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IS INDIANA'S VOTER ID LAW A BRIDGE TO NOWHERE?

MATTHEW D. NEUMANN*

INTRODUCTION

State laws requiring voters to show some form of identification before casting a ballot are more and more commonplace.1 Despite their increasing prevalence, these laws are as controversial today as when first introduced.2 With regard to controversy, Indiana's Voter ID law3 is no exception.4 Considered one of the most stringent voter identification5 laws in the country,6 litigation has hounded Indiana’s Voter ID law since before taking effect on January 1, 2006.7 Despite surviving a challenge under the United States Constitution in April

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2. Michael J. Pitts, Empirically Assessing the Impact of Photo Identification at the Polls Through an Examination of Provisional Balloting, 24 J. L. & POL (stating that “the debate over [voter] identification laws remains far from any definitive conclusion”). See also Langholz, supra note 1, at 733 (“In recent years, no election-law issue has generated such a divided response in legislatures around the country [as voter identification laws] . . . .”).

3. IND. CODE § 3-11-8-25.1 (2009); See also IND. CODE §§ 3-5-2-40.5, 3-10-1-7.2, 3-11-8-1 to -8-30; 3-11.7-1-2 to -11.7-6-3; 9-24-16-10 (2009).


5. Commentators use “voter identification laws,” “photo identification laws,” “Voter ID laws,” and “Photo ID laws” interchangeably. This Note refers to both voter identification laws and photo identification law as “voter identification laws.” This Note refers to Indiana’s photo identification law as “Indiana’s Voter ID law.” Also, this Note will refer to Indiana’s Voter ID law as though it is still in effect. Although the Indiana Court of Appeals struck down the law, its future is not exactly clear. The Indiana Supreme Court could grant transfer, vacate the opinion of the Court of Appeals, and hold that the law is constitutional. The Supreme Court could also do nothing and allow the decision of the Court of Appeals to remain intact. Even if this happens however, it is likely that the Indiana Legislature would simply re-enact the law to comport with the Court of Appeals’ decision. Either way, this Note presumes that Indiana’s Voter ID law will survive in one form or another. See discussion infra Part II.A.


2008, the League of Women Voters of Indiana, Inc. (hereinafter “League”) once again challenged Indiana’s Voter ID law. On September 17, 2009, the Indiana Court of Appeals struck down Indiana’s Voter ID law for violating the Indiana Constitution. Currently, the case is pending before the Indiana Supreme Court.

League of Women Voters of Indiana, Inc. v. Rokita (hereinafter “League of Voters”) tests the validity of Indiana’s Voter ID law under the Indiana Constitution. Because Indiana constitutional election jurisprudence provides no clear answers, the Indiana Supreme Court should use an alternative framework to decide the case. Using empiricism and pragmatism as analytic guideposts the Indiana Supreme Court should decide the constitutionality of Indiana’s Voter ID law by answering one simple question: Does Indiana’s Voter ID law do more harm than good? Application of this alternative framework requires the Indiana Supreme Court to consider new empirical evidence, revealing that Indiana’s Voter ID law survives constitutional muster. Although it should be upheld under the Indiana Constitution, the virility of Indiana’s Voter ID law should not be overstated. In truth, the Indiana Legislature probably did not have cause to pass Indiana’s Voter ID law at the time it was enacted. On the other hand, the law hardly seems to cause enough problems to justify striking it down. Stuck in a proverbial no man’s land where it creates little harm but accomplishes little good, Indiana’s Voter ID law may ultimately be a bridge to nowhere.

Part I of this Note provides general background information about Indiana’s Voter ID law. Part II of this Note examines the merits of this new state constitutional challenge to the law, League of Voters. Part III of this Note proposes an alternative framework with which the Indiana Supreme Court should decide this case. Part IV of this Note applies this alternative framework to resolve the constitutionality of Indiana’s Voter ID law.

8. Id. at 1624.
11. See Appellant’s Petition to Transfer at 1, League of Women Voters of Ind., Inc. v. Rokita, No. 49A02-0901-CV-00040 (Ind. filed Oct. 19, 2009); Appellee’s Petition to Transfer at 1, League of Women Voters of Ind., Inc. v. Rokita, No. 49A02-0901-CV-00040 (Ind. filed Oct. 19, 2009).
I. General Information about Indiana’s Voter ID Law

Polemical since its enactment, Indiana’s Voter ID law is a “partisan legislative disagreement that has spilled out of the state house [and] into the courts.” At least one commentator predicted that surviving challenge under the United States Constitution, rather than settle the debate over Indiana’s Voter ID law, may have “breath[ed] additional life into the battle.” This prediction proved to be accurate on September 17, 2009, when the Indiana Court of Appeals struck down Indiana’s Voter ID law. As the Indiana Supreme Court decides whether to grant transfer and potentially prepares to decide the merits of the case, it is important to accurately frame the debate that surrounds Indiana’s Voter ID law.

A. Passage of Indiana’s Voter ID Law

A perceived rise in voter fraud prompted an almost national movement by state legislatures to pass voter identification laws. This perceived rise in voter fraud reached a critical mass after the 2000 presidential election. Bush v. Gore decided the unimaginably close 2000 presidential race and “reminded the nation that every vote counts in a closely divided political environment.” On the heels of the United States Supreme Court’s controversial decision in Bush v. Gore, Congress passed the Help America Vote Act (hereinafter “HAVA”) in 2002. HAVA requires first-time voters registering by mail to provide identification at the polls before casting a ballot. Spurred to action, between 2002 and 2007, thirty-four states passed voter identification laws that not only complied with but actually went beyond the mandates of HAVA.

16. Pitts, supra note 2, at 475-76 (noting that “no opinion garnered a majority as four separate Justices penned opinions”); See also Crawford v. Marion County Election Bd., 128 S. Ct. 1610, 1613 (2008).
18. See supra note 11.
19. Langholz, supra note 1, at 748.
23. Overton, supra note 21, at 639.
24. Langholz, supra note 1, at 748.
In 2005, the Indiana Legislature followed suit and passed Indiana's Voter ID law. Indiana's Voter ID law provides: "[A] voter who desires to vote an official ballot at an election shall provide proof of identification." For example, on election day, the voter arrives at the polls, and the poll worker asks the voter to show identification. If the voter does not offer valid identification, the poll worker challenges her by informing the voter that she cannot cast a regular ballot but may cast a provisional ballot instead. Next, the voter casts a provisional ballot, which is a tentative paper ballot that will not officially influence the outcome of the election unless the voter later validates the ballot. To validate the provisional ballot, the voter must return to the county election board—the board of local officials ultimately responsible for administering the election—within ten days of the election and provide proper identification. If the voter returns with the proper ID, the county election board determines if the provisional ballot is valid.

The most controversial aspect of Indiana's Voter ID law is that Indiana requires voters to present a very specific form of identification. An acceptable ID must meet several criteria. First, the document must contain the individual's name. Second, the document must contain the individual's photo. Third, the document must contain an expiration date and must not be expired. Fourth, the State of Indiana or the federal government must issue the document. Despite the controversy stemming from these stringent requirements, propo-

Proponents justify Indiana's Voter ID law as a fraud prevention measure.\footnote{40. Montgomery, supra note 20, at 651 (stating that voter identification laws are "arguably designed to prevent in-person voter fraud at the polls").}{40} Without requiring voters to present identification, a voter can cast a fraudulent vote by “showing up at the polls claiming to be someone else—someone who has left the district, or died too recently to have been removed from the list of registered voters, or someone who has not voted yet on election day.”\footnote{41. Memorandum in Support of Defendant's Motion to Dismiss, supra note 39, at 11 (citing Crawford v. Marion County Election Bd., 472 F.3d 949, 953 (7th Cir. 2007)).}{41} If an election official forces the voter to prove his identity by presenting a government-issued ID card, this “in-person voter fraud” is less likely to occur.\footnote{42. See Crawford v. Marion County Election Bd., 128 S. Ct. 1610, 1637 (2008); See also Ansolabehere & Persily, supra note 6, at 1741.}{42}

Proponents also justify Indiana's Voter ID law as increasing public confidence in the integrity of the electoral process.\footnote{43. Ansolabehere & Persily, supra note 6, at 1741.}{43} If the “specter of voter fraud” is allowed to impend public confidence in our electoral system, it has potential to “breed distrust of our government.”\footnote{44. Schultz, supra note 39, at 492.}{44} The perception that one’s legitimate vote will be overshadowed by fraudulent votes can conceivably drive “honest citizens out of the democratic process.”\footnote{45. Ansolabehere & Persily, supra note 6, at 1738-39 (quoting Purcell v. Gonzalez, 549 U.S. 1, 4 (2006)).}{45} Therefore, a State has an interest in attempting to amplify public confidence in the integrity of the electoral process.\footnote{46. Id. at 1739.}{46}

Finally, proponents argue that Indiana's Voter ID law is justified by the commonsense observation that carrying identification is necessary in our modern society.\footnote{47. See Crawford v. Marion County Election Bd., 128 S. Ct. 1610, 1620 (2008); See also Andrew N. DeLaney, Note, Appearance Matters: Why the State has an Interest in Preventing the Appearance of Voting Fraud, 83 N.Y.U. L. REV. 847, 847 (2008).}{47} A person must present identification to do a variety of activities in everyday life and voting should be no different.\footnote{48. But see Overton, supra note 21, at 644-50 (criticizing common sense arguments as a rhetorical device of voter identification advocates).}{48} Simply put, as Judge Richard Posner noted, "it is exceedingly
difficult to maneuver in today's America without a photo ID.\textsuperscript{50} Because identification is an ordinary part of daily life, requiring voters to present identification before casting a ballot is a logical and reasonable electoral precaution.\textsuperscript{51}

