people"); See also, \textit{Ind. Const. art. II, § 1} ("All elections shall be free and equal").


\textsuperscript{26} \textit{Weinschenk v. Missouri}, 203 S.W.3d 201, 221-22 (Mo. 2006).
identification that contained the voter’s name as it appeared on the voter registration rolls.\textsuperscript{27} The issue with the law that statute did not provide free photo-identification cards to indigent citizen, so it was struck down as a violation of the equal protection clause and right to vote provision of the Missouri Constitution.\textsuperscript{28}

In Arizona, the case of \textit{Purcell v. Gonzalez} went to the U.S. Supreme Court and while the Court did uphold the law the case also presented important dicta on how a court should consider the merits of the constitutional claim. The law in Arizona was enacted through a voter referendum called Proposition 200 which, “sought to combat voter fraud by requiring voters to present proof of citizenship when they register to vote and to present identification when they vote on Election Day.”\textsuperscript{29} When the case reached the Supreme Court, the Court did not rule on the merits of the constitutionality claim but instead ruled on the fact the Ninth Circuit did not give enough deference to the discretion of the District Court especially when it is was close in time to an election.\textsuperscript{30} The Court did provide some guidance on how to assess the merits of the constitutional claim. In Justice Stevens’s concurrence he writes that two important factual issues remain unresolved the first being “the scope of the disenfranchisement that the novel identification requirements will produce” and second “the prevalence and character of the fraudulent practices that allegedly justify those requirements.”\textsuperscript{31}

\begin{footnotes}
\item[27] Missouri Voter Protection Act, 2006 Mo. Laws 717
\item[28] \textit{Weinschenk}, at 221-22.
\item[29] \textit{Purcell v. Gonzalez}, 127 S. Ct. 5, 6 (2006)
\item[30] \textit{Id.} at 7-8 (held that the Ninth Circuit failed “to give deference to the discretion of the District Court or to provide any factual findings or indeed any reasoning of its own and in view of the impending election that court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls).”
\item[31] \textit{Id.} at 8 (J. Stevens Concurrence).
\end{footnotes}
The next section will examine the recent voter identification case of *Crawford v. Marion County Election Board* this case dealt with the constitutionality of Indiana’s voter identification law.

B. *Crawford v. Marion County Election Board*

I. Background

Indiana in 2005 enacted a photo-identification law, which required voters to provide a photo identification issued by the Indiana state of the federal government.\(^{32}\) The statute does provide some exceptions such as the requirement “does not apply to absentee ballots submitted by mail, and the statute contains an exception for persons living and voting in a state-licensed facility such as a nursing home. Also there were exceptions for a voter who is indigent or has a religious objection to being photographed.”\(^{33}\) For voters who fall under the exception of being indigent or have a religious objection to being photographed the state allows them to cast a provisional ballot at the polling place which is counted if within ten days following the election they execute an appropriate affidavit before the circuit court clerk.\(^{34}\)

A voter who has photo identification but can’t provide it on Election Day is allowed to file a provisional ballot that will be counted as long as they bring in their photo identification to

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\(^{34}\) *Id.* at 1614 fn. 2 (The affidavit must state that (1) the person executing the affidavit is the same individual who cast the provision ballot on election day; and (2) the affiant is indigent and unable to obtain proof of identification without paying a fee or has religious objection to being photographed); See *Ind. Code Ann.* §3-11-7.5-2.5 (c) (West 2006); See also *Ind. Code. Ann.* §3-11-7.5-2.5 (d) (If the election board determines that the challenge to the affiant was based solely on a failure to present photo identification, the “county election board shall find that the voter’s provisional ballot is valid”).
circuit county clerk’s office within ten days after the election. Also, the State would offer free photo identification to qualified voters able to establish their residence and identity through the Bureau of Motor Vehicles (“BMV”).

The petitioners in their complaint about the new requirements set forth three arguments. First, that the new law “substantially burdens the right to vote in violation of the Fourteenth Amendment; [second] that it is neither a necessary nor appropriate method of avoiding election fraud; and [third] that it will arbitrarily disfranchise qualified voters who do not possess the required identification and will place an unjustified burden on those who cannot readily obtain such identification.”

