



Teaching Activity: Voter Identification and the Right to Vote

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Earlier this year, the Supreme Court decided *Crawford v. Marion County Election Board*, a case that challenged an Indiana law requiring voters to show a state-issued photo identification when voting in primary and general elections. The Court upheld the Indiana law by a margin of 6 to 3, but there was no majority opinion in the case. Three justices signed a plurality written by Justice Stevens and another three joined a concurring opinion written by Justice Scalia. Justice Souter wrote a dissenting opinion joined by Justice Ginsburg, and Justice Breyer wrote a second dissenting opinion.

In this activity, students will research the positions that divided the Court's decision on voter identification and then debate the constitutionality of scenarios affecting the right to vote.

Estimated Time

2 – 3 class periods.

Background

Students should be aware of the Court's decision in [Harper v. Virginia Board of Elections](#), 383 U.S. 663 (1966). In that decision, the Supreme Court struck down a Virginia law that imposed a poll tax of \$1.50 on persons voting in Virginia state elections. The Court held that, because voter qualifications have no relation to wealth, a requirement tied to the affluence of a voter or payment of a fee violated the Equal Protection Clause of the Fourteenth Amendment. The *Harper* decision is cited frequently in the *Crawford v. Marion County Election Board* decisions.

Activity

Step One

Share with students the main components of the Indiana voter identification law. Students can either read the description of the law at the beginning of [Justice Stevens' plurality opinion](#), or you can share the components, listed below, on a handout or on the board. The components include:

- Voters at primary and general elections are required to show a state-issued photo identification. No identification is needed for absentee ballots submitted by mail. Exemptions also apply to persons living in state-licensed facilities such as nursing homes.
- Indigent voters or voters who object to being photographed for religious reasons may cast a provisional ballot. These ballots will be counted, however, only if the voter files an affidavit with a county election board or a circuit court clerk within 10 days of the election.
- Persons seeking photo identification for the first time are required to show a birth certificate, a naturalization certificate, a U.S. veteran photo identification, a U.S. military photo identification, or a U.S. passport.
- No photo identification is required to register to vote, and the state offers free photo identifications to qualified voters who can establish their residence and identity.

Ask students for their first impressions of the law. Why might the state require voters to show photo identification when they vote? Would showing a photo identification as described in the law pose substantial obstacles to any voters? Would the burdens of obtaining a photo identification exceed the burdens already involved in registering and going to vote? Have students keep a record of their first impression of whether the law seems reasonable.

Step Two

Divide the class into groups of 4 to 6 students. Assign each group to one of the four opinions filed in the *Crawford* case (Stevens plurality opinion, Scalia concurring opinion, Souter dissenting opinion, and Breyer dissenting opinion). Make sure that at least one group is assigned to each of the four opinions. Ask the groups to read and summarize the main arguments of their assigned decision. As the groups report their summaries to the class, check for understanding of these key points from each of the decisions:

Stevens Opinion

- Restrictions are invidious when they are irrelevant to voter qualifications.
- Evenhanded restrictions that protect the integrity of the voting process are judged by balancing the interests put forward by the state and the burdens imposed by the state's rule.
- The state's interests in this case were legitimate and relevant, while the burdens imposed in obtaining a free identification were not substantial, or even a significant increase over the "usual burdens of voting.
- Although the law may have imposed a special burden on some voters, not enough evidence had been assembled to show the severity of that burden.

Scalia Opinion

- The primary question is whether the challenged law severely burdens the right to vote. Ordinary and widespread burdens are typically not severe. This law imposed a single burden – that of presenting an identification – on all voters.
- A generally applicable law that has "disparate impacts" (affects people differently) is not unconstitutional without proof of discriminatory intent.

Souter Opinion

- The state should be required to make a particular, fact-based showing that the threats to its interest in protecting the voting process outweigh the burdens it has imposed on voters. The majority did not insist enough on this showing of fact by the state; no evidence of in-person voter impersonation had been shown.
- Specific burdens on voters were demonstrated. There were far fewer places to obtain an identification than there were places to vote. And although identifications were free, the most common documents to establish the identity of first-time applicants for identification (birth certificates and passports) were available only upon payment of a fee.

Breyer Opinion

- The restrictions imposed by the state went too far. More moderate models in states such as Florida (which allowed a wider range of voter identifications) and Georgia (which allowed a greater range of documentation to establish one's identity) struck a more appropriate

balance between the state's interest in protecting the voting process and the burdens placed on voters.

Step Three

Ask the students to consider whether the arguments made in the opinions in the case changed their first impressions of the law. Did the law strike an appropriate balance between the state's interests and the burdens it placed on voters? Did the requirements raise legitimate equal protection concerns under the Fourteenth Amendment? For those students who think that the law should be struck down, would they accept one of the more moderate laws highlighted in Justice Breyer's opinion?

Step Four

Conclude the activity by asking students to debate the constitutionality of the following proposals, based on their understanding of the opinions in *Crawford*:

- A state requires individuals to show a state-issued photo identification to register to vote.
- A state requires a state-issued photo identification to vote, and requires payment of a \$2 fee to help defray its expenses.
- A state enacts a law similar to the Indiana law, but deletes the provisional ballot exception for indigent voters or voters who object to being photographed.