Nonetheless, commentators and litigants have been tireless in their attacks on Indiana's Voter ID law.\textsuperscript{52} First, opponents attack Indiana's Voter ID law as burdening the right to vote.\textsuperscript{53} The right to vote is a fundamental right under the United States Constitution.\textsuperscript{54} Requiring a voter to present identification creates an additional obstacle that may prevent a potential voter from casting a ballot.\textsuperscript{55} Thus, requiring voters to present government-issued ID cards before voting unnecessarily burdens their fundamental right.\textsuperscript{56}

Second, opponents attack Indiana's Voter ID law as a poll tax in disguise.\textsuperscript{57} The Twenty-Fourth Amendment to the United States Constitution prohibits states from collecting a tax before allowing a voter to cast a ballot.\textsuperscript{58} Most states with voter identification laws provide voters with free IDs because requiring an ID for voting purposes that can only be obtained by paying money is undoubtedly a poll tax.\textsuperscript{59} Indiana is no exception, and although a fee is normally required to obtain a state-issued ID,\textsuperscript{60} the Indiana Legislature, upon enactment of the Voter ID law, waived all fees for state-issued ID cards for those that cannot afford to pay.\textsuperscript{61} Regardless, opponents of Indiana's Voter ID law counter that a birth certificate or a passport, for which most
states charge a fee, is necessary to obtain the free identification, and therefore voter identification laws are still a poll tax.\footnote{62. Id. at 1631 (Souter, J., dissenting) (noting that Indiana counties charge anywhere from $3 to $12 for a birth certificate (and in some other States the fee is significantly higher)); See also Ind. Democratic Party, 458 F. Supp. 2d at 789-92 (discussing in-depth the procedures for obtaining state-issued identification in Indiana).} Stated otherwise, providing free ID cards does not shield voter identification laws from poll tax claims because of the ancillary costs of obtaining the free ID.\footnote{63. See Langholz, supra note 1, at 763 (discussing the argument that the “incidental costs associated with obtaining an identification card still constitute a poll tax”).}

B. The First Challenge to Indiana’s Voter ID Law

Despite the best efforts of commentators and litigants, Indiana’s Voter ID law survived challenge under the United States Constitution in \textit{Crawford v. Marion County Election Board}.\footnote{64. Crawford, 128 S. Ct. at 1616.} Announcing the judgment of the Court, Justice John Paul Stevens declined to apply strict scrutiny and instead applied a balancing approach, the undue burden standard, in upholding Indiana’s Voter ID law under the Fourteenth Amendment to the United States Constitution.\footnote{65. Id. For a more in depth discussion of the undue burden standard see discussion infra note 230 and accompanying text.} Cautioning courts to avoid applying a “litmus test,” Justice Stevens stated that a “court must identify and evaluate the interests put forward by the State as justifications for the burden imposed by its rule, and then make the ‘hard judgment.’”\footnote{66. Id.} Ultimately, Justice Stevens concluded the petitioners’ facial challenge failed because Indiana’s interest in protecting electoral integrity outweighs the burdens imposed by Indiana’s Voter ID law.\footnote{67. Id. at 1623.}

C. The Futility of Indiana’s Voter ID Law

Despite surviving challenge under the United States Constitution,\footnote{68. See supra text accompanying note 65.} one should avoid overestimating the pertinence of Indiana’s Voter ID law. In truth, close examination of the law’s mechanics reveals that the Indiana Legislature may not have had cause to pass Indiana’s Voter ID law in the first place.\footnote{69. See Ind. Democratic Party v. Rokita, 458 F. Supp.2d 775, 789-92 (S.D. Ind. 2006) (noting that challengers to Indiana’s Voter ID law argued that its passage is “not justified by existing circumstances or evidence”); Myriad commentators posit that conservative leaning legislatures across the country have been unjustified in passing voter identification laws, Indiana included; \textit{See, e.g.}, Overton, \textit{supra} note 21, at 644-53.} Simply put, Indiana’s Voter ID law may not be justified as a fraud prevention measure because in-person
voter fraud is merely used as a pretense for the law’s enactment.\textsuperscript{70} The ability of Indiana’s Voter ID law to prevent in-person voter fraud, or “voter identity theft,” is the most central justification supporting its enactment.\textsuperscript{71} Unfortunately for proponents, “actual evidence of voter impersonation fraud is rare and difficult to come by.”\textsuperscript{72} In fact, in \textit{Crawford}, Justice Stevens looked high and low for evidence of in-person voter fraud and found only two examples in the entire country in the last one hundred and forty years.\textsuperscript{73} Commentators generally agree with this conclusion and posit that the prevalence of in-person voter fraud, if it occurs at all, is not widespread and has certainly never risen to the level of influencing the outcome of an election.\textsuperscript{74} To overcompensate for this lack of comprehensive empirical evidence, proponents too often use anecdotal evidence to demonstrate the apparent prevalence of voter fraud.\textsuperscript{75} This overcompensation is dangerous because “[v]oter-fraud anecdotes are often misleading, incomplete, and unrepresentative.”\textsuperscript{76} Unfortunately, these misleading anecdotes, despite their empirical shortcomings, are rhetorically effective because they inject a heated verbosity into the debate.\textsuperscript{77}

Despite the rhetorical savvy of those that support Indiana’s Voter ID law, opponents are correct to impale the law for failing to solve the very problem at which it is aimed.\textsuperscript{78} In truth, aimed at curing a nonexistent problem, Indiana’s Voter ID law is more accurately characterized as a “solution in search of a problem.”\textsuperscript{79} As the debate inevitably rages on, a new challenge to Indiana’s Voter ID law is before the Indiana Supreme Court.\textsuperscript{80} Ultimately, as the Indiana Supreme Court prepares to issue the final word on Indiana’s Voter ID law,\textsuperscript{81} the Court should not discount the combative overtones of this partisan

\textsuperscript{70}. Ansolabehere & Persily, supra note 6, at 1737 (stating that “actual evidence of voter impersonation fraud is rare and difficult to come by”).
\textsuperscript{71}. Pitts, supra note 2, at 500-01; \textit{See generally} supra text accompanying notes 41-43.
\textsuperscript{72}. Ansolabehere & Persily, supra note 6, at 1738; \textit{See also} Pitts, supra note 2, at 500 (“Some opponents of photo identification take the position that voter impersonation fraud (i.e. voter identity theft) almost never occurs at America’s polling places.”).
\textsuperscript{73}. Pitts, supra note 2, at 500 (discussing Justice Stevens’ scouring of the evidentiary record).
\textsuperscript{74}. \textit{Id.} at 644.
\textsuperscript{75}. \textit{See Overton}, supra note 21, at 644-45 (“[A]ncedotes about voter fraud . . . fail to indicate the frequency of the alleged fraud.”).
\textsuperscript{76}. \textit{Id.} at 644.
\textsuperscript{77}. \textit{See} Stephen Ansolabehere, \textit{Access Versus Integrity in Voter Identification Requirements}, 63 N.Y.U ANN. SURV. AM. L. 613, 626 (2008) (discussing the “heated rhetoric that has inflated the debate over voter ID requirements in the United States”).
\textsuperscript{78}. \textit{See} supra text accompanying note 70.
\textsuperscript{79}. Langholz, supra note 1, at 733 (quoting 152 CONG. REC. H6777 (daily ed. Sept. 20, 2006) (statement of Rep. Holt)).
\textsuperscript{80}. \textit{See} discussion infra Part II.
\textsuperscript{81}. Amended Complaint for Declaratory Judgment, supra note 13, at 8-9.
debate. A prescient peek behind the proverbial curtain may reveal the battle over Indiana’s Voter ID law for what it is, a struggle for political control.

II. THE MERITS OF THE LEAGUE OF WOMEN VOTERS OF INDIANA, INC. v. ROKITA

A. Introduction to the Case

On June 20, 2008, the League of Women Voters of Indiana, Inc. filed a lawsuit in Marion County Superior Court, against Todd Rokita in his official capacity as the Indiana Secretary of State (hereinafter “the State”). The League challenged Indiana’s Voter ID law as violating the Indiana Constitution. The League moved for an expedited status conference in hopes of resolving the case before the November 2008 general election. This motion went undecided, and the trial court dismissed the case on December 17, 2008. On January 15, 2009, the League filed its appeal with the Indiana Court of Appeals. On September 17, 2009, the Indiana Court of Appeals struck down Indiana’s Voter ID law for violating the Indiana Constitution. Currently the State of Indiana is preparing to file its appeal to the Indiana Supreme Court.

It is not an understatement to say that the decision of the Indiana Court of Appeals came as a surprise to most. At first glance the

82. See Schultz, supra note 39, at 494-500 (“[W]hip[p]ing] up hysteria that droves of dead people, illegal immigrants, vote brokers, and ex-felons are cheating their way into voting booths, stealing elections from honest decent Republicans, and diluting the votes of red, white, and blue Americans.”).

83. See id. at 500 (noting that underlying voter identification laws may be “partisan Republican efforts to suppress voting”).

84. Complaint for Declaratory Judgment, supra note 9, at 1.

85. Amended Complaint for Declaratory Judgment, supra note 13, at 7.

86. Motion for Expedited Status Conference at 1, League of Women Voters of Ind., Inc. v. Rokita, No. 49D02-0806-PL-027627 (Ind. Super. Ct. filed July 29, 2008), rev’d, 915 N.E.2d 151 (Ind. Ct. App. 2009) (noting that its goal was to have “this litigation resolved before the general election”).


