

electionlineWeekly—May 1, 2008

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I. In Focus This Week

Director's Note

The Supreme Court's Crawford opinion: Now what?

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The U.S. Supreme Court on Monday issued its eagerly awaited [opinion](#) in *Crawford vs. Marion County Board of Elections*, ending the long-running battle over Indiana's 2005 requirement that voters present photo identification as a precondition to voting.

What you will not find here is a detailed legal analysis of the ruling, given that so many others have already beaten me to it and likely done a better job of it. If that's what you were expecting, go [here](#) and [here](#) at Rick Hasen's Election Law Blog for a roundup (as well as Hasen's [take](#) on the case).

Instead, here are three ways I think the *Crawford* opinion is likely to affect future debates about photo ID and election administration generally:

1. *The photo ID debate will (if possible) get even fiercer across the country.*

Crawford raised many questions, but in the end settled only one: whether Indiana's law would remain in force. The answer is yes, for now. Everything else – especially the marquee question of whether photo ID laws themselves violate the Constitution – is still uncertain.

In some ways, this reflects the extent to which the justices are as divided as America; the array of opinions in the case (3-3-3 or 3-3-2-1, depending on which analyst you believe) suggests that whatever your view – pro-voting ID, anti-voting ID, or still undecided – there are at least three members of the Court who agree with you.

That division is likely not only to prolong the national political blaze on photo ID but actually throw another log on the fire. It isn't clear if there is enough time (or votes, given the partisan divide on the issue) for more state legislatures to actually adopt photo ID, but it is abundantly clear that they will talk – and argue – about it in the same full-volume exchange we have come to expect.

2. *Evidence about photo ID (or the lack thereof) is finally going to get some attention – though it won't necessarily solve the problem.*

Readers of *electionlineWeekly* are by now familiar with my occasional rants about the importance of evidence to election administration. Indeed, *Crawford* has been a [recurring foil](#) of mine for years given how little data either side has had all along to support their cases.

For the time being, though, at least three members of the Court have sent the message that they are not prepared to rule on the constitutionality of photo ID laws until more data about its impact is available. Court "geeks" may have even noticed that Justice Stevens' footnote 20 sketches an outline of "[known unknowns](#)" that could serve as a roadmap for data collection in Indiana and elsewhere:

The number of registered voters that lack ID;
The geographic distribution of people lacking ID and the extent to which transportation issues prevent such people from obtaining ID; and
The number of voters who lack copies of the birth certificate they need to obtain ID.

Stevens seems to suggest that gathering this data would go a long way toward providing “admissible evidence subject to cross-examination in constitutional adjudication” – in other words, a foundation for challenges to Indiana’s photo ID requirement.

This is undoubtedly a positive sign; the fact that the Court was unwilling either to bless or strike down the Indiana law without more data is an encouraging development. We should recognize, however, that data about photo ID’s impact will not necessarily resolve the debate as much as bring it into sharper relief.

For example, Spencer Overton of George Washington University has [written](#) convincingly about the need to approach voter identification with a sense of cost-benefit analysis – using empirical data about both fraud and disenfranchisement to weigh the impact of any new law such as photo ID. But collecting the data on costs and benefits is not enough; there is also the matter of analysis – balancing the two to make an appropriate decision.

Based on the various opinions in *Crawford* about the relative burdens borne by individuals and society on the ID question it is not at all clear that each Justice would weigh the costs and benefits of ID equally.

Given the paucity of evidence, this is mostly an exercise in speculation, but I think it is worth acknowledging that while new and better data may get us closer to a resolution of the photo ID question, it won’t get us all the way there.

3. *If nothing else, the Court has acknowledged – and we should too – that ID is just one facet of the overall “ecosystem” of elections.*

[From Registration to Recounts](#) is the magnificent recent compilation of election laws and procedures from five Midwestern states by the Moritz School of Law at The Ohio State University – but it is also the source of my new favorite concept in the study of elections: election ecosystems.

