

IN THE
INDIANA SUPREME COURT

Case No. _____

Court of Appeals Case No. 49A02-0901-CV-00040

LEAGUE OF WOMEN VOTERS OF)	Appeal from the
INDIANA, INC. and)	Marion Superior Court
LEAGUE OF WOMEN VOTERS OF)	Civil Division, 13
INDIANAPOLIS, INC.)	
)	
Appellants (Plaintiffs below),)	
)	
)	Trial Court Case No:
v.)	49D13-0806-PL-27627
)	
)	
TODD ROKITA, in his official capacity as)	
Indiana Secretary of State,)	The Honorable
)	S.K. Reid, Judge
Appellee (Defendant below).)	

BRIEF OF *AMICI CURIAE*
AARP AND NATIONAL SENIOR CITIZENS LAW CENTER
IN SUPPORT OF THE LEAGUE OF WOMEN VOTERS OF INDIANA, INC AND
THE LEAGUE OF WOMEN VOTERS OF INDIANAOPPLIS, INC.

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STATEMENT OF INTEREST OF AMICI CURIAE

AARP is a nonpartisan, nonprofit organization dedicated to addressing the needs and interests of persons aged 50 and older. AARP is the largest membership organization representing the interests of older people, with nearly forty million members—more than 880,000 of whom live in Indiana. Older individuals vote in disproportionately high numbers, and AARP has long advocated for fair and simple election procedures that facilitate the high level of participation of voters aged 50 and above (“older voters”). AARP supports fair and effective procedures to detect and prevent voter fraud. AARP does not support procedures that reflect partisan bias, or that permit arbitrary or discriminatory reviews or voter challenges that may discourage turnout by older voters.

Based on these principles, AARP Foundation Litigation has served as co-counsel in cases in Georgia and Arizona challenging state photo identification voting requirements.¹ AARP has also participated as *amicus curiae* in *Crawford v. Marion County Election Board* and in challenges to similar legislation in Missouri and Michigan. These laws threaten to reduce legitimate citizen participation—particularly participation by older voters—in the electoral process.

The National Senior Citizens Law Center (“NSCLC”), a non-profit organization, advocates nationwide to promote the independence and well-being of low-income older persons. For thirty-five years, NSCLC has served that population through litigation, administrative advocacy, legislative advocacy, and assistance to attorneys and paralegals in legal aid programs. NSCLC has participated in numerous cases advocating on behalf of the rights of older persons.

¹ See, e.g., *Common Cause/Georgia v. Billups*, 504 F. Supp. 2d 1333 (N.D. Ga. 2007); *Gonzalez v. Arizona*, Nos. 06-1268-PHX, 2006 WL 3627297 (D. Ariz Sept. 11, 2006).

NSCLC recognizes the serious adverse impact of burdensome election rules on many older voters, especially older voters with limited incomes and/or disabilities, as well as older voters who are members of minority groups that historically have encountered difficulty preserving their voting rights.

SUMMARY OF THE ARGUMENT

Indiana citizens age fifty and over have voted in percentages higher than other age groups in the past two Presidential elections, and continue to come to the polls in disproportionately large numbers. The Indiana Constitution not only safeguards older voters' right to cast their vote, it also ensures that older voters will not be subjected to undue—and unnecessary—burdens restricting that right to vote.

The Court of Appeals recognized that the photo identification requirements for in-person voters under the Indiana voter ID law (“Photo ID Law”) improperly burden older voters. Older voters are much less likely to have a driver’s license or other official photo identification. Obtaining identification burdens older voters, especially older voters who are minorities or women. These obstacles are unnecessary; indeed, the legislature has recognized this by *eliminating* the photo identification requirement for absentee voters and residents of state-licensed care facilities that are also polling places.

These exceptions are insufficient to save the Photo ID Law. For one thing, many older voters do not qualify for these exemptions, and even among those who can vote by absentee ballot, it is not a complete substitute for voting in person because the voter may not have her voted counted, and because the information available to the absentee voter is inferior.