90. Immediately after the Court of Appeals issued their September 17, 2009 opinion declaring Indiana’s Voter ID law unconstitutional, Indiana Secretary of State Todd Rokita stated that “I have already requested that the Indiana Solicitor General seek immediate transfer of the case to the Indiana Supreme Court for review.” Jim Shelia, Court: Voter ID law unconstitutional, Daniels calls ruling act of judicial arrogance, Sept. 17, 2009, http://www.wishtv.com/dpp/news/indiana/Court_declares_voter_ID_unconstitutional_20090917.

Court of Appeals' decision seems to be quite dramatic. Closer examination, however, reveals that the opinion is not as sweeping as many believe. Ultimately, the Indiana Court of Appeals did not find any problem with requiring voters to show identification. Stated another way, the Court of Appeals has not said that requiring voters to show identification before casting a ballot violates the Indiana Constitution. Therefore, the essence of voter identification survives. The Court of Appeals simply held that Indiana's Voter ID law—as currently drafted—creates different classes of voters in violation of the Indiana Constitution. Arguably the decision of the Court of Appeals is limited because the problems identified by the court are easily fixable. Ultimately, if the Indiana Legislature simply removes the exceptions—i.e., removes the classes of voters created by the law—and requires every Hoosier voter to show identification, Indiana's Voter ID law would seemingly be constitutional in the eyes of the Indiana Court of Appeals.

To recognize the limits of the Indiana Court of Appeals' decision is not to de-emphasize its importance. Quite the opposite, the Indiana Court of Appeals' decision serves two important functions. First, the reaction of public officials in the wake of the Court of Appeals' decision demonstrates the highly partisan nature of the debate surrounding voter identification. Second, the opinion of the Court of Appeals provides insight into how the Indiana Supreme Court will analyze the case.

The reaction of public officials in the wake of the Court of Appeals' decision demonstrates the highly partisan tone of the debate surrounding voter identification. Within days, three officials in Indiana made public comments about the decision. Governor Mitch Daniels stated: "It's a preposterous decision, an extreme decision and came in this case from a judge who's been reversed before and I expect that to happen again. . . . It's just bad law. It's an act of judicial arrogance. . . .

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92. League of Voters, 915 N.E.2d 151. The issue turned on whether Indiana's Voter ID law is a regulation or a qualification. Id. at 157; If the Court of Appeals had held that the law is a qualification, presumably they would have said that voter identification, in and of itself, is unconstitutional. Instead, the Court held: "the Voter I.D. Law is not a qualification, but is rather a regulation of the time, place, or manner in which otherwise qualified voters must cast their votes. Therefore, if the Voter I.D. Law is to run afoul of our constitution, it is not for the reason that it imposes a qualification upon our electorate in the absence of constitutional provision." Id. at 161. This means that requiring voter to show ID is constitutionally permissible, just not the way the Indiana Legislature drafted the law. Id at 151-69.

93. The court struck down the law "because it regulates voters in a manner that is not uniform and impartial." Id. at 169.
the ruling [is] transparently [political]." Indiana Secretary of State Todd Rokita stated: "Some continue to force us to use taxpayer dollars on an issue that has already been reviewed by the US Supreme Court. The gamesmanship going on here is irresponsible and needs to stop." Finally, Indiana Attorney General Greg Zoeller stated: "The state's long-held view is that the voter ID law is constitutional, and we will vigorously defend the statute in arguing that position before the Indiana Supreme Court." These statements did not go unnoticed. The Indiana State Bar Association issued the following in response to Governor Daniels statements:

[Comments such as those attributed to the governor are not helpful in advancing appropriate respect for the courts and the judicial process, and honoring the separation of powers doctrine. The ISBA respects the governor's, and every citizen's, right to disagree with the decision. There are rules, however, that govern judicial conduct and appropriate procedures for dealing with complaints about the judiciary. Comments about individual judges are not the way to express disagreement with any court opinion.]

With pointed clarity, these reactions to the Indiana Court of Appeals' decision highlight the partisan nature of the debate surrounding voter identification.

More importantly, the opinion of the Court of Appeals provides insight into how the Indiana Supreme Court may analyze the case. Although the Indiana Supreme Court may have the final word, the Court of Appeals' opinion previews the analysis of the three legal issues presented in \textit{League of Voters}: (1) whether the League's challenge is justiciable; (2) whether Indiana's Voter ID law violates Article I, Section 23 of the Indiana Constitution; and (3) whether Indiana's Voter ID law violates Article II, Section 2 of the Indiana Constitution.

The Court of Appeals held that the League's challenge is justiciable. Rokita argued that as the Secretary of State he is not responsible for enforcement of election laws. The court pointed out that the League's case was a declaratory judgment and that Indiana law intends "to settle and to afford relief from uncertainty and insecurity

\begin{thebibliography}{9}
\bibitem{95} \textit{See} Sheila, \textit{supra} note 90.
\bibitem{97} Hoskins, \textit{supra} note 91.
\bibitem{98} \textit{League of Voters}, 915 N.E.2d at 154.
\bibitem{99} \textit{See id.} at 156-57.
\bibitem{100} \textit{Id.} at 156.
\end{thebibliography}
with respect to rights, status and other relations; and is to be liberally construed and administered."\textsuperscript{101} The court also pointed out that "Rokita is the ‘chief election official’ for the State of Indiana."\textsuperscript{102} Accordingly, the court held that “the League named a proper defendant in this matter.”\textsuperscript{103}

Turning to the second issue, the Court of Appeals held that Indiana’s Voter ID law, as enacted, runs afoul of Article I, Section 23 of the Indiana Constitution.\textsuperscript{104} In short, the Indiana Court of Appeals struck down the law “because it regulates voters in a manner that is not uniform and impartial.”\textsuperscript{105} Article I, Section 23 of the Indiana Constitution provides: “The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens.”\textsuperscript{106} Statutes run afoul of Article I, Section 23 when “the lines drawn appear arbitrary or manifestly unreasonable, and the challenger must negate every reasonable basis for the classification.”\textsuperscript{107} In particular, the court found that the law impermissibly creates two classes of voters.

The first class of voters impermissibly created by the law is absentee voters, i.e. mail in voters.\textsuperscript{108} In Indiana, “[a]n absentee voter is not required to provide proof of identification when: (1) mailing, delivering, or transmitting an absentee ballot under Section 1 of this chapter; or (2) voting before an absentee board under Section 25 of this chapter.”\textsuperscript{109} The League cited language from the Indiana Supreme Court that recognized that “the legislature believed it in the interest of Indiana voters to more stringently govern absentee balloting.”\textsuperscript{110} The League argued therefore “it is irrational for our legislature to require identification of in-person voters but not require an affidavit affirming the identity of mail-in voters.”\textsuperscript{111} The court agreed and concluded that the statute was unreasonable for that reason.\textsuperscript{112}

The second problematic class of voters created by the law are those voters residing at a state licensed care facility.\textsuperscript{113} In Indiana, “[a] voter who votes in person at a precinct polling place that is located at a state licensed care facility where the voter resides is not required to

\begin{footnotes}
101. Id. at 157 (quoting IND. CODE § 34-14-1-2 (2009)).
102. Id.
103. Id.
104. See id. at 161-69.
105. Id. at 169.
106. IND. CONST. art. I, § 23.
108. League of Voters, 915 N.E.2d at 162.
109. Id. (quoting § 3-11-10-1.2).
110. Id. at 163 (quoting Horseman v. Keller, 841 N.E.2d 164, 173 (Ind. 2006)).
111. Id.
112. Id.
113. Id. at 163-65.
\end{footnotes}
provide proof of identification before voting." The State argued that self-evident realities of residing at a state licensed care facility justified the exception in the law. The court disagreed and held that the special treatment was based upon "an arbitrary or unnatural characteristic which grants an unequal privilege or immunity to residents of state licensed care facilities which also happen to be polling places." Accordingly, given the two impermissible classes of voters, the Indiana Court of Appeals held that Indiana's Voter ID law violates Article I, Section 23 of the Indiana Constitution and must be declared void.

Faced with the Court of Appeals decision—which at first glance appears quite remarkable given that it reaches a different result than the United States Supreme court—it is important to recognize the limits in the Court of Appeals' decision. To be precise, it is important to recognize what the Indiana Court of Appeals did not say. The Court of Appeals did not say that requiring voters to show identification before voting violates the Indiana Constitution. Therefore, according to the Court of Appeals, voter identification, in and of itself, does not run afoul of the Indiana Constitution. Ultimately, the Court of Appeals struck down Indiana's Voter ID law because of the "(1) the disparate treatment between mail-in absentee voters and in-person voters; [and] (2) the disparate treatment between voters who reside at state licensed care facilities that by happenstance are polling places and elderly and disabled voters who do not reside at state licensed care facilities that also happen to be polling places." Arguably these problems are fixable, even easily fixable. To remedy these problems the Indiana Legislature need only remove the disparate treatment. Absentee voters must be required to fill out an affidavit. Residents of state licensed care facilities must be required to show identification like all other Hoosier voters. If the Indiana Legislature makes these two relatively simple changes, then Indiana's Voter ID law is presumably constitutional in the eyes of the Indiana Court of Appeals.

Ultimately, the Indiana Court of Appeals' decision is not as sweeping as many headlines seem to indicate. In short, the holding of the Court of Appeals was rather limited. In the end, Indiana's Voter ID law—despite being held unconstitutional by the Court of Appeals—seems to have escaped largely unscathed. Even if the Court of Appeals' decision is affirmed by the Indiana Supreme Court, the Indiana

114. Id. (quoting §§ 3-10-1-7.2; 11-8-25.2).
115. Id. at 164.
116. Id. at 165.
117. Id.
118. Id. at 161-62.
Legislature need only require every single Hoosier voter to show identification before casting a ballot. If the Indiana Legislature can make these changes, voter identification will survive in Indiana.

