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## LAW SUMMARY

# Photo Identification at the Ballot: Election Protection or Voter Suppression?

SEAN MILFORD\*

### I. INTRODUCTION

Voting is one of the most basic rights protected by the Missouri Constitution<sup>1</sup> and it is the most direct way in which citizens interact with their government. Because of its vital importance, it is necessary to ensure that fraudulent voting does not take place. Ensuring that a voter is who she says she is is essential to the democratic process, but should be done in a way that does not overburden the fundamental right of voting.

By requiring that all voters present specific forms of photo identification in order to receive a ballot, bills introduced in the Missouri House of Representatives and Senate during the 2014 Legislative session would do just that. These proposed laws are misguided attempts to correct non-existent but perceived threats of voter fraud and would harm the integrity of elections in the state by making it extremely difficult for large numbers of Missourians to exercise their right to vote. This Note discusses the history of these photo identification laws in Missouri and other states and demonstrates that these laws are not good-faith efforts to prevent voter fraud, but rather are politically motivated attempts to affect the outcome of elections by making it more difficult for certain people to vote. Part II of this Note discusses the current state of voter identification laws in Missouri, a recent failed attempt to amend these laws, and a challenge to a strict voter identification law in Indiana that reached the Supreme Court. Part III discusses bills introduced in Missouri during the 2014 legislative session that would amend the state's voter identification laws, while Part IV argues that such attempts should be rejected in the future.

### II. LEGAL BACKGROUND

#### *A. Voter ID in Missouri*

The Missouri Constitution provides robust protection of the right of the state's citizens to vote in elections. Article 1, Section 25 of the Missouri

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1. MO. CONST. art. I, § 25.

Constitution provides that “all elections shall be free and open; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”<sup>2</sup> The Missouri Constitution additionally provides a list of the qualifications necessary to vote in Missouri: “All citizens of the United States . . . over the age of eighteen who are residents of this state and of the political subdivision in which they offer to vote are entitled to vote in all elections by the people, if . . . they are registered within the time prescribed by law.”<sup>3</sup> These explicit guarantees establish that the right to vote is fundamental to the citizens of Missouri.<sup>4</sup>

Because of its express protections of the right of Missourians to vote, the Missouri Constitution is distinguished from the U.S. Constitution, which does not provide the same express protections on voting rights.<sup>5</sup> Under federal law, the right to vote in state elections is conferred only by implication.<sup>6</sup> The Missouri Constitution, however, establishes voting as a fundamental right and provides greater protection of this right than does the U. S. Constitution.<sup>7</sup>

Currently, there are thirty-four states that have passed some form of voter identification (“voter ID”) laws.<sup>8</sup> These laws vary from state to state, but can be grouped into broad categories based on two main distinctions: strict versus non-strict laws and photo versus non-photo requirements.<sup>9</sup> In states with “strict” voter ID laws, a potential voter may not receive a ballot unless they first present an acceptable form of identification.<sup>10</sup> If they do not have an acceptable form of identification, they are given a provisional ballot that will not be counted unless the voter returns to election officials within a short period of time after the election and provides the acceptable identification.<sup>11</sup> In states without “strict” voter ID laws, there may be other ways for a potential voter without the required identification to receive a regular ballot, such

2. *Id.*

3. MO. CONST. art. VIII, § 2.

4. *See, e.g.,* Weinschenk v. State, 203 S.W.3d 201, 213 (Mo. 2006) (en banc) (acknowledging that the right to vote is a “fundamental right” in Missouri).

5. *Compare* MO. CONST. arts. 1, 8 (expressly identifying a constitutional right to vote in state elections) *with* U.S. CONST. (failing to identify any constitutional right to vote in state elections).

6. *See* Harper v. Virginia State Bd. of Elections, 383 U.S. 663, 665 (1966) (“While the right to vote in federal elections is conferred by Art. 1, [§] 2, of the Constitution, the right to vote in state elections is nowhere expressly mentioned.”).

7. *See, e.g.,* State v. Rushing, 935 S.W.2d 30, 34 (Mo. 1996) (en banc) (“Provisions of our state constitution may be construed to provide more expansive protections than comparable federal constitutional provisions.”).

8. *Voter Identification Requirements*, NAT’L COUNCIL OF ST. LEGISLATURES (Oct. 31, 2014), [http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx#State\\_Reqs](http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx#State_Reqs).