Finally, these burdens on older voters are unnecessary to advance the valid interest in eliminating voter fraud. Indeed, while all states are concerned with preventing voter fraud, even

the most restrictive laws in other states use picture identification requirements as an alternative, not a mandate, and accept alternative identification requirements similar to the level of scrutiny that Indiana applies to absentee ballots. This Court should reject the Photo ID Law’s heightened requirement and the burdens it places on older voters.

ARGUMENT

Older voters are disproportionately likely to vote. In 2004, for example, more than 73% of voters over the age of 65 voted for President,² a figure substantially higher than turnout from other age groups.³ The right to vote is a foundation of our society. *See Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (“[V]oting is of the most fundamental significance under our constitutional structure.”). Combating voter fraud is an important goal, but it can and should be served without sacrificing legitimate access to participation in the electoral process, which is the effect of the Photo ID Law.

Article I, Section 23 of the Indiana Constitution—the Equal Privileges and Immunities Clause—guarantees that the right to vote may not be diminished by unnecessarily burdening some classes of voters, while excusing others from those same burdens. *See Collins v. Day*, 644 N.E.2d 72, 80 (Ind. 1994). Tens of thousands of older Indiana voters, however, are burdened by the Photo ID Law either by lacking a driver’s license or by facing substantial obstacles in acquiring a voter’s identification card. These obstacles may be insurmountable for some older voters.

² U.S. Census Bureau, *Voting and Registration in the Election of November 2004 – Detailed Tables*, table 4b,

<http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2004/tables.html>.

³ This trend continued in the 2008 election, in which citizens between 65 and 74 voted at a rate of 67.1%, the highest of any age group surveyed. U.S. Census Bureau, *Voting and Registration in the Election of November 2004 – Detailed Tables*, table 4c.

<http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2008/tables.html>.

Recognizing that it would be difficult or impossible for certain voters to obtain photo identification, the Photo ID Law creates classes of voters—including absentee voters and residents of some state-licensed care facilities—whose votes are not subjected to the same scrutiny. But those exceptions do not go far enough. Many similarly situated Indiana voters face the same burdens but do not qualify for these dispensations, even though their votes are no more likely to be fraudulent. These attempts to “unburden” some older Indiana voters, while leaving numerous other similarly situated older voters without the same recourse, cannot be squared with the requirements of the Indiana Constitution and run contrary to the requirement that each legitimate vote be counted. The Court of Appeals properly rejected the Photo ID Law’s unprecedented—and unnecessary—identification requirements.

I. THE PHOTO ID LAW CREATES SUBSTANTIAL BURDENS FOR MANY OLDER VOTERS WHO ARE REQUIRED TO PRODUCE PHOTO IDENTIFICATION TO VOTE.

For many Indiana voters, the process of voting entails little or no burden aside from a modest amount of time spent at the polls. The identification requirements of the Photo ID Law, however, create a substantial obstacle to voting for as many as 140,000 or more older voters.⁴ In addition to the cost of obtaining identification, many older voters, particularly minority and female older voters, are faced with additional burdens in order to obtain proper identification.

⁴ The Census Bureau estimates that, in 2008, Indiana’s population included 796,850 residents over the age of 65. U.S. Census Bureau, *Fact Sheet: Indiana*, http://factfinder.census.gov/servlet/ACSSAFFacts?_event=Search&geo_id=&_geoContext=&_street=&_county=&_cityTown=&_state=04000US18&_zip=&_lang=en&_sse=on&pctxt=fph&pgsl=010. One recent national survey concluded that 18% of Americans over the age of 65 did not have government-issued photo identification. See Brennan Center for Justice, *Citizens Without Proof* at 2 (Nov. 2006), http://www.brennancenter.org/page/-/d/download_file_39242.pdf. An estimated 143,433 older Indiana voters over the age of 65, therefore, may lack the requisite identification.