B. The Heart of Indiana’s Voter ID Law

Any broad pronouncement about the (un)constitutional constitutionality of Indiana’s Voter ID law will stem—not from Article I, Section 23—but instead from Article II, Section 2 of the Indiana Constitution. If the Indiana Supreme Court is to hold that requiring voters to show identification before voting violates the Indiana Constitution, it will have to happen under Article II, Section 2. Thus, the heart of Indiana’s Voter ID law lies in Article II, Section 2.

The Article II, Section 2 issue is summarized as follows: Whether Indiana’s Voter ID law is a legitimate exercise of the Indiana Legislature’s power to administer and regulate elections or unconstitutionally imposes an additional requirement for voter eligibility.119 With regard to this issue, the Court of Appeals found no problem, stating that “if the Voter I.D. Law is to run afoul of our constitution, it is not [because it violates Article II, Section 2].”120 In truth this issue is convoluted and actually touches on three provisions of the Indiana Constitution.

1. The Power of the Indiana Legislature to Regulate and Administer Elections. – The League argued that the Indiana Constitution defines the requirements a Hoosier must satisfy before she is eligible to vote.121 Working in concert, Article II, Section 2 and Article II, Section 14 together set forth four basic prerequisites that must be satisfied before a Hoosier is eligible to vote: (1) the person must be a U.S. citizen; (2) the person must be at least eighteen years old; (3) the person must have lived in the precinct for at least 30 days; and (4) the person must be registered to vote.122 The League argued that the Indiana Legislature is prohibited from imposing additional voting requirements beyond those four without passing a constitutional amendment.123 Because Indiana’s Voter ID law adds a fifth requirement, that voters possess and present a government-issued ID card, Indiana’s Voter ID law is unconstitutional.124

119. See Amended Complaint for Declaratory Judgment, supra note 13, at 1-7; Memorandum in Support of Defendant’s Motion to Dismiss, supra note 39, at 1-9.
120. League of Voters, 915 N.E.2d at 161.
121. Id.
122. IND. CONST. art. II, § 2; IND. CONST. art. II, § 14.
123. Amended Complaint for Declaratory Judgment, supra note 13, at 5 (relying on Morris v. Powell, 25 N.E. 221, 223 (Ind. 1890)).
124. Id. at 6.
Indiana courts have repeatedly struck down additional voting requirements imposed by the legislature. In *Board of Election Commissioner v. Knight*, the Indiana Legislature granted women the right to vote, even though the Indiana Constitution did not include women as part of the electorate. Indianapolis citizens brought an action to enjoin election officials from allowing women to vote. The Indiana Supreme Court agreed and held that the law granting women suffrage was unconstitutional because the law would allow persons to cast a ballot who are not part of the electorate as defined by Article II, Section 2.

While *Knight* demonstrates that the legislature is constrained by the election provisions of the Indiana Constitution, this case presents two problems. First, it is awkward for the League to argue that a case so blatantly about disenfranchising women now supports the argument that Indiana's Voter ID law should be struck down because of its disenfranchising effect on voters. Second, *Knight* can be distinguished because, unlike the League's challenge to Indiana's Voter ID law, the Indiana Constitution spoke directly to the issue in *Knight*. At that time, Article II, Section 2 only conferred the right to vote on white males, while the challenged law gave women in Indianapolis the right to vote. By the language of the constitution it was self-evident that the Indiana Legislature had overstepped its bounds. In contrast, *League of Voters* presents an issue about which the Indiana Constitution is silent. The Indiana Constitution provides nothing about requiring voters to present government-issued ID, and therefore, the boundary of the legislature's power with regard to Indiana's Voter ID law is ambiguous. In short, the League cannot successfully argue that Indiana's Voter ID law is outside the power of the Indiana Legislature without defining the boundaries of that power.

In response to the League's Article II, Section 2 argument, the State countered that Indiana's Voter ID law is constitutional because the Indiana Legislature passed the Voter ID law pursuant to its constitutional power to regulate elections. The State cited two different
constitutional provisions as sources of this legislative power. 137 One source of this power is Article II, Section 1 of the Indiana Constitution, which provides “[a]ll elections shall be free and equal.”138 A second source is Article II, Section 14, which commands “[t]he General Assembly shall provide for the registration of all persons entitled to vote.”139

Relying on Article II, Section 1, the State argued “[i]nherent in the requirement of holding ‘free and equal’ elections lies the power of the state to protect the rights of citizens to a fair and reliable electoral system.”140 This argument was based on the premise that in-person voter fraud cannot occur if the voter is required to prove their identity.141 Although the State failed to clearly articulate its point, the State essentially argued that fraud prevention is a conduit to a reliable electoral system and a reliable electoral system is a conduit to a free and clear election.142 Therefore, because preventing fraud ensures that elections are free and clear, passing Indiana’s Voter ID law is a legitimate exercise of the Indiana Legislature’s Article II, Section 1 power.143

Interestingly, despite the availability of colorable arguments to both sides, neither party offered a definition of “free and clear.”144 The State would have been wise to define “free and clear” to mean that all elections should be free and clear of fraudulent voting practices, which is the purpose of Indiana’s Voter ID law. The League would have been prudent to define “free and clear” to mean that all elections shall be free and clear from overly burdensome laws, like Indiana’s Voter ID law, that discourage voters from participating in the electoral process. Nonetheless, neither party explicitly provided a definition, and presumably left the Indiana Supreme Court to define “free and clear.”

Next, grounding the legislative power to enact Indiana’s Voter ID law in the voter registration provision of Article II, Section 14, the State argued that “[Indiana’s Voter ID law] is merely a procedure of verifying the identity of a registered voter—the most fundamental pre-existing voter eligibility criterion.”145 Essentially, the State was

137. Id. at 2.
138. IND. CONST. art. II, § 1.
139. IND. CONST. art. II, § 14.
140. Memorandum in Support of Defendant’s Motion to Dismiss, supra note 39, at 3.
141. Id. at 7, 11.
142. Id. at 2-3. The State fails to set forth and connect each premise of the argument but instead cursorily states without elaboration that “[b]y preventing voter fraud, the identification requirement ensures compliance with the Article II, Section 1 mandate that each vote equally influence the result of an election.” Id.
143. Id. at 2-3.
144. IND. CONST. art. II, § 1. See Amended Complaint for Declaratory Judgment, supra note 13, at 1-7; Memorandum in Support of Defendant’s Motion to Dismiss, supra note 39, at 1-9.
145. Memorandum in Support of Defendant’s Motion to Dismiss, supra note 39, at 3-4.
Positing that identifying voters is part of the registration process. Accordingly, because the Indiana Legislature has the power to register voters and identifying voters is part of that registration process, Indiana’s Voter ID law is a legitimate exercise of that legislative power.

Previously, the Indiana Supreme Court held that the registration system the Indiana Legislature imposes on the electorate is presumptively constitutional. In Simmons v. Byrd, citizens challenged Indiana’s voter registration laws as unconstitutional. The argument in Simmons, very similar to the League’s argument in League of Voters, was that although the Indiana Legislature passed registration laws pursuant to Article II, Section 14, the registration laws impose additional voting qualifications as defined by Article II, Section 2. The court rejected this argument and upheld the registration laws as constitutional, finding that Article II, Section 2 and Article II, Section 14 are not in conflict. The court, discussing Article II, Section 14, recognized that “it is made the duty of the [Indiana] General Assembly by the [Indiana] Constitution to enact a law providing . . . for the registration of all voter. . . .” In discussing the importance of registration laws the court also stated, “[w]hen the ballot box becomes the receptacle of fraudulent votes, the freedom and equality of elections are destroyed.” Seemingly validating both arguments of the State, Simmons appears to announce two principles that provide the Indiana Legislature with the power to enact Indiana’s Voter ID law. However, the broad principles announced by Simmons do not provide guidance about the constitutionality of Indiana’s Voter ID law.

The Indiana Constitution explicitly authorizes the Indiana Legislature to enact a voter registration system, and Simmons confirms this principle. However, both the Indiana Constitution and Simmons are silent as to whether requiring voters to show government-issued ID is part of the registration process. Similarly, Simmons does es-

146. Id.
147. Id.
149. 136 N.E. 14.
150. Id. at 14.
151. Id. at 14-15.
152. Id. at 16-17.
153. Id. at 16. (internal quotations omitted) (citing Morris v. Powell, 25 N.E. 221, 222 (Ind. 1890)).
154. Memorandum in Support of Defendant’s Motion to Dismiss, supra note 39, at 3-4 (quoting Simmons, 136 N.E.at 18).
156. See id.
tablish that the Indiana Legislature has power to ensure elections are free and clear, but Simmons does not define "free and clear." Furthermore, even if a "free and clear" election is defined as a fraud-free election, Simmons does not establish that requiring voters to present government-issued ID is necessary to ensure that elections are free and clear. Mirroring the shortcomings of the League's first argument, the State argued that Indiana's Voter ID law is within the power of the legislature without defining the contours of that power.

2. Procedural Regulations v. Substantive Qualifications. — Both parties turned to the distinction between substance and procedure as a way to define the contours of the Indiana Legislature's power to regulate elections. The League argued that Indiana's Voter ID law is unconstitutional because it adds an additional "substantive qualification" outside the Indiana Constitution. In response, the State argued that Indiana's Voter ID law is not a "substantive qualification" but is instead a "procedural regulation." Accordingly, the State argued that the Indiana Legislature only has the authority to add procedural regulations, not substantive qualifications. According to the State, the outer limits of the Indiana Legislature's power to regulate elections lies at the line between procedural regulations and substantive qualifications, with substantive qualifications being beyond the reach of the Indiana Legislature.

