but sought to forestall summary judgment on the basis that the officers' accounts of the events were not believable: that there were such inherent inconsistencies in the officers' testimony and their testimony was so inherently unbelievable as to allow him to get to a jury. The district court granted judgment on the merits, without reaching the qualified immunity issue, as it was undisputed that LaFrenier actively resisted arrest and attempted to flee; there was no evidence the officers were deliberately indifferent to LaFrenier's medical needs; and the officers had probable cause for the arrest, with no evidence of an improper motive. LaFrenier appealed.

The First Circuit affirmed. The appeal raised "a single key theme: that summary judgment could not be granted because LaFrenier [was] entitled to attack the credibility of the officers' testimony. As a matter of law this is incorrect." LaFrenier offered no affirmative evidence contrary to the defendants' evidence; his claims were not supported by the record; and there was nothing inherently unbelievable about either officer's testimony. Summary judgment could not be defeated on an argument of "mere disbelief" of the moving party's evidence. *LaFrenier v. Kinirey*, 550 F.3d 166 (1st Cir. 2008).

Voting Rights

Photo ID Requirement

Does a state law that requires every voter who casts a ballot to provide photo identification unduly burden the right to vote? In 2005, the Georgia General Assembly enacted a statute that required all registered voters to present government-issued photo identification (ID) before voting in person. Those without acceptable ID could purchase a voter ID card for no more than a $35 fee. The National Association for the Advancement of Colored People (NAACP) and others challenged the law, claiming that this precondition to voting unconstitutionally interfered with the right to vote in violation of the Fourteenth Amendment. The district court granted a preliminary injunction, but, in the meantime, the Georgia legislature repealed the 2005 statute and replaced it with a new law. This retained the ID requirement, but eliminated the fee for the card and required state officials to issue, free of charge, a photo ID card to any registered voter who did not have the acceptable form of ID. The plaintiffs amended their complaint to include the new law. Ultimately, the district court dismissed a challenge for lack of standing and alternatively, ruled on the merits and denied a permanent injunction, finding that the State's interest in preventing voter fraud outweighed the burden on voters' rights.

On appeal, the U.S. Court of Appeals for the Eleventh Circuit addressed whether the NAACP had standing, and second, whether the district court abused its discretion when it refused to enjoin the enforcement of the statute. It found that the court below erred on the question of standing, as "an organization has standing to sue on its own behalf if the defendant's illegal acts impair its ability to engage in its projects by forcing the organization to divert resources to counteract those illegal acts." In this case, the NAACP spent thousands of dollars towards voter empowerment initiatives, and trial testimony indicated that the NAACP would have to divert its volunteers and resources from "getting voters to the polls" to "helping them obtain acceptable photo identification." The court, therefore, concluded that the NAACP had standing on its own behalf, and did not address associational standing. On the second issue, the Eleventh Circuit ruled that the court below had not abused its discretion in refusing to permanently enjoin the photo ID requirement. In *Crawford v. Marion County Election Bd.*, 128 S.Ct. 1610 (2008), the Supreme Court ruled in favor of a "flexible standard" in cases where courts were required, with respect to a state's election laws, to balance interests of the state against the burden imposed by such laws. In *Crawford*, the Court ruled that a statute requiring voters to present photo ID was "amply justified by the valid interest in protecting the integrity and reliability of the electoral process." Here, the court reached a similar conclusion. The district court did not err when it determined that "the legitimate interest of Georgia in preventing voter fraud justified the insignificant burden of requiring voters to present photo identification before they vote in person." *Common Cause/Georgia v. NAACP*, 554 F. 3d 1340 (11th Cir. 2009).

Voting Rights Act – Redistricting

The plaintiffs, members of the Oglala Sioux Tribe, brought a challenge to a redistricting ordinance enacted by the City of Martin, claiming that the new boundaries set by the ordinance "intentionally and effectively dilut[ed] the voting strength of Native Americans." The district court held, based on the totality of the circumstances, that the ordinance impermissibly diluted the Native American vote and violated the Voting Rights Act of 1964 (VRA). The City of Martin appealed.

In order to establish a VRA violation, a plaintiff was required to show, by a preponderance of the evidence, that: the racial group was sufficiently large and geographically compact to constitute a majority in a single-member district; the racial group was politically cohesive; and the majority voted sufficiently as a bloc to enable it to defeat the minority's preferred candidate. The VRA provided that a denial of the right to vote occurred when, based on the totality of circumstances, it was shown that the political processes leading to nomination or election in the State or political subdivision were not equally open to participation by members of a class of citizens protected by the VRA, in that its members had "less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." In this case, the City had a voting-age population of 737 persons, with Native Americans constituting 36% of this population. The City was divided into three wards. The new redistricting resulted in a situation where, even if every Native American resident voted for the same candidate, they would not be able to elect that person on the strength of their vote alone. This proved true in reality, as no Native American-preferred candidate had succeeded in being elected since the adoption of the ordinance. The court agreed with the district court's finding that the ordinance impermissibly diluted the Native American vote, and affirmed a redistricting remedial plan proposed by the plaintiffs. *Cottier v. City of Martin*, 551 F.3d 733 (8th Cir. 2008). ML