A. Older Voters Face Significant Financial Costs to Obtain Qualifying Photo Identification.

Due to driver's license renewal fees, increased driver testing, and "self-regulation" of older drivers removing themselves from behind the wheel, older voters are substantially less likely to have a driver's license than other voters, with more than 20% of those over the age of 65 indicating they no longer drive.⁵ To obtain a license that can be used as identification, older voters are required to pay a fee of \$21.00; the costs of obtaining a passport are even higher, with fees starting at \$100 and increasing depending on processing speed.⁶

While Indiana provides "free" state-issued photo identification cards, they entail similar costs. A birth certificate must be produced to obtain such a card. An Indiana birth certificate costs \$10, while birth certificates from other states are frequently more expensive, ranging from \$12 to \$60.⁷ These fees exceed the costs that other states have already recognized as an excessive burden on the right to vote.⁸ Moreover, in some cases, obtaining an out-of-state birth certificate may not be possible. Indiana residents born in Georgia, for example, must provide valid photo identification to obtain a birth certificate—a catch-22 for potential voters seeking a birth certificate to obtain photo identification in Indiana.⁹

⁵ Ind. Code §§ 9-24-12-1, 9-24-12-10; U.S. Government Accountability Office, *Elderly Voters: Some Improvements in Voting Accessibility from 2000 to 2004 Elections, but Gaps in Policy and Implementation Remain*, Testimony Before the U.S. Senate Special Committee on Aging, GAO-08-442T, 6 (January 31, 2008).

⁶ U.S. Dep't of State, *Passport Fees*, http://travel.state.gov/passport/get/fees/fees_837.html; Indiana Bureau of Motor Vehicles, *Driver's License Fees*, <http://www.in.gov/bmv/4990.htm>.

⁷ Ind. Code §§ 16-37-1-11, 16-37-1-11.5; [Vitalrec.com](http://www.vitalrec.com), *Birth Certificates*, <http://www.vitalrec.com/birthcertificates>. Out-of-state voters often will be required to pay additional processing, mailing and/or handling fees to obtain out-of-state birth certificates.

⁸ See *Weinschenk v. Missouri*, 203 S.W.3d 201, 216 (Mo. 2006) (\$15 fee to obtain birth certificate imposed excessive burden on voters).

⁹ Georgia Dep't of Community Health, *Vital Records Birth Certificates*, <http://health.state.ga.us/programs/vitalrecords/birth.asp>.

These burdens are particularly severe for older voters. More than ten percent of Indiana residents over the age of 65 live below the poverty line, and more than half are on fixed incomes, mainly (or exclusively) consisting of Social Security benefits.¹⁰ For such voters these costs are anything but trivial.¹¹ Although the Photo ID Law allows “indigent” individuals to vote without photo identification, this exception will not relieve the burden for older voters who do not qualify as—or do not consider themselves to be—“indigent” but who may nonetheless live on fixed incomes and face hard choices between getting a photo identification card and securing adequate food, housing, heat and/or medications.

B. Older Voters, Particularly Minorities and Women, Face Significant Non-Financial Costs in Obtaining Identification.

For older voters that do not or cannot drive—and therefore lack a driver’s license—travelling to the Bureau of Motor Vehicles (“BMV”) to obtain a license, or to another government office for state-issued photo identification, may be a daunting task. Approximately 22.3 percent of Indiana residents live in non-metropolitan counties, and are much more likely to lack the identification necessary to vote.¹² Lack of access to transportation presents an enormous hurdle for many older voters, who may need to hire transportation at an extra cost. Many of these older voters also face mobility challenges to visiting the offices necessary to obtain photo identification. These challenges present a significant burden.

¹⁰ U.S. Census Bureau, *2009 Annual Soc. & Econ. Supplement*, http://www.census.gov/hhes/www/cpstables/032009/pov/new46_100125_06.htm; AARP, *Social Security: Indiana Quick Facts*, http://assets.aarp.org/rgcenter/econ/ss_facts_05_in.pdf.