In Rosario v. Rockefeller, the United States Supreme Court explained the distinction. The Court defined substantive voting qualifications as laws that "totally den[y] the electoral franchise to a particular class of residents, and there is no way in which the members of that class could [make] themselves eligible to vote." In contrast, the Court defined procedural election regulations as laws that leave some responsibility with the voter but "[do] not absolutely disen-

160. Id.
161. Memorandum in Support of Defendant's Motion to Dismiss, supra note 39, at 3-4.
163. See supra discussion Part II.B.
164. Memorandum in Support of Defendant's Motion to Dismiss, supra note 39, at 3.
165. Id.
166. Id.
168. Id. at 757; See Memorandum in Support of Defendant's Motion to Dismiss, supra note 39, at 4.
169. Memorandum in Support of Defendant's Motion to Dismiss, supra note 39, at 4 (quoting Rosario v. Rockefeller, 410 U.S. 752, 757 (1973)).
franchise the class to which the petitioners belong."\textsuperscript{170} For example, a sixteen-year-old Hoosier cannot vote for failure to meet the age requirement and realistically has no way of becoming eligible to vote.\textsuperscript{171} This example illustrates a substantive qualification. However, a Hoosier who does not have valid identification, although meeting the other age, citizenship, residency, and registration requirements, is not absolutely disenfranchised but is instead prevented from casting a ballot due to the voter's "own failure to take timely steps to effect [her] enrollment."\textsuperscript{172} This example illustrates a procedural regulation. Because the voter without ID is not absolutely disenfranchised from voting, unlike the sixteen-year-old Hoosier, Indiana's Voter ID law is a procedural regulation not a substantive qualification.\textsuperscript{173}

While the Indiana Supreme Court does not have to adopt Rosario's bifurcated treatment of election rules,\textsuperscript{174} textual analysis of the Indiana Constitution seems to validate this distinction between substantive qualifications and procedural regulations.\textsuperscript{175} As Article II, Section 2 provides, when a person meets the necessary qualifications of age, citizenship, and residence, that person is entitled to vote.\textsuperscript{176} Article II, Section 14 provides: "The General Assembly shall oversee the registration of all those entitled to vote."\textsuperscript{177} This language reveals that voter registration is distinct from being entitled to vote. To illustrate, if a person entitled to vote under Article II, Section 2 is properly registered, the poll worker permits the voter to cast a ballot on election day.\textsuperscript{178} If a person entitled to vote under Article II, Section 2 is unregistered, the poll worker prohibits the voter from casting a ballot.\textsuperscript{179} However, by stopping the unregistered voter from casting a ballot, the poll worker cannot take away the person's Article II, Section 2 entitlement. By the language of the Indiana Constitution, voter registration does not affect whether a person is entitled to vote. Arguably, this distinction between voter registration and entitlement could be recast in the language of Rosario. An unregistered voter is not stripped of his entitlement or "absolutely disenfranchised" from

\textsuperscript{170} Rosario, 410 U.S. at 757.
\textsuperscript{171} See IND. CONST. art. II, § 2.
\textsuperscript{172} Rosario, 410 U.S. at 758; See IND. CONST. art. II, § 14.
\textsuperscript{173} See Memorandum in Support of Defendant's Motion to Dismiss, supra note 39, at 4.
\textsuperscript{174} See Holder v. State, 847 N.E. 2d 930, 935 (Ind. 2006).
\textsuperscript{175} To be clear, in League of Voters, neither party grounds the distinction between substantive qualifications and procedural regulations on the language of the Indiana Constitution; See Amended Complaint for Declaratory Judgment, supra note 13, at 1-7; Memorandum in Support of Defendant's Motion to Dismiss, supra note 39, at 1-9.
\textsuperscript{176} IND. CONST. art. II, § 2.
\textsuperscript{177} IND. CONST. art. II, § 14.
\textsuperscript{178} IND. CODE § 3-7-48-1 (2009).
\textsuperscript{179} See id.
voting; instead the person's "own failure" to register prevents the person from casting a ballot. 180

In response, the League attempted to bypass this distinction drawn by the State with an argument based on functionality, meaning that regardless of the label you attach to Indiana's Voter ID law, functionally it can prevent a voter from casting a ballot just like an age, residency, citizenship, or registration requirement. 181 First, Indiana does not allow persons to vote who fail to meet the age, residency, and citizenship requirements. 182 Second, Indiana does not allow non-registered persons to vote. 183 Finally, Indiana does not allow persons lacking valid identification to vote. 184 In all three situations the outcome is the same; the voter is not allowed to cast a meaningful ballot. 185 From a functional standpoint, application of all three laws produces the same result, rendering the procedural-substantive distinction meaningless. 186

Nonetheless, the League's functionality argument cannot end the analysis. Taking the League's functionality argument to its logical conclusion would require the Indiana Supreme Court to strike down as unconstitutional every election law that can potentially prevent a voter from casting a ballot. 187 According to the League's theory, every single election law with the potential to prevent a voter from casting a ballot is unconstitutional unless the Indiana Constitution explicitly authorizes the Indiana Legislature to pass the law. 188 As one might surmise, the League's functionality theory is shortsighted, as many Indiana election laws, although not explicitly addressed by the Indiana Constitution, pass constitutional muster despite having potential to prevent a voter from casting a ballot. 189

Most importantly, before the Indiana Legislature passed Indiana's Voter ID law, election officials verified the identity of Indiana voters by signature matching, meaning if a voter's signature did not match the signature that appeared in the poll book the poll worker would challenge the voter, in the same way a poll worker today would chal-

181. Plaintiff's Opposition to Defendant's Motion to Dismiss, supra note 162, at 20-22.
182. Id. at 21.
183. Id.
184. Id. (explaining that the voter can cast a provisional ballot, but without valid identification the vote will not influence the outcome of the election).
185. Id.
186. Id.
187. Memorandum in Support of Defendant's Motion to Dismiss, supra note 39, at 5-6.
188. Id.
189. See id. The State provides two examples. First, Indiana law limits the amount of time a voter may spend in the voting booth. IND. CODE §§ 3-11-11-10.5, -11-13-32.5, -11-14-26 to -28 (2009). Second, Indiana law prohibits a voter from divulging his or her ballot after marking it but before casting it. IND. CODE §§ 3-11-11-16, -11-13-32.8, -11-14-29 (2009).
lenge a voter with invalid identification. Naturally, because both laws are used to prove the identity of voters, the State analogized signature matching to presenting government-issued ID, arguing that because signature matching is constitutional Indiana’s Voter ID law is also constitutional. Here, the State was correct that “no principled constitutional distinction separates” signature matching from Indiana’s Voter ID law, meaning the Indiana Constitution does not explicitly address either. Nonetheless, one very important difference remains – the Indiana Supreme Court has upheld the constitutionality of signature matching, while it has said nothing about the constitutionality of Indiana’s Voter ID law.

Of course, the Indiana Supreme Court could buy the analogy between the two, but practically speaking signature matching and presenting government-issued ID are very different. First, a voter cannot forget her signature at home. Second, a voter’s signature cannot expire. Third, a voter does not have to present a birth certificate to obtain her signature from the state of Indiana or the federal government. Because the Indiana Constitution addresses neither signature matching nor requiring voters to present government-issued ID, these practical distinctions are all that remain to guide the analysis of the Indiana Supreme Court.

3. Legal Standards. – Both parties address the legal standard that should decide the constitutionality of Indiana’s Voter ID law. While the League and the State argued that Simmons provides the standard, the parties disagreed about which standard from Simmons controls. The State posited that an election law is constitutional unless it is “so grossly unreasonable that compliance therewith is practically impossible.” The League argued that an election law is consti-

190. Memorandum in Support of Defendant’s Motion to Dismiss, supra note 39, at 5.
191. Id. at 5-6.
192. Id. at 5.
194. Plaintiff’s Opposition to Defendant’s Motion to Dismiss, supra note 162, at 19 n.5 (noting that “requiring voters to . . . identify themselves by name and signature [is not] remotely equivalent to requiring a voter to produce a specific form of governmental-issued identification”).
196. Plaintiff’s Opposition to Defendant’s Motion to Dismiss, supra note 162, at 39; Memorandum in Support of Defendant’s Motion to Dismiss, supra note 39, at 7.
197. Plaintiff’s Opposition to Defendant’s Motion to Dismiss, supra note 162, at 39; Memorandum in Support of Defendant’s Motion to Dismiss, supra note 39, at 7.
198. Memorandum in Support of Defendant’s Motion to Dismiss, supra note 39, at 7 (internal quotations omitted) (quoting Simmons v. Byrd, 136 N.E. 14, 18 (Ind. 1922) (emphasis added)).
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While individually each standard presents problems, collectively, the result is worse.

First, the two standards are very different. The standard proposed by the State is much lower than the standard offered by the League. If the court applies the language of the State's standard literally, the Indiana Legislature would essentially have unchecked power to regulate elections. Under the standard proposed by the State, Indiana's Voter ID law is constitutional unless it is "so grossly unreasonable that compliance therewith is practically impossible." \(^{200}\) "Practically impossible" seems to encompass very little. It is hard for anyone to argue that Indiana's Voter ID law is "so grossly unreasonable that compliance therewith is practically impossible." Indiana provides IDs free of charge. \(^{201}\) If one has the required documents, a prospective voter only needs a ride to the Bureau of Motor Vehicles (hereinafter "BMV") to obtain the free ID. \(^{202}\) It is hard to argue that obtaining a ride to the BMV is "practically impossible." Even if one does not have a birth certificate, it is hard to argue that it is "practically impossible" to obtain one.