At the District court the defendants were granted summary judgment, Judge Barker explained that the petitioners had “not introduced evidence of single, individual Indiana resident who will be unable to vote as a result of [the voter identification law] or who will have his or her right to vote unduly burdened by its requirements.” Next, the Seventh Circuit in a 2-1 opinion authored by Judge Posner held that the petitioners had standing to bring a facial challenge to the constitutionality of the law but affirmed the district court summary judgment decision due to the lack of evidence showing that voters might be deterred from voting, and the court rejected the argument that the law should be judged by the same strict standard as a poll tax law because the burden on voters was offset by the benefit of reducing fraud. The case was granted certiorari.

35 Crawford, at 1614; See Ind. Code Ann. §3-11.7-5-2.5 (b) (West Supp. 2006).
36 Crawford, at 1614; See Ind. Code Ann. §9-24-16-10 (b) (West Supp. 2007).
37 Crawford, at 1614 quoting Second Amended Complaint in No. 1: 05-CV-0634-SEB-VSS (SD Ind.), pp 6-9
38 Crawford v. Marion County Election Board, 458 F. Supp. 2d 775, 783 (S.D. Ind. 2006).
39 Crawford v. Marion County Election Board, 472 F. 3d 949, 952 (C.A. 7, 2007) (Court of Appeals also believe that the petitioners main “motivation for the suit is simply that the law may require the Democratic Party and the other organization plaintiffs to work hard to get every last one of their supporters to the polls.”)
and the issue before the case being “the constitutionality of an Indiana statute requiring citizens voting person on Election Day, or casting a ballot in person at the office of the circuit court clerk prior to election day, to present photo identification issued by the government.”

The next section will examine the majority and minority opinions in light of the arguments set forth by the petitioners.

ii. Arguments set forth by Opponents of Identification Law

The majority acknowledged that even rational requirements on the right to vote could be struck down if the law is unrelated to voter qualifications. The Court set forth a test to determine whether an election procedure burdens the right to vote:

A court must resolve such a challenge by an analytical process that parallels its work in ordinary litigation. It must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests, it also must consider the extent to which those interests make it necessary to burden the plaintiff’s rights. Only after weighing all these factors is the reviewing court in a position to decide whether the challenged provision is unconstitutional.

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41 Id., at 1616; See Harper v. Virginia Bd. of Elections, 383 U.S. 663, 666-667 (1966) (“While a State may obviously impose reasonable residence restrictions on the availability of the ballot, it may not deny the opportunity to vote to a bona fide resident merely because he is a member of the armed services”).
Under the *Anderson* balancing test strict scrutiny applies to “severe” restrictions on voting rights, lesser burdens trigger less exacting review, and “reasonable, nondiscriminatory restrictions” are usually constitutional if “important regulatory interests” exist.\(^{43}\) Justice Scalia in his concurrence explained that “ordinary and widespread burdens, such as those requiring nominal effort of everyone are not severe. Burdens are severe if they go beyond the merely inconvenient.”\(^{44}\)

The State identified a few state interests to justify the burdens of the voter identification law. The first interest the state points to is improvement and modernization of election procedures.\(^{45}\) The second interest is preventing voter fraud, and the third interest is safeguarding voter confidence.\(^{46}\)

The Court believed that election modernization is an important state interest due to two federal statutes that had been enacted (National Voter Registration Act and HAVA) which both contained “provisions consistent with a State’s choice to use government-issued photo identification as a relevant source of information concerning a citizen’s eligibility to vote.”\(^{47}\) Also, the federal statutes indicate that Congressional intent is that “photo identification one effective method of establishing a voter’s qualification to vote and that the integrity of elections is enhanced through improved technology.”\(^{48}\)

The second interest the state points for the voter identification law is to prevent and deter voter fraud. The majority agrees writing that “there is no question about the legitimacy or importance of the State’s interest in counting only the votes of eligible voters. Moreover, the

\(^{43}\) *Crawford*, at 1625 (J. Scalia concur.)