¹¹ Many Indiana AARP members (23%) have taken less medicine than prescribed to make it last longer; 20 percent failed to fill a prescription because of costs. AARP, *Divided We Fail Key Findings in Indiana* (Feb. 2008), http://assets.aarp.org/rgcenter/general/dwf_states_08_in.pdf.

¹² See Center on Budget and Policy Priorities, *Survey Indicates House Bill Could Deny Voting Rights to Millions of U.S. Citizens* (Sept. 22, 2006), <http://www.cbpp.org/files/9-22-06id.pdf> (rural residents less likely to have Passports or Birth Certificates); Rural Policy Research Institute, *Demographic and Economic Profile Indiana* (May 2006), <http://www.rupri.org/Forms/Indiana.pdf>.

1. **Older Minority Voters May Not Have Access to Birth Records.**

Minorities—particularly African-Americans—have historically been denied equal access to quality healthcare. Prior to the 1960s, minority children frequently were born outside of hospitals and may not have any birth certificate on file in their state of birth.¹³ These older persons cannot produce a certified birth certificate and, accordingly, will not be able to obtain photo identification card pursuant to the Photo ID Law. Although residents 65 and older who have never been issued a birth certificate may obtain photo identification without one,¹⁴ this exception is insufficient to alleviate the burden on older voters born after 1944, and who have no certified birth certificate.

2. **Older Women Voters May Face Additional Obstacles to Obtaining Photo Identification.**

The Photo ID Law requires that a voter's name on her approved photo identification be an exact match to the name on the voter registration rolls. *See* Ind. Code § 3-5-2-40.5(1). In the event of any discrepancy—such as a married name different than a birth name—the voter must obtain a new identification card that matches the registered name or be barred from voting. Older women voters may have registered to vote under their married name, rather than their maiden name.¹⁵ Indeed, states routinely *required* women voters to use their married name into the 1970s; Indiana recognized a woman's right to use her maiden name only in 1974.¹⁶

¹³ *See* Shapiro, *Development of Birth Registration and Birth Statistics in the United States*, 4 *Population Studies* 86, 99 (1950); Kevin Outterson, *Tragedy and Remedy: Reparations for Disparities in Black Health*, 9 *DePaul J. Health Care L.* 735 (2005).

¹⁴ Indiana BMV, *Getting a License, Permit, or ID Card Without a Birth Certificate*, <http://www.in.gov/bmv/4783.htm>.

¹⁵ *See* Claudia Goldin & Maria Shim, *Making a Name: Women's Surnames at Marriage and Beyond*, 18 *J. Econ. Persp.* 143, 143-44 (Spring 2004).

¹⁶ *See In re Hauptly*, 312 N.E.2d 857 (Ind. 1974); *Dunn v. Palermo*, 522 S.W.2d 679 (Tenn. 1975); *Stuart v. Bd. Of Supervisors of Elections*, 295 A.2d 223 (Md. 1972).

In order to vote under the Photo ID Law, therefore, many older women voters will have to obtain not just a birth certificate, but a marriage certificate or other official name change documentation.¹⁷ The need for these documents presents additional costs and delays, especially for persons married outside of Indiana. For older women without driver's licenses, many of whom are on a fixed income, these extra burdens are particularly severe.

II. THE EXCEPTIONS TO THE IDENTIFICATION REQUIREMENT FAIL TO ELIMINATE UNDUE AND UNNECESSARY BURDENS ON OLDER VOTERS

The Photo ID Law attempts to ameliorate the serious burden placed on many older voters through a number of exceptions allowing some older voters—but not all those similarly situated—to vote without photo identification.¹⁸ In particular, the law allows all voters age 65 and over to vote by absentee ballot and exempts voters from the identification requirement if they reside at a state-licensed care facility—but only if that facility also serves as a polling location. While these exceptions allow some older voters to vote without obtaining state-issued photo ID, there is no principled basis for distinguishing them from other older voters who experience the same burdens but who cannot vote without such identification. There is no reason to believe that fraud is reduced by treating these groups differently.