Second, while both sides offer strong arguments to uphold or strike down Indiana's Voter ID law, neither party provides any helpful guidance as to how each standard should be applied. \(^{203}\) The standards are radically different, and therefore the choice of which to apply may be outcome-determinative. If the Indiana Supreme Court chooses to apply one of the two available standards from Simmons, the Court will still not have an analytical framework with which to decide League of Voters.

To illustrate, the League offered a series of arguments in support of its conclusion that Indiana's Voter ID law is not "reasonable, uniform, and impartial." \(^{204}\) First, Indiana's Voter ID law discourages participation in the electoral process. \(^{205}\) Second, in 2008, the Voter ID law disenfranchised twelve nuns in St. Joseph County. \(^{206}\) Third, in 2007, the Voter ID law disenfranchised thirty-two voters in Marion

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199. Simmons v. Byrd, 136 N.E. 14, 16-17 (Ind. 1922). (emphasis added); See also Plaintiff's Opposition to Defendant's Motion to Dismiss, supra note 162, at 39; To be clear, the League never articulates a precise standard that should govern League of Voters, however the League does indirectly reference this standard from Simmons. Id.
200. Simmons, 136 N.E. at 18 (emphasis added).
202. Id. at 1621.
203. See Plaintiff's Opposition to Defendant's Motion to Dismiss, supra note 162, at 1-24; Memorandum in Support of Defendant's Motion to Dismiss, supra note 39, at 1-9.
204. Simmons, 136 N.E. at 16-17; See also Plaintiff's Opposition to Defendant's Motion to Dismiss, supra note 162, at 39.
205. Plaintiff's Opposition to Defendant's Motion to Dismiss, supra note 162, at 17.
206. Id. at 18.
Finally, the ancillary cost of obtaining a birth certificate creates additional burdens on the right to vote. All of these arguments are certainly relevant to whether the Voter ID law is "reasonable, uniform, and impartial." However, these arguments alone do not establish when a law becomes "too unreasonable." These arguments do not provide a definition for "uniform or impartial." Does "uniform" mean that the Voter ID law is constitutional if it is facially neutral? Does "impartial" mean the Voter ID law is unconstitutional if it has a disparate impact on certain classes of voters?

Similarly, the State offered a series of arguments in support of its conclusion that the Voter ID law is "not so grossly unreasonable that compliance therewith is practically impossible." First, almost everyone carries government-issued ID. Second, Indiana will issue the voter an ID for free. Third, if the voter does not have ID or forgets ID, Indiana provides the voter ten days to validate her ballot. All of these arguments certainly are factors in determining whether Indiana's Voter ID law is "so grossly unreasonable that compliance therewith is practically impossible." However, these arguments alone do not establish when a law becomes "grossly unreasonable." These arguments alone do not establish the number of people for whom "compliance therewith [would be] practically impossible" before the law is "grossly unreasonable." Is the Voter ID law unconstitutional if compliance is impossible for one person? Is the Voter ID law constitutional until compliance is impossible for everyone?

C. Conclusion to the Case

Ultimately, the Indiana Supreme Court—assuming transfer is granted—can resolve this case in a variety of ways. This case presents multiple legal issues, and the legal landscape is convoluted. Any broad pronouncement about Indiana's Voter ID law will stem from Article II, Section 2 of the Indiana Constitution. However, it is possible that the Indiana Supreme Court will reach an unsatisfactory result if it confines its analysis to the language of the Indiana Constitution, Indiana precedent, and general election policy. The parties' arguments place three provisions of the Indiana Constitution in equi-
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poise.214 A handful of Indiana cases, all but one from before 1930, are
on point.215 However, like the Constitution, these dusty cases simulta-
neously provide ammunition for both the League and the State.216 In
hopes of avoiding an unsatisfactory result and with the aim of probing
the real-world impact of the law, the Indiana Supreme Court should
apply an alternative framework to decide the constitutionality of Indi-
ana's Voter ID law.

III. A NORMATIVE APPROACH TO LEAGUE OF
WOMEN VOTERS, INC. v. ROKITA

In hopes of arriving at a satisfactory conclusion the Indiana Su-
preme Court should use an alternative framework to decide League of
Voters. This alternative approach should be simple and practical. The
goal of the Court should be to evaluate the real-world impact the law
has on individual voters and elections in general.217 The standard the
court should use is very simple: Does Indiana's Voter ID law do more
harm than good?218 If Indiana's Voter ID law does more harm than
good, it is unconstitutional. Conversely, if Indiana's Voter ID law
does more good than harm, it is constitutional.

To answer this question, the Court should use a simple balancing
approach.219 This balancing approach should occur in three steps.
Step one requires the Court to articulate the benefits and burdens of
Indiana's Voter ID law.220 Step two requires the Court to individually

214. See supra discussion Part II.A.
215. See supra discussion Part II.A–B.
216. See supra discussion Part II.A–C.
217. Overton, supra note 21, at 653 (“Policy-makers need data on both fraud and access to
the polls to determine whether a photo-identification requirement would lead to fewer errone-
ous election outcomes . . . ”).
218. In one of the preeminent articles about voter identification, Professor Spencer Overton
inquires about “whether a photo-identification requirement would do more harm than good” --
while Professor Overton has not proposed this should be the legal standard governing voter
identification laws, he does imply that this is the most basic, foundational inquiry in deciding
whether voter identification laws should be struck down. Overton, supra note 21, at 635, 648,
651, 653. Another important article states that (1) the extent of vote fraud and (2) the extent of
vote denial are “the central empirical questions that should guide the decision over constitution-
ality of voter ID laws.” Ansolabehere & Persily, supra note 6, at 1740. See also Christopher S.
Elmendorf, Undue Burden on Voter Participation: New Pressures for a Structural Theory of the
Right to Vote?, 35 HASTINGS CONST. L.Q. 643, 654-59 (2008) (arguing that an “aggregate-conse-
cuences” model should be used to determine the constitutionality of voter participation claims).

219. A balancing approach is not a novel concept. See Crawford v. Marion County Election
Bd., 128 S. Ct. 1610, 1616 (2008); See also Crawford v. Marion County Election Bd., 472 F.3d
949, 952-53 (7th Cir. 2007); See generally supra note 219 and accompanying text.

220. Balancing “benefits” and “burdens” of voter identification laws is not a novel concept. See
Crawford, 128 S. Ct. at 1616; Crawford, 472 F.3d at 952-953; See also Overton, supra note 21,
at 653; Pitts, supra note 2, at 500 (referring to “the debate over the benefits and burdens of
photo identification.”); See generally supra note 219 and accompanying text.
scrutinize each benefit and burden to determine its relative weight. Stated otherwise, if the first step in the analysis asks what good does this law accomplish, the second step in the analysis asks how much good does this law accomplish. At step three in the analysis, the court must weigh the good against the bad and make a decision.221

The analytic guideposts throughout the Court’s analysis should be empiricism222 and commonsense.223 In a perfect world, empiricism would be the only necessary guidepost and all the burdens and benefits created by Indiana’s Voter ID would be quantified.224 Once quantified, the burdens would be pitted against the benefits, and the constitutionality of Indiana’s Voter ID law would be clear.

In reality, not every effect of Indiana’s Voter ID law can be quantified, because unfortunately, the debate surrounding voter identification “presents a series of largely unanswered, and in some respects, unanswerable empirical questions.”225 Ultimately, empiricism is not enough.226 Therefore, where empiricism is not available to guide the analysis, commonsense is the only alternative. Opponents often criticize voter identification laws as inadequately justified by “common sense popular notions”227 and warn that “wrapping an argument ‘in the mantle of common sense [is] certainly cause for suspicion.’”228 Taking a realist approach to the shortcomings of empiricism, the Indiana Supreme Court should acknowledge that commonsense is all that remains to guide the analysis in some circumstances. Applying this alternative framework, an empirical-realist model, the Indiana Su-

221. Crawford, 128 S. Ct. at 1628 (quoting Burdick v. Takushi, 504 U.S. 428, 434 (1992)). This step is akin to considering the “‘the character and magnitude of the asserted injury.’” Id.
222. Id. at 1616. This step is akin to making the “‘hard judgment’ our adversary system demands.” Id.
223. Using empiricism as an analytical guidepost is not a novel concept. Myriad commentators have called for and taken up efforts to increase the availability of empirical data about voter identification laws. See Pitts, supra note 2, at 500 (conducting a comprehensive phone survey and provisional ballot collection to determine the impact of Indiana’s Voter ID law on Hoosiers); Overton, supra note 21, at 631 (calling for better empirical data to understand the extent of voter fraud and the exclusion of legitimate voters caused by voter identification laws); Ansolabehere & Persily, supra note 6, at 1738 (conducting a national survey “to assess how widespread fear of . . . election fraud is”).
224. Commentators often criticize the use of commonsense. See Overton, supra note 21, at 652 ("[P]olicy-makers should resist the temptation to rush to adopt [voter identification laws] based solely on anecdotes, analogy, and ‘common sense’ popular assumptions . . . .").
225. See id. at 663 (“Empirical data is not perfect . . . it allows for a better understanding of the true costs and benefits of a photo-identification requirement and permits a more honest debate about the democratic values at issue.”).
226. Ansolabehere & Persily, supra note 6, at 1738.
227. See Overton, supra note 21, at 669 (noting that “empirical data does not answer all questions”).
228. Id. at 652 (internal quotations omitted).
229. Id. at 652 (quoting Marc Galanter, Real World Torts: An Antidote to Anecdote, 55 Md. L. Rev. 1093, 1094-95 (1996)).
preme Court should aim to evaluate the real-world impacts of Indiana’s Voter ID law.