9. *Id.*

10. *Id.*

11. *Id.*

as signing an affidavit of identity or having a poll worker vouch for their identity.<sup>12</sup> States that require voters to present a form of photo identification may fall within either the “strict” or “non-strict” categories, based on the distinctions outlined above.<sup>13</sup>

In Missouri, the current voter ID law would fall under the “non-strict” and “non-photo” category of voter ID laws.<sup>14</sup> Under current Missouri law, there are four acceptable forms of identification accepted at the polls: (1) identification issued by the federal government, State of Missouri, an agency of the state, or a local election authority; (2) identification issued by a Missouri institution (public or private) of higher education, including a university, college, vocational, or technical school; (3) a copy of a current utility bill, bank statement, paycheck, government check, or other government document that contains the name and address of the voter; or (4) a driver’s license or state identification card issued by another state.<sup>15</sup> If a voter does not possess any of these forms of identification, that voter may still cast a regular ballot if two supervising election judges, one from each major political party, attest that they know the person.<sup>16</sup>

Throughout the years, attempts have been made to expand Missouri’s voter ID laws, usually by limiting the acceptable forms of identification or requiring that all voters present a form of state or government-issued photo identification to receive a ballot.<sup>17</sup> A particularly notable attempt to modify Missouri’s voter ID laws was Senate Bill 1014 (“SB 1014”) in 2006. SB 1014 would have modified Missouri Revised Statutes Section 145.427 such that the only acceptable forms of identification for voters in Missouri would be a Missouri driver’s license, a Missouri non-driver’s license, or some other form of photo identification with an expiration date issued by the United States or State of Missouri.<sup>18</sup> Additionally, a voter lacking the proper photo identification would have no other way to vote with a regular ballot and would be forced to vote with a provisional ballot.<sup>19</sup> This modification would have placed Missouri firmly in the “strict” category of voter ID laws.

SB 1014 passed the General Assembly and was signed by Governor Matt Blunt, but was faced with a court challenge before it could be implemented.<sup>20</sup> In *Weinschenk v. State*, the Supreme Court of Missouri reviewed the constitutionality of SB 1014, ultimately determining that the bill was unconstitutional and striking down its modifications to Missouri’s voter ID

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12. *Id.*

13. *Id.*

14. *Id.*; see also MO. REV. STAT. § 115.427 (Cum. Supp. 2013).

15. *Acceptable IDs to Vote*, MO. SECRETARY OF ST., [http://www.sos.mo.gov/elections/govotemissouri/docs/acceptable\\_ids.pdf](http://www.sos.mo.gov/elections/govotemissouri/docs/acceptable_ids.pdf) (last visited Mar. 16, 2015).

16. *Id.*

17. See, e.g., *Voters ID History*, NAT’L CONF. OF ST. LEGISLATURES (Oct. 16, 2014), <http://www.ncsl.org/research/elections-and-campaigns/voter-id-history.aspx>.

18. S.B. 1014, 93rd Gen. Assemb., 2d Reg. Sess. (Mo. 2006).

19. *Id.*

20. See generally *Weinschenk v. State*, 203 S.W.3d 201 (Mo. 2006) (en banc).

laws.<sup>21</sup> The plaintiff in this case, Kathleen Weinschenk, challenged the law on the grounds that it violated both the U.S. and Missouri Constitutions.<sup>22</sup>

In *Weinschenk*, the court first determined that the right to vote, as protected by both the U.S. and Missouri Constitutions, is a fundamental right.<sup>23</sup> In so holding, the court noted that the Missouri Constitution provides more protection of the right to vote than does the U.S. Constitution.<sup>24</sup> The court next found that the requirement of photo identification to vote burdened the fundamental right to vote to which every citizen of Missouri was entitled.<sup>25</sup> In determining the extent of the burden imposed by the photo identification requirement, the court stressed that the law essentially imposed a cost on voting.<sup>26</sup> While the state would provide the required photo identification for free to citizens who did not possess one, there remained the associated cost of the documents necessary to obtain a driver's license or passport.<sup>27</sup> A birth certificate, the court noted, would cost at least \$15 to obtain, not an insignificant amount for many citizens.<sup>28</sup> The court cited *Harper v. Virginia State Board of Elections*, and stated that *Harper* made clear that "all fees that impose financial burdens on eligible citizens' right to vote . . . are impermissible under federal law. There can be no lesser requirement under Missouri law."<sup>29</sup>

In addition to the cost of obtaining the required photo identification, the court noted that someone who lacked the proper identification would have to undertake substantial planning far ahead of an election to acquire the proper identification.<sup>30</sup> It takes anywhere from six to eight weeks to obtain a Missouri birth certificate, on top of the time it takes to obtain the proper identification once the birth certificate is acquired.<sup>31</sup> The court concluded that the cost and time required to obtain photo identification for the estimated three to four percent of the population that did not already possess one imposed a "heavy and substantial burden on Missourians' free exercise of the right of suffrage."<sup>32</sup>

After determining that the photo identification requirement imposed a substantial burden on Missourians' right to vote, the court considered which level of scrutiny to apply to the statute.<sup>33</sup> The court noted that, if a regulation

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21. *Id.*

22. *Id.* at 204.

23. *Id.* at 210-12.

24. *Id.* at 211-12.

25. *Id.* at 212-13.

26. *Id.* at 213-14.

27. *Id.* at 213.

28. *Id.*

29. *Id.* at 213-14, (citing 383 U.S. 663 (1966)).