The ecosystem concept is especially brilliant because it captures the notion of interdependence of different elements of an election system. If you accept the notion of ecosystems then you recognize that no one facet of elections stands alone – and understand that fixing just one element of the system is likely to generate reactions elsewhere.

Whether or not the Court has read the Moritz book, many of the Justices clearly grasp the concept of election interdependence. Specifically, the *Crawford* opinion features Indiana’s voter rolls prominently both in the narrative and the analysis of the case. This recognition that support for photo ID is at least in part derived from uncertainty about voter registration is a remarkably nuanced observation by the Court and – whatever your view of the result – should be welcome.

The fight over photo ID is, at its root, a fight about whether and how an individual should establish eligibility to vote. Registration rolls – and the way they are compiled and maintained – are an alternate means to accomplish the same ends. The Court realizes this, and we should, too.

Taking the long view, *Crawford* is likely to be one of those Big Cases that shapes the debate in a field of elections for a considerable amount of time. Until then, the short-term forecast is for continued partisan storms with a significant chance of litigation.

Please dress accordingly.

II. Election Reform News This Week

Immediately following this week’s Supreme Court ruling, several states weighed in on the impact the ruling may, or may not have on their own ID laws or pending legislation. Advocates in [California](#) are concerned the ruling could spur another ballot measure like the one that failed in 2005. In [Georgia](#), lawyers said a legal challenge to that state’s ID law would move forward despite the Supreme Court ruling. Both sides of the ID debate in the [Kansas](#) legislature seemed to find something to like about the

ruling. In [Mississippi](#), where voter ID legislation and died and been revived time and again, there is hope amongst some Republican lawmakers that the ruling will help renew the debate. The ruling also revived the hopes of [Missouri](#) lawmakers that the state could finally get the constitutional amendment necessary to require photo ID. On Tuesday, a bill in the [Oklahoma](#) Senate that would require voters to show an ID was put on hold. In [South Dakota](#), Secretary of State Chris Nelson said it is unlikely that state's law would have been impacted no matter how the court ruled. Republicans in [Texas](#) told local news media that the ruling will inspire them to push even harder for voter ID in future legislative sessions. Lawmakers in [Wisconsin](#) renewed their calls to change the state constitution, a move that would allow voter ID by bypassing the governor's approval — Gov. Scott Doyle (D) has vetoed ID legislation three times.

A [Maryland task force formed to examine voting irregularities](#) during the state's 2006 primary election has recommended an increase in the number of voting machines at polling places, a state-run hotline for voters concerned about misleading campaign literature and better communication between state and local boards of elections. The 13-member task force submitted its findings to the state's attorney general this week. Task force co-chairman Sherrilyn A. Ifill, a professor at the University of Maryland School of Law, told *The Washington Post* that the group will also submit a report with long-term recommendations to improve the voting process in Maryland. This week's report, she said, was designed to provide suggestions that can be implemented in time for the November election, during which record voter turnout is predicted.

Oops it's happened [again](#), only this time it is 1.7 million registered voters in [Oregon](#) who are being directed to a sex hotline when they dial an 800-number listed in the Oregon Voters' Pamphlet. Inside the front cover, in a letter from Secretary of State Bill Bradbury, a 1-800 number is listed for voters to register on the phone. But as it turns out, the number has nothing to do with elections, voting or Oregon's primary - it's an adult hotline. According to a local television station, Bradbury put out this apologetic message: "One of my biggest priorities here is to provide voters with all the resources they need, and clearly, we erred with the listing for the voter hotline phone number on one page in the voters' pamphlet. So, I sincerely apologize for any confusion that may have caused, and I'd like to reiterate--don't call that wrong number!"