A. Older Voters Not Qualifying For these Exceptions Are Denied Equal Privileges and Immunities Under the Indiana Constitution.

The Equal Privileges and Immunities Clause of the Indiana Constitution prohibits the unnecessary imposition of burdens on voting rights of one class of Indiana citizens, while leaving others free to vote without impediment. *See, e.g., Horseman v. Keller*, 841 N.E.2d 164

¹⁷ *See* I.C. § 3-5-2-40.5(1).

¹⁸ Indeed, the State itself has recognized that “The General Assembly was simply acknowledging and accommodating a few basic self-evident realities: . . . seniors and the disabled who live in care facilities would likely have particular difficulty traveling to obtain photo identification” Appellee’s Br. pp. 32-33.

(Ind. 2006). The Photo ID Law, however, creates exactly this type of suspect classification. The absentee ballot and state-licensed care facility exemptions alleviate the burden of obtaining photo identification for some older voters, but improperly leave that burden in place for many others.

1. **Absentee Ballots.** Absentee voting is only available to Indiana residents who meet one or more of the criteria set forth in Ind. Code § 3-11-10-24(a), including voters who are over the age of 65, those who are ill, and those whose work will take them out of the polling district on election day. That leaves thousands of older voters between the ages of 50 and 65 who will not automatically qualify for an absentee ballot. This distinction is entirely arbitrary, as there is no meaningful difference between a 55 year-old voter with limited mobility and funds who lacks photo identification and one who is 65. Nor is there any reason to subject a 50- or 60-year-old voter to greater scrutiny in order to prevent fraud.

2. **Residents of Certain State-Licensed Care Facilities.** Similarly, allowing residents of state-licensed care facilities to vote without photo identification—but only if the facility also is a polling place—draws a distinction that cannot withstand analysis. Defenders of this exception contend that poll workers are likely to know the facility’s residents, making additional identification unnecessary. The Photo ID Law, however, has previously resulted in turning away voters—including a group of nuns in 2008—who were well-known by workers at polling locations, precisely because they lacked additional identification.¹⁹ Indeed, Mr. Rokita was unapologetic in agreeing that the nuns—turned away by one of their own sisters—were properly refused the right to vote.²⁰ Allowing only voters at state-licensed care facilities to vote

¹⁹ See Associated Press, *Nuns with Dated ID turned away at Indiana Polls*, May 6, 2008, available at www.msnbc.com/id/24490932/.

²⁰ See *id.*

based on a poll worker's presumed identification of the voter is an improper classification with no legitimate relationship to preventing voter fraud.

Moreover, this classification puts many older voters at a distinct disadvantage. The great majority of older voters—including those with serious mobility impairments—live independently; still others live in state-licensed facilities that are not polling locations. One recent study found that 149,000 voting-age Indiana residents have difficulty performing self-care activities such as dressing, bathing, or getting around.²¹ Yet, there are only 39,015 residents in state-certified nursing facilities in Indiana. Almost the same number of Indiana residents—34,000—have similar disabilities but live by themselves.²² The Photo ID Law creates a needed exception for those living in state-licensed facilities, but fails to recognize that tens of thousands of others experience the same burdens, with no reason to believe their votes are any more likely to be fraudulent.

The Photo ID Law's paradoxical requirement that many older voters produce photo identification to vote, while other similarly situated voters may vote without such a requirement, bears no legitimate relationship to the law's stated purpose of protecting the integrity of elections and preventing voter fraud. The Court of Appeals was correct that these capricious distinctions violate the voting rights of Indiana voters.

B. Enjoining the Photo Identification Requirement is the Proper Remedy to Guarantee All Voters' Privileges and Immunities Under the Law.

The Indiana Constitution requires that every registered voter be guaranteed the right to vote, to have that vote count, and to be placed on equal footing with other voters. *See* Ind. Const.