30. *Id.* at 214-15.

31. *Id.* at 208-09.

32. *Id.* at 215.

33. *Id.* at 215-16.

places a heavy burden on the fundamental right to vote, “our constitution requires that [the regulation] be subject to strict scrutiny.”<sup>34</sup>

The court then moved to the question of whether the photo identification requirement served a compelling state interest and was narrowly tailored to accomplish that interest.<sup>35</sup> The court found that, while Missouri had a compelling interest in ensuring the integrity of the election process and preventing voter fraud, the photo identification requirement was not narrowly tailored to serve this interest.<sup>36</sup> The court noted that the only form of voter fraud that the photo identification requirement served to combat was in-person voter impersonation fraud.<sup>37</sup> The court restated the trial court’s finding that “[n]o evidence was presented that voter impersonation fraud exists to any substantial degree in Missouri. In fact, the evidence that was presented indicates that voter impersonation fraud is not a problem in Missouri.”<sup>38</sup> The photo identification requirement would place a heavy burden on a fundamental right, while only preventing a very specific form of voter fraud that was nearly non-existent in Missouri.<sup>39</sup> The court was also not persuaded by the argument that Missouri has a compelling interest in combating perceptions of voter fraud.<sup>40</sup> The court agreed that the state does have an interest in combating perceptions of fraud, but stated that “more than mere perception [of fraud] is required” for the abridgement of such a fundamental right.<sup>41</sup> The court dismissed the perception argument, finding that “[t]he protection of our most precious state constitutional rights must not founder in the tumultuous tides of public misconception.”<sup>42</sup>

The dissent in *Weinschenk* argued that the photo identification law should be upheld because of a two-year transition period written into the statute.<sup>43</sup> Because the law would not go into full effect until the 2008 elections, any action holding the law unconstitutional was premature because the injury was not yet ripe.<sup>44</sup> The majority rejected this argument, holding that the challenge was indeed ripe due to the immediate action required of voters who did not currently possess valid photo identification.<sup>45</sup>

With its 2006 ruling in *Weinschenk*, the Supreme Court of Missouri clearly held that the imposition of a photo identification requirement to vote violated both the Equal Protection Clause of the Missouri Constitution and the specific constitutional protection of the right to vote contained in the Mis-

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34. *Id.* at 216.

35. *Id.* at 216-19.

36. *Id.* at 217.

37. *Id.*

38. *Id.*

39. *Id.* at 218.

40. *Id.*

41. *Id.*

42. *Id.* at 219.

43. *Id.* at 222 (Limbaugh, J., dissenting).

44. *Id.* at 227-28.

45. *Id.* at 221 (majority opinion).

souri Constitution.<sup>46</sup> Despite this ruling, proponents of strict voter ID laws, including the requirement to have a photo identification, have not ceased their fight to implement this sort of law in Missouri.

### B. Voter ID Laws in Other States

A few years after the Supreme Court of Missouri struck down proposed photo ID laws in Missouri, the Supreme Court of the United States considered a similar photo ID law passed by the Indiana General Assembly. The case, *Crawford v. Marion County Election Board*,<sup>47</sup> concerned the constitutionality of a law very similar to the law struck down by the Supreme Court of Missouri. The law in question, Senate Enrolled Act 483 (“SEA 483”), required all voters to present a state-issued photo ID before voting.<sup>48</sup> SEA 483 allowed a voter who possessed the required photo ID, but did not have the ID while voting, to cast a provisional ballot that would be counted if the voter presented the ID to the circuit clerk’s office within ten days of casting his or her vote.<sup>49</sup> The law also allowed a voter who was indigent or had a religious objection to being photographed to cast a provisional ballot that would be counted if the voter executed an affidavit before the circuit clerk within ten days of voting.<sup>50</sup>

In considering whether the Indiana law violated the Fourteenth Amendment right to vote, the Court examined both the State of Indiana’s interests in requiring photo ID and the burdens that this requirement placed on voters.<sup>51</sup> Any burden that the state placed on a voter, the Court noted, must be justified by “relevant and legitimate state interests.”<sup>52</sup> The Court then considered each of the state’s interests in requiring photo ID, chief among them the prevention of voter fraud and the protection of public confidence in elections.<sup>53</sup>

The Court was persuaded that both of these interests were relevant, legitimate, and important.<sup>54</sup> “There is question about the legitimacy or importance of the State’s interest in counting only the votes of eligible voters,” the Court found.<sup>55</sup> Furthermore, public confidence in elections is an important state interest because it “encourages citizen participation in the democratic process.”<sup>56</sup>

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46. *Id.* at 221-22.

47. 553 U.S. 181 (2008).

48. Senate Enrolled Act 483, 2005 Ind. Acts p.2005.

49. *Crawford*, 553 U.S. at 186.

50. *Id.*

51. *Id.* at 191.

