

*GREATER BIRMINGHAM MINISTRIES V. SECRETARY OF STATE FOR
THE STATE OF ALABAMA: ELEVENTH CIRCUIT FINDS ALABAMA
VOTER IDENTIFICATION LAW CONSTITUTIONAL*

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In *Greater Birmingham Ministries v. Secretary of State for the State of Alabama*,¹ the United States Court of Appeals for the Eleventh Circuit addressed the constitutionality of an Alabama law that governs “one of the most fundamental rights of our citizens: the right to vote.”²

The Eleventh Circuit affirmed the lower court’s ruling that Alabama’s 2011 Photo Voter Identification Law (hereinafter “voter ID law”) is constitutional and not racially discriminatory.³ Circuit Judge Elizabeth L. Branch, writing for the majority, found that “[t]he burden of providing a photo ID pursuant to Ala. Code § 17-9-30 in order to vote is a minimal burden on Alabama’s voters—especially when Alabama accepts so many different forms of photo ID and makes acquiring one simple and free for voters who lack a valid ID but wish to obtain one.”⁴

In 2011, Alabama’s voter ID law began as House Bill 19 (“HB19”) and was codified at Alabama Code section 17-9-30.⁵ The law took effect in June 2014 and requires voters, whether in-person or absentee, to present a photo ID in order to vote.⁶ A voter is eligible to vote if he or she presents an ID from any one of the seven categories of acceptable forms, which include: drivers’ licenses and non-driver IDs; Alabama photo voter IDs; passports; military, government employee, and tribal IDs; or student and employee photo IDs from a

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¹ *Greater Birmingham Ministries v. Sec’y of State for Ala.*, 966 F.3d 1202 (11th Cir. 2020).

² *Id.* at 1221 (quoting *Ga. State Conf. of NAACP v. Fayette Cnty. Bd. of Comm’rs*, 775 F.3d 1336, 1345 (11th Cir. 2015)).

³ *Id.* at 1240; see ALA. CODE § 17-9-30 (effective Aug. 1, 2019).

⁴ *Greater Birmingham Ministries*, 966 F.3d at 1240.

⁵ *Id.* at 1208.

⁶ *Id.*

“public or private college, university, or postgraduate technical or professional school in Alabama.”⁷

For Alabamians with no valid form of identification, the voter ID law provides for the Alabama Secretary of State to issue a photo voter ID card specifically for voting purposes at no cost.⁸ Further, if a potential Alabama voter lacks means of transportation to obtain a photo voter ID, a “mobile unit” will travel to the individual’s home.⁹ In his deposition, Alabama Secretary of State John Merrill emphasized that voters who claim to lack transportation, even if untrue, are “taken at [their] word” because “nobody is ever going to be denied a voter ID” in Alabama.¹⁰ If an individual still arrives on election day without a valid photo ID, the law also permits the potential voter to utilize the “positive identify provision” (“PIP”), which allows the individual to vote if he or she is positively identified by two election officials as a voter on the poll list.¹¹

Greater Birmingham Ministries, the Alabama State Conference of the National Association for the Advancement of Colored People, and four registered minority voters (“Plaintiffs”) filed a civil rights action in federal court against the Secretary of State for Alabama (“State”) seeking declaratory and injunctive relief to prevent the enforcement of Alabama’s voter ID law.¹² Plaintiffs alleged the Alabama voter ID law’s enactment violated the United States Constitution and the Voting Rights Act (“VRA”) because the law had a racially discriminatory purpose and effect.¹³

The district court granted summary judgment in favor of the State.¹⁴ On appeal the Eleventh Circuit considered *de novo* whether Alabama’s voter ID law (1) violated the Fourteenth and Fifteenth Amendments, (2) violated Section 2

⁷ *Id.* at 1211–12. Drivers’ licenses and non-driver IDs must be issued by the Alabama Law Enforcement Agency to be valid. *Id.* at 1212 n.13. *See also* ALA. CODE § 17-9-30(a)(1) to (a)(7).

⁸ *Greater Birmingham Ministries*, 966 F.3d at 1213; ALA. CODE § 17-9-30(a)(2), (g).

⁹ *Greater Birmingham Ministries*, 966 F.3d at 1213. As of April 12, 2017, fewer than ten home visits had actually occurred. *Id.* at 1215–16.