III. Opinion This Week

National: [Preparing for Election Day](#); [Vote fraud](#)

Supreme Court: [I](#), [II](#), [III](#), [IV](#), [V](#), [VI](#), [VII](#), [VIII](#), [IX](#), [X](#), [XII](#), [XIII](#), [XIV](#), [XV](#), [XVI](#), [XVII](#), [XVIII](#)

Arizona: [Voter ID](#)

California: [Primary election](#)

Connecticut: [Voting rolls](#), [II](#)

Florida: [Poll workers](#); [Voter registration](#)

Georgia: [Voter ID](#)

Indiana: [Voter ID](#); [Vote centers](#)

Maryland: [Electronic voting](#)

Mississippi: [Voter ID](#); [Election officials](#)

Missouri: [Voter ID](#)

Montana: [Voter registration](#)

New Jersey: [Vote integrity](#); [Voting machines](#), [II](#)

New York: [Accessible voting](#)

Ohio: [Honest elections](#)

Oregon: [Voter registration](#)

Pennsylvania: [Voting system](#); [Election day](#); [Paper ballots](#); [Schuylkill County](#)

South Dakota: [Polling sites](#)

Washington: [Vote fraud](#)

West Virginia: [Election-day registration](#); [Early voting](#); [Vote fraud](#)

Wisconsin: [Voter ID](#)

***some sites require registration*

IV. Available Grants

- **Help America Vote Act (HAVA) Training and Technical Assistance (T/TA) to Assist Protection and Advocacy Systems (P&As) to Establish or Improve Voting Access for Individuals with Disabilities.** *Department of Health and Human Services* announces funds to provide T/TA to P & As in their promotion of full participation in the electoral process for individuals with disabilities, including registering to vote, casting a vote, and accessing polling places; developing proficiency in the use of voting systems and technologies as they affect individuals with disabilities; demonstrating and evaluating the use of such systems and technologies by individuals with disabilities (including blindness) in order to assess the availability and use of such systems and technologies for such individuals; and providing T/TA for non-visual access. **Eligibility:** Public and state controlled institutions of higher education, nonprofit organizations, and private institutions of higher education. **Deadline:** June 2, 2008. **Funds:** Approximately \$367,920 is available to fund 4 awards, ranging from \$91,980-\$367,920. **Information:** Melvenia Wright at melvenia.wright@acf.hhs.gov; or go to: www.acf.hhs.gov/grants/open/HHS-2008-ACF-ADD-DH-0034.html. **GrantID:** GD2765.

V. Job Postings This Week

All job listings must be received by 12 p.m. Eastern on Wednesday for publication in our Thursday newsletter. Job listings are free but may be edited for length. Whenever possible, include Internet information. Please email job postings to mmoretti@electionline.org

DP Technical Support Specialist, Maryland State Board of Elections, Annapolis, Md. Intermediate level of work maintaining and modifying operating systems for multipurpose, multi-tasking computers. Employees in this classification do not supervise. Employees in this classification receive moderate supervision from a DP Technical Support Specialist Supervisor or other data processing administrator. Employees may be required to work on evenings, weekends and holidays and may be subject to call-in. The candidate will be responsible for supporting election reform IT initiatives. Experience as a Microsoft Certified Professional and experience in Microsoft Windows Professional and Windows Server products, computer networking and technician functions, understanding of security procedures, the elections industry and technical writing skills are desirable. **Qualifications:** 30 credit hours from an accredited college or university in Computer Information Technology, Computer Science, Management Information Systems or other information technology-related field to include course work in machine or assembler computer languages, and operating system and data communication technology for multipurpose, multi-tasking computers may be substituted for the required education; One year of experience maintaining and modifying operating systems for multipurpose, multi-tasking computers may be substituted for the required education; Experience operating multipurpose, multi-tasking computer systems; or scheduling, controlling input and output or maintaining a tape library to process data on multipurpose, multi-tasking computer systems; or converting data from project specifications by developing program code using third generation computer programming languages; or designing, developing and maintaining communications networks may be substituted for high school on a year-for-year basis. **Salary:** \$40,268 - \$64,282. **Application:** Applications may be obtained by visiting our website at: www.dbm.maryland.gov; by writing to DBM, OPSB, Recruitment & Examination Division, 301 W. Preston Street Baltimore, Maryland 21201; or by calling 410-767-4850, toll-free: 800-705-3493; TTY users call Maryland Relay Service, 800-735-2258. **Deadline:** May 6, 2008.