52. *Id.*

53. *Id.*

54. *Id.* at 194-97.

55. *Id.* at 196.

56. *Id.* at 197.

The Court then considered the burden that the photo ID law placed on voters.<sup>57</sup> While conceding that a photo ID requirement “imposes some burdens on voters that other methods of identification do not share,”<sup>58</sup> the Court found that the sort of burdens imposed on a person who possessed a valid photo ID that had been lost, stolen, or contained a photo that no longer resembled his appearance were “neither so serious nor so frequent as to raise any question about the constitutionality of SEA 483.”<sup>59</sup> The Court found that the ability to cast a provisional ballot was an adequate remedy for these sorts of problems.<sup>60</sup>

Next, the Court considered the burden placed on voters who simply did not possess the required photo ID.<sup>61</sup> The Court reasoned that, because the state would provide the necessary identification to those who lacked it free of charge, the photo ID law did not present a *Harper* poll-tax type of issue.<sup>62</sup> Further, the Court stated that it did not think that assembling the required documents, travelling to the license office, and posing for a photograph qualified as a “substantial burden on the right to vote, or even represent[ed] a significant increase over the usual burdens of voting.”<sup>63</sup>

The Court then noted that the photo ID requirement might place a heavier burden on certain groups of individuals, including the elderly, those who might have difficulty obtaining a birth certificate or other necessary documents to obtain an ID, the homeless, and those with religious objections to being photographed.<sup>64</sup> While the burden on these persons might be more severe than the average voter, the Court again found that the ability to cast a provisional ballot mitigated the severity of the burden.<sup>65</sup>

The Court next noted that those challenging the voter ID law had not provided sufficient data on which they could base a valid challenge to the law.<sup>66</sup> The petitioners asked the Court to determine whether the State’s interests justified the burden imposed on those voters who could not afford or could not obtain a photo ID and who would be required to make an extra trip to the circuit court clerk’s office to sign the necessary affidavit after casting a provisional ballot.<sup>67</sup> The Court held that, on the record before them, they simply could not quantify either the magnitude of this burden on such a narrow class of voters or the degree to which the burden was justified by State interests.<sup>68</sup> The Court discounted the petitioner’s claim that up to 989,000

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57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.* at 197-98.

61. *Id.* at 198.

62. *Id.*

63. *Id.*

64. *Id.* at 199.

65. *Id.*

66. *Id.* at 200.

67. *Id.*

68. *Id.*



registered voters in Indiana lacked either a driver's license or another form of acceptable photo ID.<sup>69</sup> Instead, the Court was persuaded by a finding by the district court judge that only around 43,000 Indiana residents lacked a driver's license or state-issued ID.<sup>70</sup> The Court noted that the record in the case did not provide "any concrete evidence of the burden imposed on voters who currently lack photo identification."<sup>71</sup> Because of this lack of evidence, the Court could not conclude that the photo ID requirement imposed "excessively burdensome requirements" on any class of voters.<sup>72</sup>

Finally, the Court rejected the argument presented by the groups challenging the photo ID requirement that the law was invalid because it was politically motivated.<sup>73</sup> While conceding that it was "fair to infer that partisan considerations may have played a significant role in the decision to enact SEA 483,"<sup>74</sup> the Court nevertheless held that the valid, politically neutral justifications for the law "should not be disregarded simply because partisan interests may have provided one motivation for the votes of individual legislators."<sup>75</sup>

Justice Souter, dissenting in *Crawford*, focused on just how severe the burden imposed by SEA 483 was for certain groups of Indiana voters.<sup>76</sup> Souter noted that, in order to justify imposing a burden on the right to vote, the State "must make a particular, factual showing that threats to its interests outweigh the particular impediments it has imposed."<sup>77</sup> Here, Souter argued, the state had made no such justification.<sup>78</sup>

While the majority largely discounted the burdens that a photo ID requirement would pose on voters, Souter focused on how difficult it could be for certain persons to obtain the necessary identification.<sup>79</sup> While the average person might not find trips to obtain a birth certificate or photo identification overly burdensome, "[p]oor, old, and disabled voters who do not drive a car . . . may find the trip prohibitive."<sup>80</sup> Those who lack photo ID, noted Souter, "almost certainly will not own cars . . . and public transportation in Indiana is fairly limited."<sup>81</sup> Souter further noted that, in addition to the time or monetary cost of travelling to obtain the necessary documents or identification, an additional burden imposed by the law is the cost of paying for the documents

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69. *Id.* at 187, 200.

70. *Id.* at 187-88.

71. *Id.* at 201.

72. *Id.* at 202 (citing *Storer v. Brown*, 415 U.S. 724, 738 (1974)).

73. *Id.* at 203.

74. *Id.*

75. *Id.* at 204.

76. *Id.* at 209 (Souter, J., dissenting).

77. *Id.*

78. *Id.*

79. *Id.* at 211.

80. *Id.* at 212.