¹⁰ *Id.* at 1216.

¹¹ *Id.* at 1214; ALA. CODE § 17-9-30(f).

¹² *Greater Birmingham Ministries*, 966 F.3d at 1208. The individual plaintiffs included Giovana Ambrosio, Shameka Harris, Debra Silvers, and Elizabeth Ware. *Id.*

¹³ *Id.*

¹⁴ *Id.*

of the Voting Rights Act, and (3) violated Section 201 of the Voting Rights Act.¹⁵

Before evaluating Plaintiffs' claims, the court first noted that Plaintiffs failed to distinguish the present case from the United States Supreme Court's holding in *Crawford v. Marion County Election Board*.¹⁶ In *Crawford*, the Supreme Court upheld an Indiana law that required voters to present a government-issued photo ID in order to vote.¹⁷ According to the Eleventh Circuit, "[t]he Supreme Court's decision in *Crawford* generally affirmed the facial validity of voter ID laws."¹⁸ Despite the Eleventh Circuit's belief that the present case was not adequately distinguished from *Crawford*, the court proceeded with a full review of Plaintiffs' claims.¹⁹

First, Plaintiffs alleged the voter ID law violated both the Fifteenth Amendment and the Equal Protection Clause under the Fourteenth Amendment because the voter ID law's purpose was "to deny or abridge the right to vote on account of race or color."²⁰ Plaintiffs bringing a Fourteenth Amendment equal protection claim and a Fifteenth Amendment abridgement claim must satisfy two prongs.²¹ Under the first prong, Plaintiffs were required to show the State law was enacted with a discriminatory purpose and effect.²² Plaintiffs must be able to establish both intent and effect for their constitutional claims to succeed.²³ The court noted that the Supreme Court has *not* imposed a strict scrutiny standard on laws that place any burden on the right to vote.²⁴ Instead, the circuit court must weigh the character and magnitude of the Plaintiffs' alleged injury against the interest presented by the State as justification for the burden imposed by the rule.²⁵ The circuit court applied a multi-factor approach articulated by the Supreme Court in *Village of Arlington Heights v. Metropolitan Housing Development*

¹⁵ *Id.* at 1221–40.

¹⁶ *Id.* at 1222; *see Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181 (2008).

¹⁷ *Greater Birmingham Ministries*, 966 F.3d at 1222; *Crawford*, 553 U.S. at 204.

¹⁸ *Greater Birmingham Ministries*, 966 F.3d at 1210.

¹⁹ *Id.* at 1224.

²⁰ *Id.* at 1222; *see U.S. CONST.* amends. XIV, XV.

²¹ *Greater Birmingham Ministries*, 966 F.3d at 1225.

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 1224; *see Burdick v. Takushi*, 504 U.S. 428, 432 (1992).

²⁵ *Greater Birmingham Ministries*, 966 F.3d at 1224.

Corp. to determine whether discriminatory intent exists, and includes factors such as discriminatory impact, disparate impact, historical context, availability of less discriminatory options, and statements by the legislature.²⁶

Plaintiffs' primary evidence of discriminatory intent behind the law's passage relied on the "overt statements of racial bias against voters of color" made primarily by three Alabama legislators.²⁷ But the statements were largely unconnected to the passage of the voter ID law.²⁸ None of the statements were made by sponsors of the bill and some of the legislators were not even in office during the consideration and passage of the bill.²⁹ For those who were in office, undisputed evidence showed that *none* of the racial comments were made about the law in contest, HB19.³⁰

The Eleventh Circuit made clear that it "does not condone, under any circumstances, racist statements" and recognized Alabama's racist history.³¹ However, the court also recognized the "danger of allowing the old, outdated intentions of previous generations to taint Alabama's legislative action forevermore on certain topics," stating, "it cannot be that Alabama's history bans its legislature from ever enacting otherwise constitutional laws about voting."³² In his dissent, Circuit Judge Gayles criticized the majority for this "clean slate" approach and argued that "Alabama's history of voter suppression [was] relevant here and . . . should [have been] considered at trial."³³

According to Plaintiffs, the law also violated Section 2 of the Voting Rights Act³⁴ because the law results in minority voters "having less opportunity than white voters to participate effectively in the political process and to elect candidates of their choice" and "having less opportunity to participate effectively in the political process in Alabama on

²⁶ *Id.* at 1225; *see also* *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977).