\(^{44}\) *Id.* at 1625; See *Storer v. Brown*, 415 U.S. 724, 728-729 (1974) (law was severe because it so burdensome as to be virtually impossible to satisfy).

\(^{45}\) *Crawford*, at 1617

\(^{46}\) *Id.*

\(^{47}\) *Id.*

\(^{48}\) *Id.* at 1618.
interest in orderly administration and accurate recordkeeping provides a sufficient justification for carefully identifying all voters participating in the election process.\footnote{Id. at 1619 (Majority pointed to the fact that Indiana’s registered voters lists included the names of thousands of persons who had either moved, died, or were not eligible to vote because they had been convicted of felonies).}

Another interest the state contends is in protecting public confidence in the integrity and legitimacy of representative government.\footnote{Id. at 1620.} They explain that “public confidence in the integrity of the electoral process has independent significance, because it encourages citizen participation in the democratic process” and the electoral system does not inspire confidence if there is not safeguards to deter or detect fraud or to confirm voter identities.\footnote{Id. at 1620.}

The Court acknowledges that photo identification imposes some burdens that other methods of identification do not.\footnote{Id.} The photo identification in the Court’s opinion does not pose a burden so serious or so frequent that would raise the question of constitutionality of the law; and the ability of a person who does have photo identification but forgot to bring it with them to the polls is adequately remedied by the right to cast a provisional ballot.\footnote{Id.}

Where the Court sees another burden is on voters who do not possess a current photo identification which they see remedied by the State providing free photo identification cards issued by the Indiana’s Bureau of Motor Vehicles.\footnote{Id. at 1621.} The majority feels that the “inconvenience of making a trip to the BMV, gathering the required documents, and posing for a photograph” is

\footnote{Id. at 1621. (*For example, a voter may lose his photo identification, maybe have his wallet stolen on the way to the polls, or may not resemble the photo in the identification because he recently grew a beard. Burdens of that sort arising from life’s vagaries, however, are neither so serious nor so frequent as to raise any question about the constitutionality of SEA 483; the availability of the right to cast a provisional ballot provides an adequate remedy for problems of that character).}
not a substantial burden on the right to vote. Justice Souter disagrees and believes it is a heavy burden pointing to “the need to travel to a BMV branch [affecting] voters according to their circumstances, with the average person probably viewing it as nothing more than inconvenience. Poor, old, and disabled voters who do not drive a car, may find the trip prohibitive with far fewer license branches in each county than there are voting precincts.”

In terms of the argument put forward by the opponents of the voter identification that photo identifications are not the best method of avoiding election fraud the majority disagrees. The majority explains that photo identification imposes some burdens but the law has sufficient safeguards in place to mitigate the burdens. The majority writes, “on the basis of the record that has been made in this litigation, we cannot conclude that the statute imposes ‘excessively burdensome requirements’ on any class of voters.” The dissent makes the argument that photo identification only address one form of voter fraud but “leaves untouched the problems of absentee ballot fraud which is a documented problem in Indiana of registered voters voting more than once (but maintaining their own identities) in different counties or in different States; of felons and other disqualified individuals voting in their own names; of vote buying or, for that matter, of ballot stuffing, ballot miscounting, voter intimidation, or any other type of corruption on the part of officials administering elections.” Ultimately, the State argument won out because they were able to convince the majority that the burden on the right to vote is minimal and they put in mitigating provisions such as the ability to cast a provision ballot, get a free id, or vote absentee to justify the identification requirement.