81. *Id.* at 214.

required to obtain a photo ID.<sup>82</sup> Birth certificates cost anywhere from \$3 to \$12 in Indiana, and a passport may cost around \$100.<sup>83</sup> While these fees might seem modest to most, Souter noted that they “are disproportionately heavy for, and thus disproportionately likely to deter, the poor, the old, and the immobile.”<sup>84</sup>

Unlike the majority, Souter was not convinced that the provisional ballots mitigated any burden that the photo ID law placed on potential voters.<sup>85</sup> If a voter lacks the required identification, he or she is required to sign an affidavit within ten days of casting a vote in any election.<sup>86</sup> Forcing this sort of repeated travel on those who lack photo identification is “particularly onerous,” especially given Indiana’s poor public transportation system.<sup>87</sup> Souter pointed to a recent example of the law in action to illustrate his point about just how burdensome the photo ID requirement could be.<sup>88</sup> In the 2007 municipal elections for Marion County, thirty-four provisional ballots were cast.<sup>89</sup> Of those who cast provisional ballots, only two voters subsequently traveled to the county clerk’s office within ten days to sign the required affidavit.<sup>90</sup> Thirty-three of these voters provided a signature that matched the signature on file, and twenty-six of them had a history of voting in Marion County elections.<sup>91</sup>

Souter pointed out that a large proportion of the tens of thousands of eligible voters in Indiana who lacked the necessary photo identification were “likely to be in bad shape economically.”<sup>92</sup> The voter ID law placed burdens on citizens by requiring them to obtain an ID or to vote by provisional ballot, burdens that “translate into nontrivial economic costs.”<sup>93</sup> These burdens and costs, concluded Souter, would undoubtedly discourage or disable “a significant number of state residents . . . from voting.”<sup>94</sup>

Souter next pointed out the disconnect between the stated goal of preventing voter fraud and the implementation of the photo ID requirement.<sup>95</sup> The photo ID requirement, noted Souter, prevented only in-person voter fraud.<sup>96</sup> This specific type of fraud was not only rare, but essentially nonexistent: there had not been “a single instance of in-person voter impersonation

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82. *Id.* at 215.

83. *Id.*

84. *Id.* at 216.

85. *Id.* at 216-17.

86. *Id.*

87. *Id.* at 217.

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.* at 220-21.

93. *Id.* at 221.

94. *Id.*

95. *Id.* at 225.

96. *Id.*

fraud in all of Indiana's history."<sup>97</sup> This absence of evidence, opined Souter, is "consistent with the dearth of evidence of in-person voter impersonation in any other part of the country."<sup>98</sup> Not only is in-person fraud extremely rare or non-existent, it is simply illogical for an individual to commit this sort of fraud.<sup>99</sup> The penalties for committing voter fraud, Souter pointed out, are particularly high when compared with the relatively minor gain of one additional vote for a given candidate, should the impersonator succeed.<sup>100</sup> Because of these facts, Souter argued that the State interest in preventing voter fraud "in no way necessitates the particular burdens the Voter ID Law imposes on poor people and religious objectors."<sup>101</sup>

Souter also attacked the State of Indiana's interest in safeguarding voter confidence in the electoral system.<sup>102</sup> If the voters lacked confidence in the system, Souter noted, that lack of confidence was entirely the fault of the state, not a result of some perceived voter fraud.<sup>103</sup> To solve this confidence problem, the State should not "burden the right to vote, but . . . end the official negligence."<sup>104</sup> Souter summed up his dissent strongly, stating:

Without a shred of evidence that in-person voter impersonation is a problem in the State, much less a crisis, Indiana has adopted one of the most restrictive photo identification requirements in the country . . . . It is impossible to say . . . that the State's interest in adopting its signally inhibiting photo identification requirement has been shown to outweigh the serious burdens it imposes on the right to vote.<sup>105</sup>

If *Harper* stands for anything, Souter opined, it stands for the idea that "being poor has nothing to do with being qualified to vote."<sup>106</sup> The State of Indiana's requirements under the voter ID law created "unjustified economic burdens uncomfortably close to the outright \$1.50 fee [the Court] struck down 42 years ago."<sup>107</sup>

It is against this backdrop of the rejection of a photographic identification requirement by the Supreme Court of Missouri, contrasted with the approval, albeit narrowly, of a similar law in Indiana by the Supreme Court of the United States, that both proponents and opponents of stricter voting identification laws find themselves in Missouri.

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97. *Id.* at 226.

98. *Id.*

99. *Id.* at 227-28.

100. *Id.* at 228.

101. *Id.* at 232.

102. *Id.* at 235.

103. *Id.*

104. *Id.*

105. *Id.* at 236.

106. *Id.*

107. *Id.* at 237.