²⁷ *Greater Birmingham Ministries*, 966 F.3d at 1226.

²⁸ *Id.* at 1228.

²⁹ *Id.* at 1227.

³⁰ *Id.*

³¹ *Id.* at 1226–27.

³² *Id.* at 1228–29.

³³ *Greater Birmingham Ministries*, 966 F.3d at 1249 (Gayles, J., dissenting).

³⁴ 52 U.S.C. § 10301 (2018).

account of race, color, or language minority status.”³⁵ Unlike Plaintiffs’ constitutional claims, the VRA only requires proof of discriminatory results rather than an additional intent requirement.³⁶ Conflicting expert testimony estimated anywhere between 32,000-118,000 registered voters lack a valid photo ID.³⁷ Plaintiffs contended that minority voters are “twice as likely” as white voters to lack a valid voter photo ID, but the Eleventh Circuit agreed with the State that the representation “[was] a misuse of data’ that ‘mask[s] the fact that the populations were effectively identical.”³⁸ Undisputed evidence revealed that 99% of white voters and 98% of black voters possessed a photo ID in Alabama, meaning there was only a 1% difference of the rate of ID possession between white and minority voters.³⁹

Lastly, Plaintiffs alleged that the voter ID law violated Section 201 of the Voting Rights Act⁴⁰ because the PIP provision was a “test or device” and “violate[d] the prohibition on those tests or devices enumerated in” the VRA by requiring voters to “prove their qualifications by the voucher of two election officials.”⁴¹ The Eleventh Circuit was unpersuaded.⁴² The court determined that the PIP was not created as a prerequisite to vote, as required to violate Section 201 of the VRA, but instead was a “failsafe” provision to allow voters who lacked proper identification the opportunity to vote.⁴³ The court also found merit in the district court’s analysis, which recognized that the PIP “‘gives *more* voters, including minority voters, the opportunity to vote,” not fewer.⁴⁴

Ultimately, the Eleventh Circuit found Alabama’s interests in “combatting voter fraud, increasing confidence in

³⁵ *Greater Birmingham Ministries*, 966 F.3d at 1231–32.

³⁶ *Id.* at 1232.

³⁷ *Id.* at 1233. This range represents an estimated combination of voters who lack an ID entirely and voters who have “contestable” photo IDs, meaning the voter’s identification may be contested at the polls because of “material discrepancies” between identifying information on the voter’s ID and the voter roll. *Id.* at 1216 n.25.

³⁸ *Id.* at 1233 (quoting *Frank v. Walker*, 768 F.3d 744, 752 n.3 (7th Cir. 2014)).

³⁹ *Id.*

⁴⁰ 52 U.S.C. § 10501 (2018).

⁴¹ *Greater Birmingham Ministries*, 966 F.3d at 1238.

⁴² *Id.* at 1239–40.

⁴³ *Id.* at 1239.

⁴⁴ *Id.* (emphasis added) (quoting *Greater Birmingham Ministries v. State*, 161 F. Supp. 3d 1104, 1116 (N.D. Ala. 2016)).

elections, and modernizing Alabama’s elections procedures” were legitimate policy justifications for enacting the voter ID law when compared with the low burden the law placed on voters.⁴⁵ The Eleventh Circuit upheld the district court’s grant of summary judgment in favor of the State, holding that Plaintiffs failed to present any genuine disputes of material fact that a reasonable juror could find the Alabama voter ID law was discriminatory.⁴⁶ In sum, “[t]he Alabama voter ID law does not violate the Fourteenth and Fifteenth Amendments [to] the Constitution, nor does it violate the Voting Rights Act.”⁴⁷

Perhaps the most notable takeaway from the court’s decision in *Greater Birmingham Ministries* is the extent a state’s history should be considered when presented with a constitutionality question. Here, the Eleventh Circuit appears to take a state’s history into consideration but ultimately relies on a “clean slate” theory.

⁴⁵ *Id.* at 1230, 1240.

⁴⁶ *Id.* at 1240.

⁴⁷ *Greater Birmingham Ministries*, 966 F.3d at 1240.