In truth, this empirical-realist framework does not differ drastically from the “undue burden” standard used by the United States Supreme Court in Crawford. In Crawford, the undue burden standard was stated as follows: “[A] court evaluating a constitutional challenge to an election regulation [should] weigh the asserted injury to the right to vote against the ‘precise interests put forward by the State as justifications for the burden imposed by its rule.’” In truth, inquiring whether Indiana’s Voter ID law does more harm than good is not a radical departure from weighing the “asserted injury” against the “precise interests” of the State. Nonetheless, the two standards are not identical. To be exact, the empirical-realist framework is in some ways similar to and other ways different from the undue burden standard. Both the similarities and the differences are important. In fact, the normative design of this empirical-realist framework intends four important consequences.

First, the empirical-realist framework mitigates the indeterminacy of the undue burden standard, meaning it attempts to make the undue burden standard less nebulous and easier to apply in a consistent manner. Despite their similarities, the empirical-realist framework is conceptually much simpler than the undue burden standard. Commentators often criticize the undue burden standard as “an indeterminate framework [which allows courts to] reach seemingly partisan decisions.” Providing conceptual simplicity to the undue burden standard is an attempt to answer this criticism. This conceptual simplicity is possible because in the context of voter identification laws, the analysis can be distilled to a very simple inquiry: Does the voter identification law do more harm than good? By balancing the extent of voter fraud against the extent of vote denial, the Indiana Supreme Court can distill the inquiry to the two “central empirical questions” relevant to the constitutionality of Indiana’s Voter ID law.


231. Crawford, 128 S. Ct. at 1616 (internal quotations omitted) (quoting Burdick, 504 U.S. at 434).

232. Elmendorf, supra note 218, at 651.

233. Id. (noting that the partisan divide in voter identification litigation calls into question the ability of American courts to set aside partisan prejudice when faced with political-process questions which causes judges to appear as “de facto agents for their political party of choice”).

234. Ansolabehere & Persily, supra note 6, at 1740.
Second, the normative design of this empirical-realistic framework forces the Indiana Supreme Court to take a one-tiered approach. Courts have applied the undue burden standard in two very different ways—a two-tiered approach and a one-tiered approach. Courts taking the two-tiered approach apply “strict scrutiny for severe burdens and something else for lesser ones,” while courts taking the open-ended, one-tiered approach consider all laws under the same level of scrutiny. Because the undue burden standard fails to guide courts toward the appropriate choice, this empirical-realistic framework further mitigates the indeterminacy of the undue burden by rescinding the Indiana Supreme Court’s choice between the one and two-tiered approach. This rescission forces the Court to apply an “open-ended balancing test” using one level of scrutiny, which provides additional simplicity. However, to understand why the one-tiered approach is preferred to the two-tiered approach, one must consider competing theories of the right to vote.

The normative design of this alternative framework intends an important third consequence, funneling the Indiana Supreme Court toward a structural approach to the right to vote. Two competing theories are often used to explain the right to vote. One theory considers the right to vote as an individual right, i.e., a right possessed by an individual, while another theory considers the right to vote as a structural-collective right, i.e. the right of “the people” to elect a representative government. Giving a court unchecked freedom to oscillate between one and two-tiered scrutiny and both theories of the right to vote can encourage hyper-partisan decisions, meaning courts have wiggle room to decide cases exactly as they please, often in step with partisan loyalty. By constraining the Indiana Supreme Court to one-tiered scrutiny and funneling the Court towards a structural theory of the right to vote, this empirical-realistic framework is an attempt to remove from the table any partisan temptations. The empirical-realistic framework imports a structural theory of the right to vote and forces the Indiana Supreme Court to consider the macro-

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235. Elmendorf, supra note 218, at 656.
236. Id. (articulating two different approaches courts have used in applying the undue burden standard).
237. Id. (noting Judge Richard Posner uses the one-tiered and the United States Supreme Court uses the two-tiered approach).
238. Id.
239. Id.
240. Id. at 643-46.
241. Id. at 644-45.
242. Id.
243. Id. at 656-57.
244. Id. at 656.
level effects of Indiana's Voter ID law. 245 Afterwards, however, the simple balancing test of this alternative framework forces the Court to focus on the micro-level impact of the law. 246 By providing the Indiana Supreme Court with a means of panning between a micro and macro-level perspective, the design of this empirical-realist framework aims to avoid seemingly partisan decisions. 247

Finally, the normative design of this empirical-realist framework charts a centrist course, meaning Crawford 248 is neither fully rejected nor fully embraced. Designing the empirical-realist framework similar to the undue burden standard acknowledges that the analytical approach of Crawford was correct; a balancing approach is the appropriate framework to analyze Indiana's Voter ID law, albeit in the simpler manner proposed by this Note. 249 Furthermore, application of this empirical-realist framework reveals the outcome of Crawford was correct: Indiana's Voter ID law should have survived challenge under the federal constitution. However, the reasoning on which Crawford rests its conclusion was incorrect. Undoubtedly, Indiana's Voter ID law is valid under the United States Constitution—Crawford was right about this much. What Crawford failed to acknowledge was the thin ground on which the Indiana Legislature stood when it passed Indiana's Voter ID law. 250 Accordingly, gratuitous agreement with Crawford about the validity of Indiana's Voter ID law under the United States Constitution—Crawford was right about this much. What Crawford failed to acknowledge was the thin ground on which the Indiana Legislature stood when it passed Indiana's Voter ID law. 250 Accordingly, gratuitous agreement with Crawford about the validity of Indiana's Voter ID law under the United States Constitution is replaced by the sobering realization that the law occupies a legislative dead zone where it manages to accomplish little good but survives nonetheless by causing little harm. Crawford was not wrong, but Crawford was not completely right either. Discovering the surprising firmness of this middle ground is important to recognize as the debate surrounding Indiana's Voter ID law lurches forward.

IV. APPLYING THE ALTERNATIVE FRAMEWORK TO LEAGUE OF WOMEN VOTERS, INC. v. ROKITA

Application of the empirical-realist framework helps demonstrate the firmness of this middle ground by revealing Indiana's Voter ID law as constitutionally valid but legislatively dubious. Acclimation to this centrist position inevitably brings to light the larger implications that attach to recognizing both the futility and the constitutionality of Indiana's Voter ID law.
A. Articulating the Benefits and Burdens of Indiana’s Voter ID Law

Deciding whether Indiana’s Voter ID law does more harm than good requires the Indiana Supreme Court to articulate the potential benefits and burdens of the law.²⁵¹ Regarding the good it creates, the following benefits potentially justify upholding Indiana’s Voter ID law. First, Indiana’s Voter ID law potentially prevents voters from casting fraudulent votes.²⁵² Second, Indiana’s Voter ID law potentially increases public confidence in the electoral process.²⁵³ Regarding the harm it causes, Indiana’s Voter ID law potentially prevents legitimate voters from casting ballots.²⁵⁴

B. Scrutinizing the Benefits and Burdens of Indiana’s Voter ID Law

The second step in this alternative framework requires the Court to individually scrutinize each benefit and burden enumerated in step one to determine its relative weight.²⁵⁵ At step two in the analysis, the Indiana Supreme Court should be particularly mindful of the two analytical guideposts central to this framework—empiricism and commonsense.²⁵⁶

1. How much fraud does Indiana’s Voter ID law prevent? – The analysis begins with empiricism. Authorities have not discovered any cases of in-person voter fraud in Indiana.²⁵⁷ However, this empirical insight overlooks two problems. First, “successful fraud goes undetected,” meaning that if a voter successfully casts a fraudulent vote, authorities will struggle to detect it short of a confession from the voter.²⁵⁸ Second, many cases of in-person voter fraud prevented or deterred by Indiana’s Voter ID law may also go undetected, meaning that when a poll worker asks a would-be fraudulent voter to present identification, that would-be fraudulent voter is likely to leave the polling place immediately, claiming to have forgotten her ID, rather than stay and risk prosecution.²⁵⁹ In both situations, successful and pre-
vented voter fraud, the fraud goes undetected and causes authorities to underreport the prevalence of in-person voter fraud in Indiana and elsewhere. Ultimately, given these empirical roadblocks, the prevalence of in-person voter fraud may be an “unanswerable question” presented by Indiana’s Voter ID law. Nonetheless, one final commonsense observation is important: in-person voter fraud is an “inefficient method of influencing the outcome of an election.” Ultimately, the prevalence of in-person voter fraud is probably not widespread because it is easier to influence the outcome of an election by running an absentee ballot scheme or by rigging a voting machine. Stated otherwise, if an in-person voter fraud scheme is to have any chance of influencing the outcome of an election, an entire army of fraudulent voters would need to be turned loose on election day.