### III. RECENT DEVELOPMENTS

Since *Weinschenk*, the Missouri General Assembly has repeatedly attempted to enact voter ID bills that include a photo identification requirement.<sup>108</sup> Every year since 2006, bills have been introduced in both the House and Senate chambers that would require some form of photo identification.<sup>109</sup> In each of the past seven years, voter ID bills passed in the House have died in the Senate.<sup>110</sup>

In 2014, twin bills introduced in the House and the Senate aimed to both change the Missouri Constitution to allow photo identification at the polls and to enact a statute containing the photo identification requirement.<sup>111</sup> In the House, House Joint Resolution 47 (“HJR 47”) would have amended the Missouri Constitution, adding the following language to Article VIII:

A person seeking to vote in person in public elections may be required by general law to identify himself or herself and verify his or her qualifications as a citizen of the United States of America and a resident of the state of Missouri by providing election officials with a form of identification, which may include requiring valid government-issued photo identification. Exceptions to the identification requirement may also be provided for by general law.<sup>112</sup>

Because this resolution intended to amend the Missouri Constitution, it needed to be placed on the state-wide ballot and subjected to a vote of the people.<sup>113</sup> Then, if the constitutional amendment passed a state-wide referendum, the companion bill, House Bill 1073 (“HB 1073”), would implement the new photo identification requirements.<sup>114</sup> Under HB 1073, the only accepted form of identification for voters would include photographs.<sup>115</sup> These accepted forms of voter ID would be limited to: a Missouri driver’s license or non-driver’s license, a U.S. Passport, a Missouri or Federal Military ID, or a Missouri or Federal ID that has a name, photo, and expiration date.<sup>116</sup> No other form of identification would be accepted at the polls.<sup>117</sup>

As in the past, the driving force behind the push for stricter voter ID laws, including the requirement of a photo ID, was the perception that in-

108. *Voter Identification Requirements*, *supra* note 8.

109. *Id.*

110. Reid Wilson, *Missouri Likely To Pass Voter ID Bill This Year*, WASH. POST (Jan. 31, 2014, 6:00 AM), <http://www.washingtonpost.com/blogs/govbeat/wp/2014/01/31/missouri-likely-to-pass-voter-id-bill-this-year/>.

111. *Id.*

112. H.J. Res. 47, 97th Leg., 2d Reg. Sess. (Mo. 2014).

113. *Id.*

114. H.B. 1073, 97th Leg., 2d Reg. Sess. (Mo. 2014).

115. *Id.*

116. *Id.*

117. *Id.*

person voter fraud is a widespread problem in Missouri.<sup>118</sup> The bill's sponsor, Stanley Cox, said that the law would prevent the registration of dead people, "which in some parts of the state is part of our history."<sup>119</sup> Additionally, Cox stated that "[a]ll the time we have had stolen elections. We have a history of a lot of cheaters. We have a history of cheating in this state."<sup>120</sup> Despite these assertions, there is little to no evidence of widespread in-person voter impersonation fraud in the State of Missouri.<sup>121</sup>

If HB 1073 had passed and were implemented, as many as 220,000 Missourians would have been disenfranchised.<sup>122</sup> Missouri Secretary of State Jason Kander estimated that as many as 150,000 registered voters lack the required photo identification, while an additional 70,000 possess identifications that have expired.<sup>123</sup> HB 1073 was similar to the law in *Weinschenk* in that it provided for free state-issued photo IDs, but it did not cover the cost of the materials needed to obtain a photo ID, such as a birth certificate.<sup>124</sup> Among the largest groups in these suddenly disenfranchised voters would be students with school-issued IDs, senior citizens who do not drive, citizens who rely solely on public transportation, and women who have changed their last names due to marriage or divorce.<sup>125</sup> This is especially problematic in light of historical voting trends, which show that voter turnout for those aged 65 and older is significantly higher than other age groups.<sup>126</sup> In the 2012 Presidential election, 72% of citizens aged 65 and older voted nationwide, compared with just 45% of those aged 18-29.<sup>127</sup>

The Senate introduced its own companion constitutional amendment and bill, Senate Joint Resolution 31 ("SJR 31") and Senate Bill 511 ("SB

118. Rudi Keller, *Voter ID Rules Pass House Committee on Party-Line Vote*, COLUM. DAILY TRIB. (Feb. 13, 2014), [http://www.columbiatribune.com/news/politics/voter-id-rules-pass-house-committee-on-party-line-vote/article\\_c41f593a-9432-11e3-a489-0017a43b2370.html](http://www.columbiatribune.com/news/politics/voter-id-rules-pass-house-committee-on-party-line-vote/article_c41f593a-9432-11e3-a489-0017a43b2370.html).

119. *Id.*

120. *Id.*

121. *See, e.g.*, *Weinschenk v. State*, 203 S.W.3d 201 (Mo. 2006) (en banc) (finding no evidence that in-person voter identification fraud "exists to any substantial degree in Missouri.").

122. SECRETARY OF STATE JASON KANDER, HOUSE BILL 1073 IMPACT REPORT: THE EFFECT ON MISSOURI VOTERS (2014) [hereinafter HB 1073 IMPACT REPORT], available at <http://www.sos.mo.gov/2014impactreport.pdf>.