²¹ *See* Charlene Harrington et al., *Nursing Facilities, Staffing, Residents and Facility Deficiencies, 2001 Through 2007*, 15 (Sept. 2008), <http://www.pascenter.org/documents/OSCAR2007.pdf>; Henry J. Kaiser Family Foundation, *Indiana: Nursing Homes*, <http://www.statehealthfacts.org/profileind.jsp?cat=8&sub=97&rgn=16>.

²² *See id.*

Art. 2 § 2; *see also Simmons v. Byrd*, 136 N.E. 14 (Ind. 1922) (elections must be “free and equal”). Increasing access to absentee ballots is an important step, particularly for voters who are unable to travel to a polling place on election day. Guaranteeing the rights of all Indiana voters, however, requires that all voters be given a genuine opportunity to vote in person on the day of an election, if they possibly can.

1. **Absentee Ballots Are Not a Complete Solution**. An absentee ballot does not substitute for the opportunity to participate in the political process in person.

First, absentee balloting threatens older voters’ right to have their votes counted because election officials have repeatedly disregarded absentee ballots. Recent reports and concessions from Indiana officials strongly suggest that absentee ballots often are not counted, despite the fundamental principle that “every voter’s vote is entitled to be counted once.”²³ Newspapers have reported repeated instances of absentee votes that go uncounted. In 2004, lawfully and timely cast absentee ballots in Marion County were never counted because the Election Board failed to deliver them to the proper office on time, a problem that occurs virtually every year.²⁴ News accounts of the 2004 election year confirm that a number of races were close, with one Marion County race being decided by seven votes.²⁵ The loss of one’s vote due to an uncounted absentee ballot, therefore, is not a harmless error. Just two years later, in November of 2006, absentee ballots in Marion County were printed incorrectly, and many were not counted.²⁶ Two

²³ *See, e.g., Gray v. Sanders*, 372 U.S. 368, 380 (1963); *Reynolds v. Sims*, 377 U.S. 533, 561–562 (1964) (right to have one’s vote counted fairly is “fundamental ... in a free and democratic society.”).

²⁴ *See* Editorial, *Go the Distance to Make Each Vote Count*, Indianapolis Star, Nov. 17, 2006, at A.14.

²⁵ *See* Brendan O’Shaughnessy, *Democratic Incumbent Loses by 7*, Indianapolis Star, Nov. 18, 2006, at B.1.

²⁶ James A. Gillaspay, *Ballot Error Leads to Call for Resignation*, Indianapolis Star, Oct. 18, 2006, at B.1.

candidates' names were left off the absentee ballots, and 250 defective ballots were sent to voters.²⁷

These problems resurfaced in 2008, as “[a]t least 18 voters received absentee ballots in the mail for the wrong voting precinct.”²⁸ The Marion County clerk admitted that the ballots of voters who did not recognize the mistake may not have been counted.²⁹ Indiana law treats absentee ballots voters differently from the way it treats the ballots of in-person voters, in the important sense that “an absentee ballot may not be recounted in situations where clerical error by an election officer rendered it invalid.”³⁰ Any individual deprived of an opportunity to vote in person is not made whole by being sent an absentee ballot that is incorrect or never counted.

Second, those who cast their votes by absentee ballot receive substantially less notice of voting procedures and may not have complete information when casting their votes. Absentee ballots are often archaic and confusing, and thereby create a higher risk of voter mistake.³¹ For example, absentee ballots with cover letters have, at times, given conflicting directions. The directions are so confusing that registered voters—with no poll workers to provide clarification—justifiably fear they might “spoil[]” an absentee ballot by doing the wrong thing.³² Overall, absentee voters must maneuver a confusing voting process with less notice and assistance than they would receive if they voted in person on Election Day.

²⁷ *Id.*

²⁸ *Some Voters Receive Wrong Ballot*, Indianapolis Star, Oct. 10, 2008, available at 2008 WLNR 26563902.

²⁹ *Id.*

³⁰ *Horseman*, 841 N.E.2d at 171.