2. How much does Indiana’s Voter ID law increase public confidence in elections? – Proponents justify Indiana’s Voter ID law because it arguably increases public confidence in the electoral process. Stated otherwise, regardless of whether it actually prevents voter fraud, Indiana’s Voter ID law may still prevent the “appearance” of voter fraud. This potential to increase public confidence in electoral integrity “presents a testable empirical proposition.” Commentators have tested this empirical proposition and concluded “voter identification requirements will [not] raise levels of trust in the electoral process.” Nonetheless, a related study indicates that three in every four voters support voter identification requirements. Seemingly these surveys reach contradictory re-

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260. See supra text accompanying note 227.
261. Schultz, supra note 39, at 498.
262. Id. Professor David Schultz, relying on an Election Assistance Commission report, observes that “impersonation of voters is probably the least frequent type of fraud because it is the most likely type of fraud to be discovered, there are stiff penalties associated with this type of fraud, and it is an inefficient method of influencing an election.” Id.
263. Memorandum in Support of Defendant’s Motion to Dismiss, supra note 39, at 2-3.
265. Ansolabehere & Persily, supra note 6, at 1739 (conducting a national survey to determine the relationship between forcing a voter to identify themselves and the likelihood that the voter perceives fraud in the electoral process).
266. Id. at 1759. This comprehensive study examined “survey data from 2006, 2007, and 2008 to calculate how pervasive Americans believe vote fraud to be…” Id. at 1742.
267. Ansolabehere, supra note 77, at 618-20 (reporting that over 75% of survey respondents support voter identification laws). This study examined survey data collected in 2006 that “asked whether respondents approved of laws requiring voter identification.” Id. at 616.
At best, the only firm conclusion the Indiana Supreme Court can reach is that despite failing to increase public confidence in the electoral process, well over half of all Hoosiers approve of Indiana's Voter ID law.

3. How many legitimate voters does Indiana's Voter ID law prevent from casting a ballot? – Importantly, comprehensive data about the impact of Indiana's Voter ID law on Hoosier voters is available. Although the data is the first attempt to conclusively determine the number of Indiana voters that show up at the polls without valid identification. Although the data is not perfect, it nonetheless provides empirical insight into the impact of Indiana's Voter ID law.

In Indiana's 2008 primary election, Indiana voters cast 1,727,023 total ballots, and Indiana's Voter ID law prevented 321 voters from casting ballots that influenced the outcome of the election. In Indiana's 2008 general election, Indiana voters cast 2,805,902 total ballots, and Indiana's Voter ID law prevented 902 voters from casting a ballot that influenced the election. Therefore, in Indiana's 2008 primary election, Indiana's Voter ID law prevented .019% of Indiana voters from casting a meaningful ballot. In Indiana's 2008 general election, Indiana's Voter ID law prevented .032% of Indiana voters from casting a meaningful ballot. Collectively, in Indiana during the 2008 primary and 2008 general elections, Indiana's Voter ID law prevented .027% of Indiana voters from casting a meaningful ballot.

C. Making a Decision

After scrutinizing the benefits and burdens of Indiana's Voter ID law, the third and final step in the analysis requires the court to weigh

268. Id. at 626 (“These findings undercut much of the heated rhetoric that has inflated the debate over voter ID requirements . . . .”).
269. See Pitts, supra note 2, at 478-80.
270. See id. at 478-80; In truth, this is the only such data for any state with a photo identification requirement. Id.
271. Id. at 480 (admitting that the survey “may not provide a perfect data set. . . .”).
272. Id. at 504.
273. Id. at 499-500 n. 89 (reporting that 321 Indiana voters cast a provisional ballot because they lacked identification and ultimately failed to return to the county election board to validate their provisional ballot).
275. See Pitts, supra note 2, at 480.
276. See Pitts & Neumann, supra note 274 (manuscript at 22).
277. See Pitts, supra note 2, at 499-500 n. 89.
the evidence and make a decision. After step two, the Indiana Supreme Court is left with three relatively firm conclusions. First, the prevalence of in-person voter fraud in Indiana is probably minimal. Second, although studies indicate that Indiana’s Voter ID law does not increase public confidence in the electoral process, a large majority of Hoosiers probably approve of Indiana’s Voter ID law. Third, in 2008 during Indiana’s primary and general elections, Indiana’s Voter ID law prevented approximately 0.027% of Hoosier voters from casting a meaningful ballot.

Ultimately, the Indiana Supreme Court should uphold Indiana’s Voter ID law as valid under the Indiana Constitution. First, Indiana’s Voter ID law is constitutional because it affects a very small number of voters. In 2008, over 99.9% of Indiana voters that arrived at the polls had their government-issued identification. Even if this empirical study underestimated by ten fold the number of disfranchised voters (an error rate of 1000%), still over 99.7% of Indiana voters showed up to the polls with identification. Accordingly, the fundamental reason that the Indiana Supreme Court should uphold Indiana’s Voter ID law is because its bottom-line impact is minimal. To return to the standard, Indiana’s Voter ID law causes very little harm.

Second, Indiana’s Voter ID law should be upheld because Indiana provides free IDs. Simply put, the available data reveals that most Hoosiers have government-issued identification cards. For the small number of prospective voters without an ID, Indiana waives the fee. The only legitimate attack remaining in the arsenal of opponents is that birth certificates are required to obtain the free ID, and birth certificates still cost between $3 and $12. In the context of a facial attack on Indiana’s Voter ID law, ancillary costs to obtaining identification is a potentially “fixable” problem. If the Indiana Supreme Court found the ancillary costs constitutionally problematic, the Indiana Legislature could correct the problem by statutorily waiv-

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278. See supra discussion Part III.
279. See supra discussion Part IV.B.1.
280. See supra discussion Part IV.B.2.
281. See supra discussion Part IV.B.3.
282. See supra note 2, at 480 (anticipating that proponents of Indiana’s Voter ID law, whether right or wrong, will use the data to argue a very small percentage of the electorate is affected by Indiana’s Voter ID law).
283. See supra discussion Part IV.B.3.
284. See supra discussion Part IV.B.3.
285. See supra text accompanying notes 58–64.
286. See supra text accompanying notes 58–64.
287. See supra text accompanying notes 58–64.
ing the fee for Indiana issued birth certificates for those that cannot afford to pay.

Third, Indiana’s Voter ID law is constitutional because the reason 1,218 Hoosiers showed up at the polls without identification is unknown. On one hand, it is certainly plausible that some, perhaps most, of the 1,218 voters were disenfranchised because of indigence. However, it is equally plausible that some, potentially many, of the 1,218 voters were disenfranchised because of laziness, forgetfulness, and apathy. The former group is appropriately labeled disenfranchised, but the latter group is certainly not. Without inquiring into the reason the voter failed to present valid identification, it is short-sided to label them all as “disenfranchised.”

Upholding Indiana’s Voter ID law under the Indiana Constitution will undoubtedly leave a sour taste in the mouths of many. This sour taste is not without meaning; in fact it demonstrates why voter identification laws present such a thorny issue. Indiana’s Voter ID law places access and integrity, the competing cornerstones of election law jurisprudence, on a collision course. However, research continues to reveal that Indiana’s Voter ID law has a minimal impact on both access and integrity. One might wonder why the debate continues if Indiana’s Voter ID law neither increases electoral integrity nor burdens voter access. Seemingly this minimal impact on access and integrity should lower the stakes of the debate—while in reality it often appears the inverse is true. Importantly, reading between the lines reveals the subtext of this fevered debate; voter identification is a symptom of the battle for the control of electoral mechanics.

In the end, despite concluding that Indiana’s Voter ID law is destined to survive challenge under the Indiana Constitution, continued

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288. See Pitts, supra note 2, at 480 (noting that the “data does not tell us why prospective voters who appeared at the polls lacked photo identification”).
289. See id. at 503 (noting that “It’s not known if (or how many) persons were indigent”).
290. See supra note 288 and accompanying text.
291. See Crawford v. Marion County Election Bd., 128 S. Ct. 1610, 1620 (2008) (noting that “life’s vagaries,” such as a lost identification or a stolen wallet, do not implicate the constitutionality of Indiana’s Voter ID law). See also Pitts, supra note 2, at 503.
293. See Ansolabehere, supra note 77, at 629 (concluding “the values of access and integrity simply do not seem to have much play in the actual use of ID requirements”).
294. See supra text accompanying notes II.B.3.
295. See supra text accompanying note 16.
296. See At-Tauhidi, supra note 292, at 220 (characterizing voter identification laws as “designed to maximize partisan advantage”). See also Elmendorf, supra note 218, at 646-47.
research is the only remedy that will settle this debate.\textsuperscript{297} Most importantly, research must uncover the reason why voters are arriving at the polls without their IDs. If laziness or forgetfulness, rather than indigence, is the barrier, as this author suspects, Indiana's Voter ID law may be here to stay. If indigence is the primary force at work, the constitutionality of Indiana's Voter ID law will need to be reevaluated.

\textbf{Conclusion}

Inevitably, the Indiana Supreme Court will have the final word on Indiana's Voter ID law. Unfortunately, Indiana constitutional election jurisprudence provides a somewhat unsatisfactory framework. Accordingly, the Indiana Supreme Court should use an empirical-realist framework to decide \textit{League of Women Voter of Indiana, Inc. v. Rokita}. By forcing the Indiana Supreme Court to pragmatically consider the real-world impact of the law, application of this empirical-realist framework will reveal that Indiana's Voter ID law passes muster under the Indiana Constitution. Undoubtedly critics and litigants will disagree with this decision. These critics and litigants should not be deterred from their efforts to invalidate the law because close examination reveals that the efficacy of Indiana's Voter ID rests on fragile ground. In truth, the Indiana Legislature probably did not have cause to pass Indiana's Voter ID law at the time it was enacted. On the other hand the law hardly seems to cause enough problems to justify striking it down. Stuck in a proverbial no man's land where it causes little harm but accomplishes little good, Indiana's Voter ID law may ultimately be a bridge to nowhere.

\textsuperscript{297} See Pitts, \textit{supra} note 2, at 505 (stating that "it is only with additional research that we can begin to come to more definitive conclusions as to the costs and benefits of photo identification").