123. Jo Mannies, *Missouri Voters Would Have To Approve Photo IDs Before Details Are Worked Out*, ST. LOUIS PUB. RADIO (Feb. 26, 2014), <http://news.stlpublicradio.org/post/missouri-voters-would-have-approve-photo-ids-details-are-worked-out>.

124. H.B. 1073, 97th Leg., 2d Reg. Sess. (Mo. 2014).

125. HB 1073 IMPACT REPORT, *supra* note 122.

126. Thom File, *Young-Adult Voting: An Analysis of Presidential Elections, 1964-2012*, U.S. CENSUS BUREAU 2-4 (April 2014), <http://www.census.gov/prod/2014pubs/p20-573.pdf>.

127. *Id.* at 4.

511”). These bills, sponsored by Will Kraus, were identical to the constitutional amendment and voter ID bills introduced in the House.<sup>128</sup>

Many of the problems with the Indiana law identified by Justice Souter in his dissent in *Crawford* were also present in Missouri.<sup>129</sup> Like the Indiana bill, the Missouri bill resembled a disguised poll tax, a solution to a non-existent problem the only purpose of which was to “erect new barriers between minority and poor voters and the ballot box.”<sup>130</sup>

#### IV. DISCUSSION

The practical effect of the passage and implementation of the new voter ID laws in Missouri would be to immediately disenfranchise tens of thousands of voters. Such proposed laws are aimed at preventing the sort of in-person voter fraud that is essentially non-existent in Missouri and would do nothing to stop the types of fraud that have actually occurred in the state, such as voting in an improper district or using a fake voter registration card.<sup>131</sup> Based on the fear of a largely non-existent threat to the integrity of the ballot, such laws would make it extremely difficult, if not impossible, for large numbers of Missourians to exercise their right to vote, hurting the integrity of elections in the state.

Currently, only nine states require a voter to present photo identification to vote.<sup>132</sup> Of those nine, six have what are considered “strict” photo ID requirements.<sup>133</sup> If the proposed voter ID laws introduced in 2014 had passed, Missouri’s photo ID requirement would be stricter than all but two of those states, Indiana and Texas.<sup>134</sup> Other states that currently require a photo ID to vote allow forms of ID that would not be accepted under the proposed Missouri laws. Tennessee allows a photo ID issued by any other state, Kansas and Arkansas allow a student ID with a photo, and Georgia allows an expired state-issued driver’s license.<sup>135</sup> The proposed Missouri laws did not consider any of these acceptable forms of photo ID, and would have required a non-expired driver’s or non-driver’s license, a non-expired Missouri or Federal ID with photo, a Missouri or Federal Military ID, or a U.S. passport.<sup>136</sup>

Currently, it is estimated that approximately 150,000 Missourians do not have the required forms of identification.<sup>137</sup> An additional 70,000 are esti-

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128. S.J. Res. 31, 97th Leg., 2d Reg. Sess. (Mo. 2014); S.B. 511, 97th Leg., 2d Reg. Sess. (Mo. 2014).

129. See *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 209 (2008).

130. Charles Postel, *Why Voter ID Laws Are Like a Poll Tax*, POLITICO (Aug. 7, 2012, 12:26 AM), <http://www.politico.com/news/stories/0812/79416.html>.

131. HB 1073 IMPACT REPORT, *supra* note 122.

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. Mannies, *supra* note 123.

mated to have expired forms of the required identification.<sup>138</sup> Though no data exists on the demographic makeup of those lacking the required identification in Missouri, 25% of eligible black voters nation-wide lack the required identification, compared to only 8% of eligible white voters.<sup>139</sup> Of those eligible voters over the age of sixty-five, 18% lack the required identification.<sup>140</sup> 15% of eligible voters with an income of less than \$35,000 likewise lack the required identification.<sup>141</sup> In *Crawford*, the U.S. Supreme Court took issue with the estimated number of voters impacted by the Indiana voter ID law, finding that the estimates were not accurate enough to find that a significant number of voters would be burdened by the photo ID requirement.<sup>142</sup> The situation in Missouri is very different, with the estimated number of affected voters coming straight from Missouri's Secretary of State.<sup>143</sup>

It is certainly not lost on the supporters of photo ID laws that the groups of people most impacted by the laws are those that generally vote for their opponents. Around the country, stricter voter ID laws are being supported and passed by Republican legislators while being opposed by their Democratic colleagues.<sup>144</sup> Republicans around the country are aware that those most burdened by a photo ID requirement, including college students, the poor, and the elderly, generally vote for their opponents.<sup>145</sup> Indeed, Pennsylvania House Republican leader Mike Turzai opined, upon passage of a new photo ID requirement in that state prior to the 2012 presidential election, that the new law "is gonna allow Governor Romney to win the state of Pennsylvania."<sup>146</sup> With Republican proponents of voter ID laws openly acknowledging that they believe the laws will help them win elections, any previously tenuous pretense that they care about actual voter fraud or that the laws are designed to address fraud vanishes completely. Protecting the right to vote, and removing undue burdens on this right, should be an apolitical issue with bipartisan support.