55 Id.
56 Id. at 1629 (J. Souter dissent)
57 Id. at 1623
58 Id. at 1637. (Dissent also writes that there has not been a single instance of in-person voter impersonation fraud in all of Indiana’s history).
The District Judge said roughly 43,000 citizens as of 2005 did not possess the proper photo identification.\textsuperscript{59} The dissent explains this disenfranchises qualified voters financially because voters who get the free photo identification card must present “a birth certificate, a certificate of naturalization, U.S. veterans’ photo identification, U.S. military photo identification, or a U.S. passport.”\textsuperscript{60} The financial burden comes into play because obtaining a birth certificate or a passport will cost the voter a fee, so adding those fees along with travel fees to the BMV they are “disproportionately heavy for, and thus disproportionately likely to deter, the poor, the old, and the immobile.”\textsuperscript{61} The majority feel that the burden is not as heavy due to the fact that the voter can vote absentee or go to the polling place and cast a provisional ballot. In regards to the absentee ballot argument by the majority the dissent responds that “Indiana law ‘treats absentee voters differently from the way it treats Election Day voters’, in the important sense that ‘an absentee ballot may not be recounted in situations where clerical error by an election officer rendered it invalid.’”\textsuperscript{62} In regards to the provisional ballots the dissent explains that there is still a heavy burden because the voter must appear in person within ten days to circuit court clerk to sign an affidavit showing their indigency or to present a photographic ID, the dissent says that since affidavits don’t count in successive elections the poor are forced to “travel to the county seat every time they try to vote.”\textsuperscript{63} Essentially, the dissent is arguing that the relief that the majority say that are available to the voters is not relief at all and therefore they are being arbitrarily disenfranchised, and that the law places hurdles “in the way of either getting an ID or of voting provisionally, and they translate into nontrivial economic costs. There is

\textsuperscript{59} Id. at 1623 Fn. 20 (“District Judge estimated that when the state was passed in 2005, 43,000 citizens did not have photo identification”).
\textsuperscript{60} Id. at 1631 (J. Souter dissent)
\textsuperscript{61} Id. (J. Souter Dissent)
\textsuperscript{62} Id. at 1630 (J. Souter dissent quoting Horseman v. Keller, 841 N.E.2d 164, 171 (2006)).
\textsuperscript{63} Id. at 1631-32 (J. Souter dissent)
accordingly no reason to doubt that a significant number of state residents will be discouraged or disabled from voting.\textsuperscript{64}

The importance of \textit{Crawford} is the Supreme Court upholding an identification law that is one of the most restrictive in the country. It was also important in the sense that the Court laid out the approach they would use in evaluating a constitutionality claim they would implement a balancing approach and depending on the balance determine whether the burden is severe or minimal and based off the severity burden they will see whether the state interests outweigh the burden imposed. The last section of this note will examine alternatives that voters could use to prove identity if they don’t have photo identification.

IV. Photo-Identification Alternatives

There a few alternatives that states could use to confirm the identity of voters who arrive at the polling places without a photo identification. The first is expanding documentation that could meet the requirement of identification before photo identification to include non-photo identification such as a utility bill or bank statement.\textsuperscript{65} Another alternative is for voters to have to show identification when registering as opposed to at the polls. Professor Overton writes that this method could “enhance access for people who have obtained photo identification but later fail to bring it to the polls.”\textsuperscript{66} Another alternative that is employed in a number of states is to compare signatures between the signature used in a poll-book versus the signature the person used when they registered.\textsuperscript{67} An alternative suggested by Larry Sabato is government obtaining a photograph, biometric information, or a thumbprint from citizens when they register to vote.

\textsuperscript{64} \textit{Id.} at 1634. (J. Souter dissent)

\textsuperscript{65} Overton, p. 678

\textsuperscript{66} \textit{Id.}

\textsuperscript{67} \textit{Id.} at 679
than maintaining in a database that poll workers could have access too.\textsuperscript{68} These are just a few of the alternatives that have been suggested to lessen the burden on people who lack photo identification.

V. Conclusion

While photo identification does not seem to cure all the problems of voter fraud, as Justice Souter wrote in the dissent in \textit{Crawford}, it really only cures in person voter fraud but still leaves open the fraud that could occur with absentee ballots. Election fraud is a serious concern voters need to have confidence in the system if they don’t they won’t vote. The most preferable method of identification might be one where photo identification is just one of a number of ways for a voter to establish their identity at the polls. One example the dissent in \textit{Crawford} points to is the state of Florida which requires photo identification but also as other forms of identification that are acceptable such as a debit or credit card, student identification, neighborhood center identification, retirement identification.\textsuperscript{69} The important aspect of voter identification laws is they give people confidence in the system and does not disenfranchise qualified voters. Voter identification laws will continue to a real partisan issue and the debate will continue in the legislature as well as the courts.