³¹ News reports suggest that many voters find the absentee ballot instructions confusing. See Rich Van Wyk, *Absentee Ballots Cause Confusion* (Updated Nov. 5, 2007), <http://www.wthr.com/Global/story.asp?S=7228533>.

³² *Id.*

Moreover, to ensure that ballots arrive at the local election board on time, voters must mail their ballots at least several days prior to Election Day. *See* Ind. Code § 3-11-10-14. Absentee ballots, therefore, cannot reflect any last-minute changes to the ballot made by election officials, nor can an absentee voter consider a late-developing issue or new information disclosed about a candidate late in the race. Absentee voting by mail—the only alternative to the photo identification requirement available to older voters who do not live in a state-licensed facility that also happens to be a polling place—is not a replacement for in-person voting.³³

2. **Less Burdensome Identification Requirements Are Warranted.**

The limited utility in preventing fraud that is gained from the Indiana Photo ID Law's unique requirements cannot stand against the burdens it places on the fundamental right to vote. Nothing suggests that in-person voters (but not absentee voters) need present a state-issued photo identification for Indiana to avoid voter fraud. Numerous other states combat voter fraud using measures that place lesser burdens on older voters; indeed, Indiana's onerous photo identification rules are virtually unique. Some states allow election officials to *request* photo identification, allowing election officials to focus on situations where there is concern about potential fraud. When photo identification is unavailable, however, states have found other measures sufficient to establish a voter's identity. Some states allow a voter to sign an affidavit confirming his identity and qualification to vote.³⁴ Other states allow a voter to cast a provisional ballot that will be counted unless challenged or that will be counted as long as the voter's signature matches the signature on the voter's registration.³⁵ Still other states accept non-photo identification materials such as utility bills and bank statements with the name and address of the voter as proof of

³³ While voters may cast an absentee ballot in person on election day, Indiana law requires such voters to present identification in the same manner as a voter who votes in person, including presenting photo identification. I.C. §§ 3-11-10-26, 3-5-2-40.5.

³⁴ N.D. Cent. Code § 16.1-05-06; S.D. Codified Laws §12-18-6.2.

³⁵ Fla. Stat. §101.048.

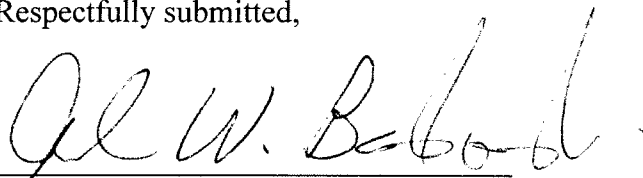
identity.³⁶ Any of these measures would ameliorate burdens on older voters, and would provide at least the same level of scrutiny—and in some cases, more—than is currently applied to absentee voters in Indiana, who are not required to make *any* affirmation or sworn statement as to their identity. This Court has recognized that absentee ballots are *more* prone to tampering or fraud than in-person votes. *See Horseman*, 841 N.E.2d at 171. Other readily available measures are more than sufficient to deter and avoid voter fraud in Indiana.

³⁶ Ariz. Rev. Stat. Ann. § 16-579.

CONCLUSION

Amici curiae AARP and NSCLC respectfully submit that the Indiana Court of Appeals correctly enjoined enforcement of the Photo ID Law.

Respectfully submitted,



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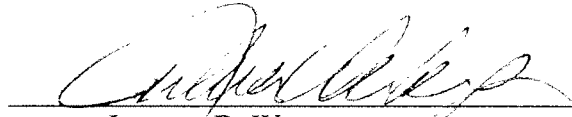
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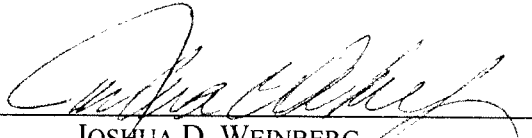
The undersigned hereby certifies that on this 9th day of November, 2009, a copy of the foregoing was served via First Class United States mail, postage pre-paid, to the following:

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