Supporters of restrictive photo ID laws in Missouri downplay the number of voters without the necessary identification and claim that because the state would issue photo identification to these people free of charge, the laws would not have an effect on Missourians' ability to vote. This could not be further from the truth. While the state would cover the cost of the actual IDs, it would offer no assistance obtaining the documents required to obtain an ID,

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138. HB 1073 IMPACT REPORT, *supra* note 122.

139. Zachary Roth & Mina Liu, *State of Voter ID Laws*, MSNBC (Jan. 28, 2014, 10:58 AM), <http://www.msnbc.com/msnbc/the-state-voter-id-laws>.

140. *Id.*

141. *Id.*

142. *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 200-02 (2008).

143. HB 1073 IMPACT REPORT, *supra* note 122.

144. Postel, *supra* note 130.

145. *Id.*

146. Mackenzie Weinger, *Mike Turzai: Voter ID Helps GOP Win State*, POLITICO (Jun. 25, 2012, 4:26 PM), <http://www.politico.com/news/stories/0612/77811.html>.

including birth certificates or marriage licenses.<sup>147</sup> Women who have married, divorced, or have otherwise changed their names would be disproportionately affected by these laws.<sup>148</sup> Those currently lacking photo IDs are likely to be the people who would have the most difficulty obtaining one, including low-income Missourians, students, senior citizens, and people who rely on public transportation.<sup>149</sup>

Under stricter voter ID laws requiring a photo ID, those lacking the necessary identification would be required to find some form of transportation to and from the license office in addition to the required birth certificate or marriage license. Birth certificates cost \$15,<sup>150</sup> and official copies of marriage licenses cost about \$9 or \$10.<sup>151</sup> The waiting period to obtain birth certificates can be from six to eight weeks.<sup>152</sup> For people who are barely scraping together enough money to feed their families, or senior citizens who live in nursing homes and have no access to transportation, these hurdles can be impossible to overcome. As Justice Souter noted in his dissent to *Crawford*, these additional travel costs and fees are “disproportionately heavy for, and thus disproportionately likely to deter, the poor, the old, and the immobile.”<sup>153</sup> The right to vote is a basic and fundamental right in our state, and lawmakers should strive to make it easier for all citizens to participate in our democracy, not more difficult.

## V. CONCLUSION

Voting is a fundamental right, and the exercise of this right should be strongly protected. In *Harper*, the Supreme Court held that “[t]o introduce wealth or payment of a fee as a measure of a voter’s qualifications is to introduce a capricious and irrelevant factor.”<sup>154</sup> Newly enacted laws requiring photo identification to vote in several states, and proposed laws in Missouri, amount to nothing more than a poorly disguised poll tax of the kind forbidden in *Harper*, presented as a necessary protection against the looming threat of widespread voter fraud and stolen elections. These laws represent a cynical attempt by one party to make it difficult or impossible for potential supporters of the other party to exercise their fundamental right to vote.

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147. HB 1073 IMPACT REPORT, *supra* note 122.

148. *Id.*

149. *Id.*

150. *Obtaining Certified Copies of Vital Records*, MO. DEPT. OF HEALTH & SENIOR SERVS., <http://health.mo.gov/data/vitalrecords/applications.php> (last visited Mar. 16, 2015).

151. *Department of Revenue Frequently Asked Questions*, ST. LOUIS COUNTY, <https://revenue.stlouisco.com/common/Faq.aspx#MarLicenseCost> (last visited Mar. 16, 2015); *Marriage Licenses*, JACKSON COUNTY MO., <http://jacksongov.org/content/3310/3356/3358/default.aspx> (last visited Mar. 16, 2015).

152. *Obtaining Certified Copies of Vital Records*, *supra* note 150.

153. *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 216 (2008).

154. *Harper v. Va. Bd. of Elections*, 383 U.S. 663, 668 (1966).



While measures must certainly be taken to ensure the integrity of the electoral system in Missouri, steps to reduce or eliminate voter fraud must not unduly burden the actual right to vote. Further, the steps taken must actually prevent the type of voter fraud that has been found to occur in Missouri. Proposed voter ID laws in Missouri have in the past and will in the future purport to solve a largely non-existent problem at the expense of tens of thousands of citizens' ability to freely exercise their fundamental right to vote. These proposed laws and constitutional amendments are misguided and poorly crafted and therefore should not be passed or implemented. The future of Missouri depends on the active participation of all its citizens in the electoral process. Attempts to limit this participation under false pretenses, such as those discussed above, should be condemned in the strongest possible terms and rejected by all citizens of Missouri.