

Civil Rights

Voting Rights and Photo ID

In 2005, the citizens of Albuquerque approved an amendment to their City Charter that required the production of photo identification for in-person voters in all municipal elections. The stated purpose was to prevent voter fraud and identity impersonation for in-person voting (thus, it did not address absentee voters). However, the amendment allowed a voter without the requisite identification to submit a provisional ballot, after completing a clerk-supplied affidavit as to identity. The vote would then be counted once the individual presented photo identification to the city clerk within ten days of the election date. Also, the city clerk provided free photo identification cards at any time, including on election day and during the ten-day period following an election. The plaintiffs, City residents and various organizations representing voters and homeless individuals, challenged the constitutionality of the Charter amendment, claiming that it violated equal protection and First Amendment rights. The district court granted summary judgment in favor of the plaintiffs on the equal protection claim and in favor of the defendants on the First Amendment claim. The City appealed. After the district court entered its final order, but before the oral argument in the Tenth Circuit, the U.S. Supreme Court decided the case of *Crawford v. Marion County Election Board*, 128 S.Ct. 1610 (2008), where the Court upheld, against a facial equal protection challenge, an Indiana requirement that photo identification be presented before voting. In *Crawford*, the Court held that the appropriate standard for evaluating constitutional challenges to a regulation affecting the right to vote was to balance the restrictions imposed by the regulation against its justifications. Justices Scalia, Thomas, and Alito, in a concurring opinion, stated that the burden imposed by the photo identification law was "minimal and justified," and that the law was a "generally applicable, nondiscriminatory voting regulation."

With the *Crawford* decision in mind, the U.S. Court of Appeals for the Tenth Circuit reviewed the grant of summary judgment. The City argued the plaintiffs' lacked standing, and that the law properly distinguished between in-person and absentee voters. In the court below, the plaintiffs successfully argued that the law created an arbitrary distinction between in-person and absentee voters by only requiring in-person voters to present identification. The Tenth Circuit disagreed, finding that absentee voting was fundamentally different than in-person voting and had its own set of procedures by which to confirm a voter's identity. The law was intended for in-person voters only and, since there were clear differences between in-person and absentee procedures, the law's distinction was proper. Next, analyzing the law using the balancing test in *Crawford*, the court ruled that the law was valid. The justifications for the requirement were to prevent voter fraud and impersonation. Dealing with the district court's finding that the City did not present any evidence of past instances of voting fraud, the Tenth Circuit referred to *Crawford*, where the Supreme Court did not require Indiana to present specific evidence of past conduct to justify its photo identification requirement. Balancing the government's need to prevent fraud against the burden on an in-person voter, a voter without ID could still cast a provisional ballot, and at most, would be burdened with an additional single trip to the city clerk's office. Because an identical burden was found to be permissible in *Crawford*, the court here found it was permissible as well, and the district court's judgment invalidating the law was reversed. *The American Civil Liberties Union of New Mexico v. Santillanes*, 546 F. 3d 1313 (10th Cir. 2008).

Red Light Cameras

In 2003, the City of Chicago installed so-called "red light cameras"—cameras to take photos of cars that ran red lights and made illegal turns. The ordinance provided that the vehicle owner was liable for the $90 fine, regardless of who was driving, although the ordinance exempted certain leases (in such cases, the lessee, rather than the owner, was responsible). Persons cited could defend by showing that the vehicle or its plates had been stolen or that the vehicle had been sold, but could not raise the defense that someone else was driving. The plaintiffs, various owners who had been fined under the ordinance, argued that the system violated the equal protection and due process clauses of the Fourteenth Amendment. The district court held otherwise and entered summary judgment for the defendants. On further appeal, the U.S. Court of Appeals for the Seventh Circuit affirmed. "Substantive due process depends on the existence of a fundamental liberty interest ... and no one has a fundamental right to run a red light or avoid being seen by a camera on a public street. The interest at stake is a $90 fine…, and the Supreme Court has never held that a property interest so modest is a fundamental right." Further, the ordinance was rational: the photographic evidence reduced the costs of law enforcement and increased the proportion of offenses that were detected. Placing the responsibility on the owner induced owners to exercise control over their vehicles, without foreclosing the opportunity for them to recover the cost from the wrongdoer. Lastly, the distinction between lessors and owners was not irrationally discriminatory, given that the City's goal was to impose the fine on the person who, based on readily-available legal documents, was